

COMMENTS ON MONA DCO ORDER

Introduction

I apologise for the brief and informal approach of this document. It has been prepared in a very limited timescale in response to the panel's request for a submission or attendance in advance of the Hearing on the DCO taking place on Thursday 24th October.

Order text, where cited is shown in italics and where additional text for the Order is suggested this is shown in blue font – where it is suggested that Order text be deleted this is shown in red font with a strike through line.

Reasons for the insertions deletions are shown in green font.

It is likely that further submissions will be required on the Order as time permits however the major issues are dealt with here.

1. Our primary submission is that Plots 06-102 to 06-105 (inclusive) (**Plots**) should be removed completely from the Development Consent Order. Therefore, in respect of the draft Statutory Instrument at section 2 (1) the reference to "Order land" should exclude reference to the Plots.

2. Without prejudice to our primary submission, in the event the Inspector is minded to include the Plots in the Development Consent Order, the following changes should be made to the draft Statutory Instrument (insofar as it concerns the Plots):

2.1 Recitals

“required” to have the same meaning as in section 122(2) of the 2008 Act not as per the “requirements” set out in Schedule 2

2.1 Article 8(d) to be removed in its entirety – see Article 29 later

2.2 Article 16 – text in red to be added

“Discharge of water

16.—(1) Subject to paragraphs (3) and (4) and Part 5 of this Order below the undertaker may, *having first consulted obtained the owner's reasonable consent use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may inspect, lay down, and having first consulted obtained the owner's reasonable consent 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 pursuant to paragraph (1) must be determined as if it were a dispute under section 106 (right to communicate with public sewers)(a) of the Water Industry Act 1991

COMMENTS ON MONA DCO ORDER

(2A) Any dispute arising from the making of connections to or the use of a private drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute Determined in line with Part 1 of the 1961 Act

(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 pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension. In the event of a dispute Determined in line with Part 1 of the 1961 Act”

“Compulsory acquisition of land

20.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to carry out or to facilitate or is incidental to it.

(2) This article is subject to:

- (a) article 21 (time limit for exercise of authority to acquire land compulsorily);
- (b) article 22 (compulsory acquisition of rights);
- (c) article 26 (acquisition of subsoil only);
- (d) article 29 (temporary use of land for carrying out the authorised project); and
- (e) article 39 (crown rights).

(3) In the event of a dispute as to the amount of land required then this to be determined in line with Part 1 of the 1961 Act”

(reason, as currently drafted this Article seems to give the Promoter absolute discretion over this land)

“Time limit for exercise of authority to acquire land compulsorily

21.—(1) After the end of the period of ~~seven~~ *three* years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 (compulsory purchase under acquisition of Land Act of 1946) of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration)(b) of the 1981 Act as applied by article 25 (application of the 1981 Act).

(reason is that the Promoter advises that detailed design will be available 12 months post confirmation three years should be more than sufficient)

~~(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised project) 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~~

(reason is that there is no statutory right for a temporary power to apply under a DCO (see later)

“Compulsory acquisition of rights

22.—(1) The undertaker may acquire such rights over the Order land, by creating them as well as acquiring rights already in existence, or impose restrictions affecting the land as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land).

COMMENTS ON MONA DCO ORDER

(2) Subject to article 24 (private rights) and article 31 (statutory undertakers) in the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) the powers of compulsory acquisition conferred by this Order are limited to the acquisition of new rights in the land or the imposition of restrictions for the purpose specified in relation to that land in column (2) of that Schedule and as described in the book of reference.

~~(3) Subject to section 8 (other provisions as to divided land) (I am unable to find this section 8 reference) of and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act(c) (as substituted by paragraph 10 of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictions)), where the undertaker acquires a right over the Order land or imposes a restriction under this article, the undertaker is not required to acquire a greater interest in that land.“~~

(Reason - the well developed and highly regarded longstanding tests for material detriment under Section 8 of the 1965 Act concern far wider issues than merely the permanent impact on the affected plot alone and remainder of the land. They actually concern the permanent and temporary (construction) impacts on the affected land, retained land as well as on the entire wider scheme generally. Further merely because the impact may be “underground” makes it no less of a case for hardship (or material detriment) on the affected party and so accordingly it is unfair for the Promoter to seek to exclude itself from these very respected necessary safeguards for affected parties) The Promoter should not seek to thwart the will of Parliament for its own advantage and to the detriment of those affected.

“Acquisition of subsoil only

26.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) and paragraph (1) of article 22 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

~~(2) Where the undertaker acquires any part of, or rights in the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land:~~

~~(3) Paragraph (2) does not prevent Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 27 (modification of Part 1 of the 1965 Act) or Schedule 9 (Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictions) as the case may be) from applying where the undertaker acquires any part of, or rights in a cellar, vault, arch or other construction forming part of a house, building or factory:~~

~~(4) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—~~

~~(a) Schedule 2A to the 1965 Act (as modified by article 27 (modification of Part 1 of the 1965 Act));~~

COMMENTS ON MONA DCO ORDER

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

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

(Reason - the longstanding tests for material detriment under Section 8 of the 1965 Act concern far wider issues than merely the impact on the affected plot alone and remainder of the land. Further merely because the impact may be “underground” makes it no less of a case for hardship on the affected party and so accordingly it is unfair for the Promoter to seek to exclude itself from these very respected necessary safeguards for affected parties)

29 “Temporary use of land for carrying out the authorised project “

To be deleted in its entirety

30”Temporary use of land for maintaining the authorised project”

To be deleted in its entirety

Reason –

Article 29 (and Article 8 d) and Article 30 Temporary Possession Powers

In the Compulsory Purchase Association Law Reform Lecture in May 2014, Barry Denyer-Green ⁽¹⁾, clearly demonstrates 5 extremely compelling grounds that demonstrate why temporary possession, being merely a form of “consent for trespass” is not lawfully authorised under a Development Consent Order.

His very credible analysis includes a review of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ⁽²⁾ which seems to be the basis upon which the Promoter is seeking to rely on for its Article 29 Temporary Powers in this instance.

In the meantime, the Neighbourhood Planning Act 2017 has been passed but without the temporary possession section in Chapter 1 having yet been enacted as evidenced in Burgess Salmons’s current article on their website entitled CPO and compensation: important changes to planning and CPO Law – Future changes ⁽³⁾. Were it enacted then Sections 18 to 31 would deal with temporary possession of land. As far as I have currently been able to find to date, there is no other enabling legislation for temporary possession of land in connection with compulsory purchase orders including DCOs.

Even in the event that chapter 1 of the Neighbourhood Planning Act 2017 had been enacted and therefore of possible use to the promoter then I cannot however find any direct link (citations, interpretations etc) between the Neighbourhood Planning Act 2017 and the Planning Act 2008 and vice versa.

Neither is there a reference to it in the interpretations of the Promoter’s Order as currently drafted. However, there is a reference to it in Article 8d where, the Promoter seems to be relying on this as yet unenacted section of the Act to underpin its use of temporary possession powers in Article 29 and 30 whilst at the same time seeking to bypass the protective provisions

¹ LAW REFORM LECTURE (May 2014): Temporary possession of land: The legal implications; Barry Denyer-Green (pp5 & 11-15)

² Infrastructure Planning (Model Provisions) (England and Wales) Order 2009

³ Burgess Salmon: article entitled “CPO and compensation: important changes to planning and CPO Law”

COMMENTS ON MONA DCO ORDER

of Section 19 to 30 and instead apply the far more “Promoter friendly” provisions in the “model clause” of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ⁽⁴⁾.

I regret that due to current time constraints I am still trying to conclude what my view is on the lawfulness of Articles 29 and 30 but I will confirm this when I do although I will probably need independent legal advice to assist.

In the meantime the Promoter should be asked to clarify what statutory provision it relies on to support the inclusion of Articles 29 and 30 in the draft Order.

However I would point out that the protective provisions in Sections 19 to 30 of the Neighbourhood Planning Act 2017 are, (although not yet in force) on the whole, generally well regarded, within the profession, as finding a reasonable basis of checks and balances and general protection of the landowner against the risks and adverse impacts that they can suffer due to temporary possession and in particular under the model clauses advanced in Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 which is what the Order as drafted as currently has in place at Article 29.

Notwithstanding that I question the lawfulness of the Order’s temporary possession powers at all on which I shall respond further in due course, I would request that in the first instance the protective provisions of section 18 to 30 of the Neighbourhood Planning Act 2017 replace Article 29 of the current draft Order, save that the figure of 6 years at Section 21 (2)(b) of the neighbourhood Planning Act 2017 be reduced to 33 months (in line with the Promoter’s stated construction timeframe).

“SCHEDULE 1 Articles 3 and 4 Authorised Project PART 1 Authorised Development

~~Work No. 13: temporary construction compounds and laydown areas with a total maximum area of 37,500 m2 and access to Work Nos. 12 and 14 during construction including works to the public highway and visibility splays;~~

~~Work No. 14: (a) installation of up to four buried cable circuits between Work No. 12 and Work No. 15 approximately 2,700 m including cable ducts; and (b) trenchless installation technique works including the creation of entry and exit pits for trenchless installation techniques and cable trenching works;~~

(Reason – Amendments to these works descriptions to reflect the removal of plots 06-102 to 06-105 from the Order)

“SCHEDULE 7 Article 29 Land of which only temporary possession may be taken

(1) Number of plot shown on land plan (onshore)	(2) Purpose for which temporary possession may be taken	(3) Relevant part of authorised project
05-094, 05-095, 06-099, 06-102, 06-104	Temporary construction compounds and laydown	Work Nos. 12, 13 and 14

⁴ Infrastructure Planning (Model Provisions) (England and Wales) Order 2009

COMMENTS ON MONA DCO ORDER

	areas with a total maximum area of 37,500 m2 and access to Work Nos. 12 and 14 during construction including works to the public highway and visibility splays	
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(Reason – Amendments to these descriptions to reflect the removal of plot 06-104 from the Order)

SCHEDULE 8 Article 20 Land in which only new rights etc. may be acquire

1) Number of plot shown on land plan (onshore)	(2) Purpose for which rights may be acquired
02-033; 03-037; 03-045; 03-047; 03-049; 03-050; 03-060; 03-062; 03-063; 04-067; 04-070; 04-074; 04-078; 05-080; 05-083; 05-084; 05-087; 05-088; 05-091; 05-093; 06-097; 06-100; 06-103; 06-105 ; 06-106; 06-108; 07-109; 07-111; 07-117; 07-120; 07-125; 07-127; 07-129; 07-133; 08-136; 08-146	Cable rights and restrictive covenants 1.Cable rights Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project to— (a) lay down, install, retain, adjust, alter, construct, operate, erect, use, maintain, repair, renew, upgrade, inspect, remove and replace the electricity cables (including the removal of materials including spoil) in, under, over and/or on the land, together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers, cable clamping and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (the "cables"), and in doing so, to use or resort to trenchless installation techniques including (but not limited to) directional drilling; 64 (b) enter, be on, and break open and break up the surface of the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables; (c) to benefit from continuous vertical and lateral support for the authorised project; (d) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing, testing, upgrading and replacing the cables and connection into any adjacent cables and associated works, to take plant and equipment on to adjoining land; (e) construct and install the cables and thereafter use the land for all necessary purposes for the construction, commissioning, testing, repair and maintenance of the cables in, on or under the land; (f) place and use plant, machinery, structures and temporary structures within the land for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and to erect temporary signage and provide measures for the benefit of public and personnel safety; (g) erect fencing, gates, walls, barriers or other means of enclosure, and create secure working areas and compounds including trenchless installation technique compounds and working areas; (h) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal is being carried out; (i) effect access to the highway including creation of temporary visibility splays; 65 (j) make such investigations in or on the land as are required; (k) fell, lop, cut or remove or coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the land or other land which would if not felled, lopped, cut or removed would obstruct or interfere with the installation and operation

COMMENTS ON MONA DCO ORDER

	<p>of the cables; (l) remove and discharge water from the land, and to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse drainage schemes on the land or reinstate any existing drainage scheme on the land; (m) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus, public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers); (n) remove fences and structures within the land during any period in which construction, maintenance, repair or renewal is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instatement or suitable replacement of the fences or structures following the exercise of the rights); (o) store and stockpile materials (including excavated material); (p) create boreholes and trial excavation pits for the purposes of intrusively surveying the land and monitoring the use of any trenchless installation technique, to keep in place and monitor the same through construction, maintenance, repair, replacement or decommissioning and reinstatement of the land; (q) to excavate materials below ground level, including soils, and to store and 66 re-use or dispose of the same, and in so excavating to undertake any works, including works of protection or removal of archaeological remains as may be required by any written scheme of investigation approved under this Order; (r) lay out temporary paths and bridleways for public use as temporary diversions for public rights of way which are interfered with during any period in which construction, maintenance, repair, renewal or decommissioning is being carried out; (s) to install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, and remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna; (t) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the land and/or in accordance with any necessary licences relating to protected species and/or wildlife; (u) (in an emergency only when the cables are temporarily unusable) to lay down, install, use, maintain and inspect replacement underground cables, telephone signalling and fibre-optic cables and ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the land; (v) to construct, use, maintain and improve a permanent means of access including visibility splays, and retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing the land, adjoining land and the highway; and (w) erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land. 2. Restrictive covenants 67 A restrictive covenant over the land for the benefit of the remainder of the Order land to: (a) prevent anything being done in or upon the land or any part thereof for the purpose of the erection of any buildings or construction, erection or works of any kind (including the foundations or footings thereto); (b) prevent anything being done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project); (c) to prevent anything to be done by way of excavation of any kind in the land or any activities which would alter, increase or decrease ground cover or soil levels in any manner whatsoever save</p>
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COMMENTS ON MONA DCO ORDER

	as are reasonably required for agricultural activities (being ploughing to no deeper than 0.6m for the purposes of arable farming) or are required to be carried out by any statutory undertaker in order to exercise their statutory functions or rights in relation to their apparatus (if any) within the land without the consent in writing of the undertaker; (d) to prevent the planting or growing within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access and maintain the relevant part of the authorised project); (e) to prevent anything being done which may interfere with free flow and passage of electricity or telecommunications through the cables or support for the authorised project; (f) to prevent the carrying out of operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised project; and (g) to prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of ecological mitigation areas or areas of habitat creation or enhancement including any ploughing or grazing without the prior written consent of the undertaker.”
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(Reason – Amendments to these works descriptions to reflect the removal of plots 06-103 to 06-105 from the Order)

“SCHEDULE 9 Article 27 Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictions”

This needs further consideration following which further comments will be submitted

“SCHEDULE 2A Section 8 COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

This needs further consideration following which further comments will be submitted

(Reason - the well developed and highly regarded longstanding tests for material detriment under Section 8 of the 1965 Act concern far wider issues than merely the permanent impact on the affected plot alone and remainder of the land. They actually concern the permanent and temporary (construction) impacts on the affected land, retained land as well as on the entire wider scheme generally. Further merely because the impact may be “underground” makes it no less of a case for hardship (or material detriment) on the affected party and so accordingly it is unfair for the Promoter to seek to exclude itself from these very respected necessary safeguards for affected parties) The Promoter should not seek to thwart the will of Parliament for its own advantage and to the detriment of those affected.

“SCHEDULE 10 Article 40 Protective provisions

PART 1 Protection of electricity, gas, water and sewerage undertakers

PART 2 Protection for operators of electronic communications code network

PART 3 — For the protection of Dŵr Cymru Cyfyngedig (DC) PART 4 — For the protection of SP Manweb as electricity undertake

PART 5 For the protection of Wales and West Utilities

PART 6 For the protection of Welsh Ministers as Strategic Highway Authority

PART 7 For the protection of National Grid Electricity Transmission Plc

COMMENTS ON MONA DCO ORDER

PART 8 For the protection of Landowners and Occupiers

Code of conduct and dispute resolution arrangements to be developed for landowners and occupiers for matters such as non-financial (monetary losses sustained) for instance from damage to land and property (i.e. chattels) including retained land from i.e. poor reinstatement, poor fencing, drainage impacts including outside Limits of Deviation arising from the Promoter's works which are not ordinarily matters of compensation referable to the Upper Chamber. It may be that i.e. the Chairman of the NFU appoints an independent expert to determine such disputes.

LAW REFORM: TEMPORARY POSSESSION OF LAND

THE LEGAL IMPLICATIONS

Barry Denyer-Green¹

Summary

In this paper I examine the legal rules relating to the taking of temporary possession of land by acquiring authorities and other authorised scheme promoters ("statutory undertakers").

This paper examines the legal effect of the exercise of a temporary possession power, whether temporary possession powers should apply to highway scheme, whether certain important primary legislation authorises powers of temporary possession, and problems of compensation entitlement. This examination makes suggestions for some areas of law reform, having regard to a need for certainty and practicality, and also fairness, and thus compliance with human rights.²

Law reform

In the field of compulsory acquisition, law reform is necessary where the law is uncertain as to its application, or there are practical difficulties in applying it to the intended purpose. There is also the question as to whether the existing legal rules, in their provision or non-provision for some circumstance, are 'fair'. Although the measurement of fairness is a difficult exercise, there are some essential propositions in the common law that

¹ Barrister, Falcon Chambers.

² The views expressed in this paper are my own, and are not that of the Compulsory Purchase Association. I acknowledge the helpful comments of Paul Astbury on the earlier draft of this paper.

provide useful benchmarks,³ and the relevant rights under the Convention of European Human Rights have application.⁴ Associated with these legal rules, and part of the same set of normative values, is the policy direction in ministerial guidance.⁵ I shall refer to these rules and guidance by the generic “the fairness principles”.

Background

There are a number of reasons why statutory undertakers may wish to take temporary possession of land in relation to the execution and maintenance of schemes. Apart from land, which will be compulsorily acquired for the permanent features of the scheme, land may also be required temporarily for construction compounds, the construction operations, landscaping, and land regrading, among other possibilities. Whilst temporary possession powers are quite usual in legislation concerned with railway schemes, there seems no reason why in principle such powers should not be available for other types of schemes.

The genesis of the modern compulsory purchase legislation is found in the 1845 legislation concerning railways. The Lands Clauses Consolidation Act 1845 contained powers of compulsory acquisition. In connection with new railways, provision was made in the Railways Clauses Consolidation Act 1845 for powers to take temporary possession of land within certain defined limits and for certain specified purposes, subject to the payment of

³ The two most significant: (1) parliament does not usually authorise a taking of private property without compensation (*Central Control Board v Cannon Brewery*[1919] AC 744); and (2) the principle of equivalence (as approved in *Director of Buildings and Lands v Shun Fung Ironworks* [1952] 2 AC 111).

⁴ S.3, Human Rights Act 1998 and European Convention of Human Rights, Articles 6 and 8, and First Protocol, Article 1.

⁵ Para 17, Circular 6/2004.

compensation.⁶ However, the exercise of such temporary possession powers, and the provisions relating to the payment of compensation, were subject to a number of requirements and limitations.⁷

Powers of temporary possession are not universally provided for in modern legislation, and where such powers are included, the comprehensive provisions found in the 1845 Act are not present⁸. However, one should start with the presumption that statutory undertakers may require temporary possession powers, depending on the requirements or any particular project or scheme.

The modern legislation

The Transport and Works Act 1992 contains powers to make orders (“T&WOs”) in relation to certain transport systems and inland waterways.⁹ Schedule 1 to the 1992 Act provides for matters that may be within such orders, including the acquisition of land,¹⁰ and the creation of rights over land,¹¹ in either case whether compulsorily or by agreement. Although the Act contains no express provisions relating to the temporary possession of land, the Secretary of State has power to prescribe model provisions for incorporation in any draft orders.¹² In respect of railways, the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 makes provision for, inter alia, the temporary use of land for construction works and

⁶ Sections 32 and 43.

⁷ In certain cases an owner could offer alternative land: sections 35 and 37. An owner could compel the railway undertaker to purchase lands temporarily occupied: see section 42. Compensation for disturbance items are required to be paid within one month of entry and a rental occupation shall be paid half-yearly to the occupier, or to the owner, as the case may require: see section 43.

⁸ Railways Clauses Consolidation Act 1845.

⁹ Sections 1 and 3.

¹⁰ Para 3, Schedule 1.

¹¹ Para 4, Schedule 1.

for maintenance of works.¹³ The model clause relating to the temporary use of land for construction works provides for a minimum 14-day notice, a limit on the duration and possession of 12 months after completion of the works without agreement, an obligation to pay compensation for any loss or damage arising from the exercise of the powers, that the power of compulsory acquisition of land, conferred by the order, shall not apply in relation to land in respect of which temporary use is authorised, and that a statutory undertaker taking temporary possession shall not be required to acquire the land or any interest in it.¹⁴ However, many confirmed orders provide that, in addition to specifying land in respect of which only temporary possession powers are available, temporary possession can be taken in advance of the compulsory acquisition of land authorised to be taken permanently.¹⁵ Orders frequently provide for time limits within which powers of temporary possession may be exercised that are longer than the one-year, following completion of the works, provided for in the model clauses.¹⁶

Broadly similar provisions are found in primary legislation relating to railways, such as the Crossrail Act 2008,¹⁷ and the Channel Tunnel Rail Link Act 1996.¹⁸ Although in the latter case the powers to take land temporarily were limited to certain temporary purposes, and there was no power to take land temporarily in advance of its compulsory acquisition. The High Speed

¹² Section 8.

¹³ Article 3, and Schedule, clauses 24-25.

¹⁴ Model clause 24, Schedule 1 to the 2006 Order.

¹⁵ E.g. Nottingham Express Transit System Order 2009 (SI 2009/1300), Mersey Tram (Liverpool City Centre to Kirkby) Order 2005 (SI 2005/120), Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (SI 2004/757) and the Docklands Light Railway (Stratford International Extension) Order 2006 (SI 2006/2905), The Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (SI 2012/2679).

¹⁶ *Ibid.*

¹⁷ Section 5 and Schedule 5.

Rail (London – West Midlands) Bill 2013 contains extensive provisions for the temporary possession and use of land, and such powers will enable temporary possession to be taken of land in advance of its permanent acquisition.¹⁹

A Development Consent Order (“DCO”), made under the provisions of the Planning Act 2008, may include provisions authorising the compulsory acquisition of land, subject to certain limitations and conditions.²⁰ The Act makes provision for the matters that may be included in a DCO.²¹ Such matters include acquisition powers, the creation of interests in or rights over land, and the payment of compensation.²² In that connection the Secretary of State may issue guidance about the making of a DCO which includes provisions authorising the compulsory acquisition of land.²³ The issued guidance, relating to procedures for compulsory acquisition, says nothing about the inclusion of provisions for temporary possession.²⁴ However the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 includes suggested provisions for the temporary use of land for carrying out, or maintaining, the authorised project.²⁵ These broadly follow the equivalent model clauses for the purposes of a T&WO. However, in respect of certain approved DCOs, the provisions relating to the temporary use of land for carrying out the authorised development include powers to take, not only land of which temporary possession alone may be taken, but also to take

¹⁸ Section 6 and Schedule 5.

¹⁹ Clause 14 and Schedule 15.

²⁰ Section 122.

²¹ Section 120 and Schedule 5, Part 1.

²² See paragraphs 1, 2 and 36, Part 1, Schedule 5. But the taking of temporary possession of land is not one of the matters listed.

²³ Section 124 and the Planning Act 2008.

²⁴ Department for Communities and Local Government, February 2010.

²⁵ Schedule 1, Model Clauses 28 and 29.

temporary possession in advance of the compulsory acquisition of land authorised to be taken permanently.²⁶

As to other general public legislation authorising compulsory acquisition, one does not find express provisions for temporary possession powers. The Highways Act 1980 contains powers to acquire land compulsorily, but says nothing about the temporary possession of land.²⁷ although the Act does include powers to create rights over land.²⁸

Notwithstanding the absence of any express power to take temporary possession of land in connection with the compulsory acquisition of land for highway purposes, highway authorities seek to get round the absence of a temporary possession power in a number of ways.²⁹

The powers to compulsorily acquire land under the Town and Country Planning Act 1990 make no express provision for the acquisition of a right to take land for temporary purposes only.³⁰

As to the general legislation relating to the making of compulsory purchase orders, the Acquisition of Land Act 1981 provides for the procedure for the authorisation of a CPO, but does not otherwise address the extent of the powers that may be authorised. The Compulsory Purchase Act 1965 and the

²⁶ E.g. The Able Marine Energy Park Development Consent Order 2014, Article 40. In the case of the Hinckley Point C (Nuclear Generating Station) Order 2013, the powers to take temporary possession are limited only to the land specified for that purpose: see Article 33.

²⁷ Sections 239, 240, 241, 242 and 246.

²⁸ See section 250.

²⁹ Thus, under the Metropolitan Borough of Stockport (Hazel Grove (A6) to Manchester Airport A555 Classified Road) Compulsory Purchase Order 2013, a number of plots are identified for compulsory acquisition, notwithstanding that the acquiring authority has indicated that the land is only required for temporary purposes only.

³⁰ See section 226.

Compulsory Purchase (Vesting Declarations) Act 1981 contain procedures for the acquisition of land once a CPO has been confirmed. But neither Act addresses the extent of the powers that may be authorised. The Land Compensation Act 1961 contains the Compensation Code. Whilst it may have application to the determination of compensation for the exercise of temporary possession powers where it is expressly provided for,³¹ it falls to be applied where any land is "acquired compulsorily",³² and compensation is to be assessed in accordance with certain rules "in respect of any compulsory acquisition".³³

The problems identified

I will examine a number of problems in relation to the temporary possession powers.

- (1) What is the legal effect of the exercise of a power of temporary possession.
- (2) Whether there should be such powers in connection with highway schemes.
- (3) Whether the inclusion of such powers in a T&WO or a DCO is outwith the enabling enactments.
- (4) Whether the inclusion of temporary possession powers for the land that may also be permanently acquired can satisfy the fairness principles.
- (5) What is meant by the obligation to pay "compensation" where so provided for?

³¹ Eg, para 24(5)-(6), Transport and Works (Model Clauses for Railways and Tramways) Order 2006, as applied in the Chiltern Railways (Bicester to Oxford Improvements) Order 2012, article 29(5)-(6).

³² S.1.

³³ S.5.

What is the legal effect of the exercise of temporary possession powers?

Entry onto land of another person without consent or legal authority is a trespass.³⁴ On the exercise of a temporary possession power, notice of that is usually required to be served on the owners and occupiers.³⁵ No notice to treat is required to be served as the statutory undertaker will not be treating for any interest; it does not need a tenancy, and it will acquire no interest in land. No title is taken or becomes vested. The exercise of a lawful temporary possession power authorises provides the defence of justification for an act that would otherwise be a trespass.³⁶

An important consequence, of the exercise of the temporary possession power, is that where the relevant land is subject to a tenancy, the tenancy is not terminated, as might be the case where a notice of entry is served under the Compulsory Purchase Act 1965.³⁷ The obligations of the landlord and tenant ordinarily continue; the tenant to pay rent, and the landlord to perform any landlord obligations. It is true that the doctrine of frustration is capable of applying to a tenancy, and, if applied, this would excuse the performance of the parties' obligations, but the doctrine's application is both limited and uncertain.³⁸ In considering whether frustration arises, the terms of the tenancy must be considered, and a comparison made between the likely

³⁴ *Unlawful Interference with Land*, Elvin & Karas, 2nd ed, para 1-046.

³⁵ Eg, para 28(2) of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.

³⁶ Elvin & Karas, *ibid*, para 1-057.

³⁷ S.22.

³⁸ Notice of an intended compulsory acquisition of land did not allow a purchaser to invoke the doctrine of frustration, as justification for refusing to complete a purchase, in *E Johnson & Co (Barbados) Ltd v NSR Ltd* [1996] 3 WLR 583, as the seller could still provide vacant possession; in *National Carriers Ltd v Panalpina Northern Ltd* [1981] AC 675 the House of Lords accepted that the doctrine was capable of applying to leases, but the relationship between the length of the term and the duration of the temporary obstruction of the access precluded frustration in that case.

period of temporary possession and the term under the tenancy.³⁹ In the case, say, of an annual agricultural tenancy, where part only of a holding is the subject of temporary possession, the doctrine is unlikely to apply. But it may apply where the whole or a substantial part of the demise is taken for a period approaching or exceeding the term of the lease.

In the case of orders made under 1992 and 2008 Acts, the model provisions provide that an undertaker may enter and take temporary possession of specified land, for specified purposes, and may remove any buildings and vegetation from that land, and construct temporary works.⁴⁰ These powers omit two important safeguards found in the 1845 legislation. First, that an owner may, by counternotice, object on the basis that some other contiguous or nearby land of his would be more fitting for the purpose.⁴¹ Second, that an owner can require the statutory undertaker to purchase land temporarily occupied.⁴² There are obvious objections to the inclusion of the first safeguard on the basis that where land is to be taken only for the purpose of the construction activity, it may be impossible to accommodate alternatives, if at all, in the construction design or programme. There is far less objection to the second safeguard in those cases where temporary possession is taken of land, upon which the scheme works are constructed, and which plainly will be permanently acquired at some stage.

³⁹ In *National Carriers Ltd v Panalpina Northern Ltd* [1981] AC 675 no frustration arose where a road was closed for 20 months and the lease term was 10 years.

⁴⁰ Transport and Works (Model Clauses for Railways and Tramways) Order 2006, Schedule 1, para 24(1) and ...

⁴¹ S.35, Railways Clauses Consolidation Act 1845.

⁴² S.42, *ibid.*

Whether there should be temporary possession powers for highway schemes

I appreciate that many highway schemes will be subject to DCOs; but there will be schemes outside the scope of the Planning Act 2008. There is very little evidence, other than anecdotal, and my personal experience, as to the need for temporary possession powers in connection with highway schemes. The practical problems of constructing roads and bridges are little different from constructing the equivalent for railways. Space may be required for contractors' compounds and for the erection of structures. Cuttings and embankments may require temporary or permanent spoil heaps and land grading. In the past highway authorities, or their contractors, frequently negotiated for the use of additional land for temporary purposes.⁴³ That practice is now less common as road contractors have become more involved in furthering the compulsory purchase orders, and seek to avoid the ransom sums that might otherwise be payable.

It is known that the highways authorities, relying on the powers of permanent acquisition under the Highways Act 1980, include land required only temporarily as land to be taken permanently. There are two objections to this. First, that an authority might fail to justify the use of permanent acquisition powers for a temporary purpose only.⁴⁴ Second, that it could be compelled to acquire land that it does not require permanently.

⁴³ Difficult questions of betterment set-off then arose where a claimant-owner obtained a lucrative contract to provide land temporarily.

⁴⁴ Para 17, Circular 6/2004 - *compelling case in the public interest*

Subject to the other safeguards considered in this paper, there is no reason why the Highways Act 1980 should not be amended to include a temporary possession power.

Whether temporary possession powers can be lawfully included in T&WO and DCOs?

Both the Transport and Works Act 1992 and the Planning Act 2008 make provision for the subject matter of the respective orders.⁴⁵ Whilst the acquisition of land, compulsorily or by agreement, is a matter that may be the subject of the respective orders, the compulsory taking of temporary possession for construction and/or maintenance is not expressly so included. That omission provokes a number of questions.⁴⁶

First, whether the inclusion of a power to take temporary possession in the respective orders falls within the powers of “compulsory acquisition of land”. As the 1845 legislation contained powers for both the compulsory acquisition of land, and the taking of temporary possession for certain purposes, that raises the possibility that the legislature distinguishes between those two powers.⁴⁷ The prescribed model clauses, relating to the temporary use of land for construction or maintenance of works, require the service of notice before taking temporary possession, and refer neither to a Notice to Treat or

⁴⁵ Section 5 of, and Schedule 1 to, the 1992 Act and section 120 of, and Schedule 5, Part 1 to, the 2008 Act.

⁴⁶ Some of the points raised in this section may also have resonance in relation to other primary legislation authorising compulsory acquisition.

⁴⁷ Section 10 of the Defence Act 1842 authorised the appropriate authorities to treat for the absolute sale of land, or the grant of any lease, or “*for such period as the exigency of the public service shall require*” and for powers of compulsion: see sections 10 and 19. The Emergency Powers (Defence) Act 1939, which provided for the Defence Regulations also made a distinction between the taking of possession of any property and the acquisition of any property (other than land): see section 1(2)(b). Sections 1 and 2 of the Compensation (Defence) Act 1939 makes provision for compensation where possession of any land has been taken, but distinguishes the requisition or acquisition of land: see section 1.

a General Vesting Declaration, to which the provisions of the 1965 or 1981 Acts would otherwise apply, and where such steps either state that land is sought to be acquired, or is vested, respectively. On their terms, no interest is sought to be acquired under the model clauses; what is purported to be authorised is possession only. What is authorised is the taking of temporary possession for specified purposes; it amounts to no more than legal justification for what would otherwise amount to a trespass. The acquisition procedures of the 1965 Act are generally incorporated into T&WO and DCO's. The 1965 Act defines "land" as that defined in the Act authorising the acquisition.⁴⁸ Where possession is taken under the model clauses, no interest or title is acquired, and no legal interest or title vests in the undertaker. It therefore seems unlikely that the grant of a power of compulsory acquisition of land can be construed as including a power to take temporary possession of land.

Second, the matters that may be included in the respective orders include the creation of rights over land.⁴⁹ Would the temporary possession powers and the model clauses fall within the expression "rights over land"? In each case the model clauses deal separately with the power of temporary possession and the power to acquire new rights; this again rather suggests that the Secretary of State, at least, does not consider that the statutory power to create rights over land includes the right to take temporary possession of land. The meaning of "rights over land" needs to be considered in relation to other primary legislation. The acquisition, by way of the creation of new rights over land, as provided for in the Local Government (Miscellaneous Provisions) Act 1976⁵⁰ and the Highways Act 1980⁵¹ is generally understood

⁴⁸ S.1(3).

⁴⁹ 1992 Act, Schedule 1, para 4 and 2008 Act, Schedule 5, Part 1, para 2.

⁵⁰ Section 13.

as providing for the creation of rights in the nature of easements.⁵² A right to acquire land does not include a right to acquire, by creation, new rights over land, in the absence of express powers.⁵³

Where, rights are compulsorily acquired under the 1976 or 1980 Acts, the 1965 Act applies with modifications, including the requirement to serve a Notice to Treat.⁵⁴ Consistently with such arrangements, the model clauses apply the 1965 Act with modifications necessary to make it apply to the compulsory acquisition of a right, by the creation of a new right, as it would apply to the compulsory acquisition of land.⁵⁵

It is therefore difficult to construe the power to acquire a right over land as including a power of temporary possession.

Third, the matters for which the respective orders can make provision include compensation.⁵⁶ In the case of the model clauses for T&WO, provision is made simply for the payment of compensation, without any reference to the exercise of any identified power. The existence of a compensation provision in a statute can be relevant to the construction of its provisions relating to the taking of, or the interference with, rights.⁵⁷ But, having regard to the

⁵¹ Section 250.

⁵² For the necessity for such a power: see Sovmots Investments Limited v Secretary of State for the Environment [1979] AC 144.

⁵³ See also Pinchin v London and Blackwall Railway Co (1854) 5 De GM&G 851 and Hill v Midland Railway Co (1882) 21 Ch D 143.

⁵⁴ Eg., see s.13(3) of the 1976 Act.

⁵⁵ Transport and Works (Model Clauses for Railways and Tramways) Order 2006, Schedule 8, para 3.

⁵⁶ The 1992 Act, Schedule 1, para 11 and the 2008 Act, Schedule 5, para 36.

⁵⁷ The existence of a compensation obligation, in a manorial custom, a local law, was relevant to the right to let down the surface of land in relation to mining in *Excors of John Hargreaves Ltd v Burnley Corpn* [1936] 3 All ER 959, 968. Although in *New Sharlston Collieries Co Ltd v Westmoreland (Earl)* [1904] 2 Ch 443n HL, the existence of a

extensive list of matters for which orders may make provision, and where any number of them could well give rise to losses or damage for which compensation ought to be provided, the non-specificity of the expression "compensation" is understandable, and does not assist in the extension of matters for which orders may provide, and which are not expressly stated. To put the matter the other way round, the absence of a compensation provision raises the presumption that Parliament does not authorise a taking of or interference with property rights,⁵⁸ but its non-specified inclusion does not raise a presumption that any interference with property is authorised. Further, the existence of a non-specific compensation provision would most probably negate a contention of a breach of Convention Rights.

I conclude that the existence of the compensation obligation is helpful in interpreting the enactments as including the power of temporary possession, but is not conclusive.

Fourth, in the case of T&WOs, the Secretary of State has power to prescribe model provisions for incorporation in any draft orders.⁵⁹ Is this sufficient authority to prescribe a clause authorising temporary possession? I think that a delegated power is unlikely, on its own, to authorise a compulsory power to interfere with property.

Fifth, whilst subordinate legislation might contain provisions that are not authorised by the enabling legislation, the subordinate legislation retains legal effect until quashed by a judicial act.⁶⁰

compensation provision in a conveyance was not inconsistent with an obligation not to let down the surface.

⁵⁸ *Central Control Board v Cannon Brewery* [1919] AC 744.

⁵⁹ Section 8.

⁶⁰ See the authorities cited at *de Smith's Judicial Review*, 7th ed, para3-011.

I conclude that there is, at the least, doubt whether orders made under the 1992 and 2008 Acts may include a power to take temporary possession of land; such orders could be vulnerable to judicial challenge.

Taking temporary possession in advance of permanent acquisition

Some T&WO and DCOs authorise temporary possession of land that is also authorised to be taken permanently. This is also intended under the High Speed Rail (London-West Midlands) Bill. Paul Astbury identifies some of the practical difficulties, no early valuation date for assessment of compensation for the permanent acquisition, and no early entitlement to an advance payment under the Land Compensation Act 1973,⁶¹ as would enable relocation. Whilst one can see the financial advantage to the statutory undertaker, in limiting early capital payments, and addressing any uncertainty about the precise limits of the finished scheme, the disadvantages to a claimant could be very significant where deprived of the means to relocate where relocation is inevitable.

Under some of the T&WOs, the temporary possession power is exercisable in respect of land authorised to be permanently required.⁶² It appears that the temporary possession power has been used before, and sometimes some considerable time before, any notice to treat is served or a general vesting declaration made. As possession taken under the temporary possession power is not the taking of possession following a notice of entry under section 11 of

⁶¹ S.52.

⁶² E.g. Nottingham Express Transit System Order 2009 (SI 2009/1300), Mersey Tram (Liverpool City Centre to Kirkby) Order 2005 (SI 2005/120), Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (SI 2004/757) and the Docklands Light Railway (Stratford International Extension) Order 2006 (SI 2006/2905), The Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (SI 2012/2679).

the 1965 Act, such a taking of possession does not fix the valuation date, or the liability to pay compensation, under any later notice to treat or GVD. Nor will any obligation to make an advance payment of compensation for the permanent acquisition arise.⁶³ Indeed, save for any time limit in the enabling power, there appears to be neither a need nor any incentive on a statutory undertaker to serve any notice to treat. The consequences of all this is that the affected owner or occupier, losing possession of land, and denied any advance payment, is left with the uncertainty of not knowing how much land will be permanently required, and is not provided with the financial means to acquire substitute land. The application of the mitigation duty to find substitute land becomes very uncertain, and the compensation obligation on the statutory undertaker will become more onerous.

The potential disadvantages are so significant as to raise a possible breach of Article I of the First Protocol of the European Convention, on the ground of disproportionality, or of Article 8, interference with a home. An inadequate provision for compensation could either result in the legislation being interpreted more favourably to the claimant, and/or an award of compensation,⁶⁴ or a declaration of incompatibility.⁶⁵ There is the related issue as to whether the inclusion of the temporary possession power will satisfy that part of the fairness principles expressed in ministerial guidance.⁶⁶

It would be preferable to introduce limits on the use of a temporary power of possession in respect of land to be taken permanently. Such limits could

⁶³ S.52, Land Compensation Act 1973.

⁶⁴ Eg, as in *Andrews v Reading BC* [2006] RVR 56, where compensation was awarded under Article 8 of the European Convention.

⁶⁵ S.4, Human Rights Act 1998; although the Upper Tribunal (Lands Chamber) may not have jurisdiction to make such a declaration.

⁶⁶ Para 17, Circular 6/2004.

either be in terms of time limits or topographical limits. There could be a time limit of 12 months within which a notice to treat is served or a general vesting declaration made.

Compensation

What is meant by the obligation to pay “compensation”, where so provided? Under the 1845 legislation the compensation provided that for disturbance items compensation was required to be paid within one month of entry and a rental occupation shall be paid half-yearly to the occupier, or to the owner, as the case may require.⁶⁷ The modern legislation goes no further than providing an obligation to pay "compensation ... for any loss (or damage)".⁶⁸ This formulation of the compensation entitlement is also found in the Town and Country Planning Act 1990,⁶⁹ and has been held to include the loss of the profits that were reasonably expected to have been earned from the subject land.⁷⁰ Subject to the application of the relevant principles of causation, remoteness and mitigation, the principles for the assessment of compensation for disturbance and other losses under the Compensation Code would seem to apply by analogy.⁷¹

There seems no reason why the compensation obligations in connection with temporary powers should not require the payment of rental occupation sum half-yearly, by analogy with the obligation to make advance payments where possession is taken in advance of permanent acquisition.

⁶⁷ S.43 Railways Clauses Consolidation Act 1845.

⁶⁸ Eg, para 1(4), Schedule 5, Crossrail Act 2008; Transport and Works (Model Clauses for Railways and Tramways) Order 2006, Schedule 1, para 24(5).

⁶⁹ See s.107(1)(b), in the case of the revocation of a planning permission.

⁷⁰ See *Hobbs (Quarries) Ltd v Somerset CC* (1975) 30 P&CR 286.

The real problems arise where the land is tenanted. A difficulty could arise where a tenant stops paying rent. If the statutory undertaker contends that there is no basis for that failure, perhaps because the doctrine of frustration does not apply, the landlord may be left only with a rent action against his tenant, and no entitlement to claim compensation.⁷² If the tenant continues to pay the rent, an element of double-counting might arise if he claims that rent and loss of profits. There could also be difficulties if the relevant lease provides for a rent review by reference to a valuation date during the period of temporary possession. The valuation is likely to reflect the real world of lack of entitlement to possession, and the rent could be fixed on that basis until the next rent review. Whilst there seems no reason why the landlord should not be compensated for the consequential depreciation in value of his interest, there is no valuation date for the assessment of the temporary possession compensation. There is no reason why the landlord should not be compensated for the depreciation in rental value on the basis determined in *Wildtree Hotels Ltd v Harrow LBC*.⁷³ But it be arguable that the tenant may gain a benefit, a lower rent for a period of time, and therefore higher profits, which would be attributable to the scheme, and brought into account in any disturbance claim.

Conclusions

The following matters put themselves forward as candidates for law reform:

1. That there should be a general power of temporary possession capable of application in connection with highway schemes;

⁷¹ Rule (6), s.5, Land Compensation Act 1961 and *Director of Buildings and Lands v Shun Fung Ironworks* [1952] 2 AC 111.

⁷² For a different aspect of the problems of acquiring a leasehold interest, see *Richard Parsons Ltd v Bristol City Council* (2007) 47 EF 174.

⁷³ [2001] 2 AC 1.

2. That any doubt about the inclusion of a power of temporary possession in T&WO and DCOs should be settled by amendments to the appropriate legislation;
3. That there should be limits on the taking of temporary possession of land in advance of its permanent acquisition;
4. That where temporary possession is taken, compensation for the use of land should be payable half-yearly.

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[Advanced Search](#)

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Neighbourhood Planning Act 2017

[UK Public General Acts](#) > [2017 c. 20](#) > [Whole Act](#)

[Table of Contents](#)

[Content](#)

[Explanatory Notes](#) ?

[More Resources](#) ?

[◀ Previous](#)

[Next ▶](#)

[Plain View](#)

[Print Options](#)

Changes over time for: [Neighbourhood Planning Act 2017](#) ?



27/04/2017



19/07/2017



22/09/2017



16/01/2018



31/01/2018

Status:

This version of this Act contains provisions that are prospective. ?

Changes to legislation:

Neighbourhood Planning Act 2017 is up to date with all changes known to be in force on or before 18 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. ?

[▼ View outstanding changes](#)



Neighbourhood Planning Act 2017

2017 CHAPTER 20

An Act to make provision about planning and compulsory purchase; and for connected purposes.

[27th April 2017]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

- C1 Act excluded in part (31.5.2018) by [The Silvertown Tunnel Order 2018 \(S.I. 2018/574\)](#), arts. 1(2), [3\(1\)\(p\)](#)
- C2 Act excluded in part (3.10.2018) by [The A19/A184 Testos Junction Alteration Development Consent Order 2018 \(S.I. 2018/994\)](#), arts. 1, [2\(7\)](#) (with arts. 3(3), 5)
- C3 Act excluded in part (13.3.2019) by [The Port of Tilbury \(Expansion\) Order 2019 \(S.I. 2019/359\)](#), arts. 1, [3\(1\)\(g\)](#) (with arts. 55, 56)
- C4 Act excluded in part (3.4.2019) by [The Millbrook Gas Fired Generating Station Order 2019 \(S.I. 2019/578\)](#), arts. 1, [27\(13\)](#), 28(12)
- C5 Act excluded in part (7.5.2019) by [The Midland Metro \(Birmingham City Centre Extension, etc.\) \(Edgbaston Extension Land Acquisition\) Order 2019 \(S.I. 2019/882\)](#),

- arts. 1, 3 (with art. 18)
- C6 Act excluded in part (10.10.2019) by [The Abergelli Power Gas Fired Generating Station Order 2019 \(S.I. 2019/1268\)](#), arts. 1, **28(13)**
- C7 Act excluded in part (10.10.2019) by [The Abergelli Power Gas Fired Generating Station Order 2019 \(S.I. 2019/1268\)](#), arts. 1, **29(12)**
- C8 Act excluded in part (25.10.2019) by [The Drax Power \(Generating Stations\) Order 2019 \(S.I. 2019/1315\)](#), arts. 1, **8(1)**
- C9 Act excluded in part (30.10.2019) by [The Northampton Gateway Rail Freight Interchange Order 2019 \(S.I. 2019/1358\)](#), arts. 1, **45(2)** (with art. 45(7), Sch. 13 Pt. 1 para. 19)
- C10 Act excluded in part (27.2.2020) by [The A30 Chiverton to Carland Cross Development Consent Order 2020 \(S.I. 2020/121\)](#), arts. 1, **4** (with art. 3(1))
- C11 Act excluded in part (4.3.2020) by [The Midland Metro \(Birmingham Eastside Extension\) Order 2020 \(S.I. 2020/141\)](#), arts. 1, **6** (with arts. 47, 48, Sch. 10 para. 19)
- C12 Act excluded in part (30.4.2020) by [The A585 Windy Harbour to Skippool Highway Development Consent Order 2020 \(S.I. 2020/402\)](#), arts. 1, **29(12)** (with arts. 5, 44)
- C13 Act excluded in part (30.4.2020) by [The A585 Windy Harbour to Skippool Highway Development Consent Order 2020 \(S.I. 2020/402\)](#), arts. 1, **30(12)** (with arts. 5, 44)
- C14 Act excluded in part (1.5.2020) by [The Riverside Energy Park Order 2020 \(S.I. 2020/419\)](#), arts. 1, **6(6)** (with art. 7)
- C15 Act excluded in part (21.5.2020) by [The Lake Lothing \(Lowestoft\) Third Crossing Order 2020 \(S.I. 2020/474\)](#), arts. 1, **3(e)** (with arts. 51, 57)
- C16 Act excluded in part (25.5.2020) by [The West Midlands Rail Freight Interchange Order 2020 \(S.I. 2020/511\)](#), arts. 1, **44(2)** (with art. 44(8))
- C17 Act excluded in part (11.6.2020) by [The M42 Junction 6 Development Consent Order 2020 \(S.I. 2020/528\)](#), arts. 1, **49(1)** (with art. 37)
- C18 Act excluded in part (18.6.2020) by [The A63 \(Castle Street Improvement, Hull\) Development Consent Order 2020 \(S.I. 2020/556\)](#), art. **30(12)** (with arts. 5, 44)
- C19 Act excluded in part (18.6.2020) by [The A63 \(Castle Street Improvement, Hull\) Development Consent Order 2020 \(S.I. 2020/556\)](#), arts. 1, **29(12)** (with arts. 5, 44)
- C20 Act excluded in part (19.6.2020) by [The Cleve Hill Solar Park Order 2020 \(S.I. 2020/547\)](#), arts. 1, **6** (with art. 37)
- C21 Act excluded in part (22.7.2020) by [The Norfolk Vanguard Offshore Wind Farm Order 2020 \(S.I. 2020/706\)](#), arts. 1, **7(2)** (with arts. 41, 42, Sch. 16 para. 66)
- C22 Act excluded in part (6.8.2020) by [The A19 Downhill Lane Junction Development Consent Order 2020 \(S.I. 2020/746\)](#), arts. 1, **36(2)** (with art. 5)
- C23 Act excluded in part (1.9.2020) by [The Immingham Open Cycle Gas Turbine Order 2020 \(S.I. 2020/847\)](#), arts. 1, **27(14)** (with Sch. 9 para. 144)
- C24 Act excluded in part (1.9.2020) by [The Immingham Open Cycle Gas Turbine Order 2020 \(S.I. 2020/847\)](#), arts. 1, **28(13)** (with Sch. 9 para. 144)
- C25 Act excluded in part (15.10.2020) by [The Great Yarmouth Third River Crossing Development Consent Order 2020 \(S.I. 2020/1075\)](#), arts. 1, **3(1)(f)**
- C26 Act excluded in part (29.10.2020) by [The Southampton to London Pipeline Development Consent Order 2020 \(S.I. 2020/1099\)](#), arts. 1, **36(2)** (with art. 32, Sch. 9 para. 36)
- C27 Act excluded in part (31.12.2020) by [The Network Rail \(Cambridgeshire Level Crossing Reduction\) Order 2020 \(S.I. 2020/1485\)](#), arts. 1, **4(1)(d)**
- C28 Act excluded in part (19.1.2021) by [The Network Rail \(Suffolk Level Crossing Reduction\) Order 2020 \(S.I. 2020/1663\)](#), arts. 1, **4(d)**
- C29 Act excluded in part (22.1.2021) by [The Hornsea Three Offshore Wind Farm Order 2020 \(S.I. 2020/1656\)](#), arts. 1, **6(2)** (with arts. 40, 41, Sch. 9 Pt. 5 para. 18)
- C30 Act excluded in part (9.2.2021) by [The A1 Birtley to Coal House Development Consent Order 2021 \(S.I. 2021/74\)](#), arts. 1, **2(7)** (with art. 5, Sch. 27 para. 36)
- C31 Act excluded in part (19.2.2021) by [The A303 Sparkford to Ilchester Dualling Development Consent Order 2021 \(S.I. 2021/125\)](#), arts. 1, **3(2)** (with arts. 4, 47)
- C32 Act excluded in part (1.9.2021) by [The Network Rail \(Teddington Station Access for All\) Order 2021 \(S.I. 2021/937\)](#), arts. 1, **3(2)**
- C33 Act excluded in part (1.1.2022) by [The Norfolk Boreas Offshore Wind Farm Order 2021 \(S.I. 2021/1414\)](#), arts. 1, **7(2)** (with arts. 41, 42, Sch. 17 para. 66)
- C34 Act excluded in part (5.3.2022) by [The Norfolk Vanguard Offshore Wind Farm Order 2022 \(S.I. 2022/138\)](#), arts. 1, **7(2)** (with arts. 41, 42, Sch. 16)

- C35 Act excluded in part (10.3.2022) by [The Thurrock Flexible Generation Plant Development Consent Order 2022 \(S.I. 2022/157\)](#), arts. 1, **10(f)** (with Sch. 8 Pt. 6 para. 19)
- C36 Act excluded in part (25.3.2022) by [The Bridgwater Tidal Barrier Order 2022 \(S.I. 2022/299\)](#), arts. 1, **64(1)** (with art. 55)
- C37 Act excluded in part (22.4.2022) by [The East Anglia TWO Offshore Wind Farm Order 2022 \(S.I. 2022/433\)](#), arts. 1(2), **6(2)** (with arts. 40, 41)
- C38 Act excluded in part (12.5.2022) by [The M54 to M6 Link Road Development Consent Order 2022 \(S.I. 2022/475\)](#), arts. 1, **2(7)**
- C39 Act excluded in part (2.6.2022) by [The M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022 \(S.I. 2022/549\)](#), arts. 1, **3(3)** (with arts. 6, 34)
- C40 Act excluded in part (6.6.2022) by [The M25 Junction 28 Development Consent Order 2022 \(S.I. 2022/573\)](#), arts. 1, **47(3)** (with arts. 5, 36)
- C41 Act excluded in part (30.6.2022) by [The Network Rail \(Essex and Others Level Crossing Reduction\) Order 2022 \(S.I. 2022/651\)](#), arts. 1, **4(1)(d)**
- C42 Act excluded in part (13.7.2022) by [The A47 Blofield to North Burlingham Development Consent Order 2022 \(S.I. 2022/738\)](#), arts. 1, **3** (with arts. 4, 50)
- C43 Act excluded in part (1.8.2022) by [The Northumberland Line Order 2022 \(S.I. 2022/820\)](#), arts. 1, **19(12)** (with Sch. 10 paras. 21, 43)
- C44 Act excluded in part (1.8.2022) by [The Northumberland Line Order 2022 \(S.I. 2022/820\)](#), arts. 1, **20(7)** (with Sch. 10 paras. 21, 43)
- C45 Act excluded in part (2.8.2022) by [The Network Rail \(Oxford Station Phase 2 Improvements \(Land Only\)\) \(No. 2\) Order 2022 \(S.I. 2022/872\)](#), arts. 1(1), **23**
- C46 Act excluded in part (2.8.2022) by [The Network Rail \(Oxford Station Phase 2 Improvements \(Land Only\)\) Order 2022 \(S.I. 2022/871\)](#), arts. 1, **23**
- C47 Act excluded in part (8.9.2022) by [The A428 Black Cat to Caxton Gibbet Development Consent Order 2022 \(S.I. 2022/934\)](#), arts. 1, **3(1)**
- C48 Act excluded in part (4.11.2022) by [The A47/A11 Thickthorn Junction Development Consent Order 2022 \(S.I. 2022/1070\)](#), arts. 1, **3(1)** (with arts. 4, 52, Sch. 9 para. 82)
- C49 Act restricted (4.11.2022) by [The A47/A11 Thickthorn Junction Development Consent Order 2022 \(S.I. 2022/1070\)](#), art. 1, **Sch. 9 para. 67(1)** (with arts. 4, 52, Sch. 9 para. 82)
- C50 Act excluded in part (7.12.2022) by [The A57 Link Roads Development Consent Order 2022 \(S.I. 2022/1206\)](#), arts. 1, **31(12)** (with arts. 5, 31(8))
- C51 Act excluded in part (7.12.2022) by [The A417 Missing Link Development Consent Order 2022 \(S.I. 2022/1248\)](#), arts. 1, **3** (with art. 4)
- C52 Act excluded in part (7.12.2022) by [The A57 Link Roads Development Consent Order 2022 \(S.I. 2022/1206\)](#), arts. 1, **32(11)** (with arts. 5, 32(8))
- C53 Act excluded in part (29.12.2022) by [The Keadby 3 \(Carbon Capture Equipped Gas Fired Generating Station\) Order 2022 \(S.I. 2022/1396\)](#), arts. 1, **8(1)** (with art. 32, Sch. 10 paras. 26(2), 68)
- C54 Act excluded (in part) (10.3.2023) by [The A47 Wansford to Sutton Development Consent Order 2023 \(S.I. 2023/218\)](#), arts. 1, **3(1)** (with arts. 4, 50)
- C55 Act restricted (18.7.2023) by [The Longfield Solar Farm Order 2023 \(S.I. 2023/734\)](#), art. 1, **Sch. 15 para. 71(1)** (with art. 19)
- C56 Act excluded in part (27.7.2023) by [The Boston Alternative Energy Facility Order 2023 \(S.I. 2023/778\)](#), arts. 1, **40(2)** (with arts. 5, 53, Sch. 8 paras. 6, 64)
- C57 Act excluded in part (3.8.2023) by [The Hornsea Four Offshore Wind Farm Order 2023 \(S.I. 2023/800\)](#), arts. 1, **6(1)** (with arts. 6(2), 42, 43, Sch. 9 Pt. 1 para. 4, Sch. 9 Pt. 3 para. 6(1), Sch. 9 Pt. 4 para. 20, Sch. 9 Pt. 9 para. 4)
- C58 Act restricted (3.8.2023) by [The Hornsea Four Offshore Wind Farm Order 2023 \(S.I. 2023/800\)](#), art. 1, **Sch. 9 Pt. 4 para. 4(1)** (with arts. 42, 43, Sch. 9 Pt. 1 para. 4, Sch. 9 Pt. 3 para. 6(1), Sch. 9 Pt. 4 para. 20, Sch. 9 Pt. 9 para. 4) (as amended (31.1.2024) by [The Hornsea Four Offshore Wind Farm \(Correction\) Order 2024 \(S.I. 2024/117\)](#), art. 1(2), **Sch.**)
- C59 Act excluded in part (4.8.2023) by [The A303 \(Amesbury to Berwick Down\) Development Consent Order 2023 \(S.I. 2023/834\)](#), arts. 1, **3(1)** (with arts. 6(2), 18, Sch. 11 paras. 5, 30)
- C60 Act excluded in part (7.9.2023) by [The A38 Derby Junctions Development Consent Order 2023 \(S.I. 2023/923\)](#), arts. 1, **3** (with arts. 4, 45, Sch. 9 paras. 6, 46, 54(1))
- C61 Act excluded in part (11.10.2023) by [The Awel y Môr Offshore Wind Farm Order 2023 \(S.I. 2023/1033\)](#), arts. 1, **7**

- C62 Act excluded in part (7.2.2024) by [The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 \(S.I. 2024/70\)](#), arts. 1, **8(1)** (with art. 43, Sch. 12 paras. 5, 24)
- C63 Act restricted (9.2.2024) by [The A12 Chelmsford to A120 Widening Development Consent Order 2024 \(S.I. 2024/60\)](#), art. 1, **Sch. 11 para. 69(1)** (with arts. 4, 52, Sch. 11 paras. 6, 24, 39(1), 55(1), 71(3), 84)
- C64 Act excluded in part (9.2.2024) by [The A12 Chelmsford to A120 Widening Development Consent Order 2024 \(S.I. 2024/60\)](#), arts. 1, **3(1)** (with arts. 4, 52, Sch. 11 paras. 6, 24, 39(1), 55(1), 84)
- C65 Act excluded in part (11.3.2024) by [The Net Zero Teesside Order 2024 \(S.I. 2024/174\)](#), arts. 1, **31(14)**, 32(13) (with arts. 31(8)(13), 32(9), 42, 43, Sch. 12)
- C66 Act excluded in part (13.3.2024) by [The Medworth Energy from Waste Combined Heat and Power Facility Order 2024 \(S.I. 2024/230\)](#), arts. 1, **6** (with Sch. 11 paras. 5, 22, 37, 47, 82, 110)
- C67 Act restricted (13.3.2024) by [The Medworth Energy from Waste Combined Heat and Power Facility Order 2024 \(S.I. 2024/230\)](#), art. 1, **Sch. 9 para. 95(1)** (with Sch. 11 paras. 5, 22, 37, 47, 82, 110)
- C68 Act excluded in part (28.3.2024) by [The A66 Northern Trans-Pennine Development Consent Order 2024 \(S.I. 2024/360\)](#), arts. 1, **3(1)** (with arts. 18, 35, Sch. 9)
- C69 Act restricted (28.3.2024) by [The A66 Northern Trans-Pennine Development Consent Order 2024 \(S.I. 2024/360\)](#), art. 1, **Sch. 9 para. 66(1)** (with arts. 18, 35, Sch. 9)
- C70 Act excluded in part (5.4.2024) by [The National Grid \(Yorkshire Green Energy Enablement Project\) Development Consent Order 2024 \(S.I. 2024/393\)](#), arts. 1, **36(13)** (with arts. 36(9)(12), 44, Sch. 15)
- C71 Act excluded in part (11.4.2024) by [The HyNet Carbon Dioxide Pipeline Order 2024 \(S.I. 2024/436\)](#), arts. 1(2), **8(1)** (with arts. 21, 41, Sch. 10)
- C72 Act excluded in part (9.5.2024) by [The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 \(S.I. 2024/564\)](#), arts. 1, **6(1)** (with arts. 35, 36, Sch. 14)
- C73 Act restricted (9.5.2024) by [The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 \(S.I. 2024/564\)](#), art. 1, **Sch. 14 Pt. 3 para. 4(1)** (with arts. 35, 36, Sch. 14)
- C74 Act excluded in part (14.6.2024) by [The A1 in Northumberland: Morpeth to Ellingham Development Consent Order 2024 \(S.I. 2024/733\)](#), arts. 1, **3** (with art. 6, Sch. 10)
- C75 Act excluded in part (3.8.2024) by [The Sunnica Energy Farm Order 2024 \(S.I. 2024/802\)](#), arts. 1, **6(1)(g)** (with art. 44, Sch. 12)
- C76 Act restricted (3.8.2024) by [The Sunnica Energy Farm Order 2024 \(S.I. 2024/802\)](#), art. 1, **Sch. 12 para. 109(1)(q)** (with art. 44, Sch. 12)
- C77 Act restricted (3.8.2024) by [The Gate Burton Energy Park Order 2024 \(S.I. 2024/807\)](#), art. 1, **Sch. 14 para. 116(1)** (with art. 45, Sch. 14)
- C78 Act restricted (3.8.2024) by [The Mallard Pass Solar Farm Order 2024 \(S.I. 2024/796\)](#), art. 1, **Sch. 15 para. 76(1)** (with Sch. 15)
- C79 Act excluded in part (3.8.2024) by [The Mallard Pass Solar Farm Order 2024 \(S.I. 2024/796\)](#), arts. 1, **6(1)(g)** (with Sch. 15)
- C80 Act excluded in part (3.8.2024) by [The Gate Burton Energy Park Order 2024 \(S.I. 2024/807\)](#), arts. 1, **6(1)** (with art. 45, Sch. 14)
- C81 Act excluded in part (27.9.2024) by [The Cottam Solar Project Order 2024 \(S.I. 2024/943\)](#), arts. 1, **6(1)** (with art. 48, Sch. 15)
- C82 Act excluded in part (4.10.2024) by [The National Grid \(Bramford to Twinstead Reinforcement\) Order 2024 \(S.I. 2024/958\)](#), art. 1, **Sch. 15 para. 3** (with art. 40, Sch. 14)

PART 1

PLANNING

Neighbourhood planning

- 1 **Duty to have regard to post-examination neighbourhood development plan**
- (1) Section 70 of the Town and Country Planning Act 1990 (determination of applications for planning permission: general considerations) is amended as follows.
- (2) In subsection (2) (matters to which local planning authority must have regard in dealing with applications) after paragraph (a) insert—
- “(aza) a post-examination draft neighbourhood development plan, so far

as material to the application.”.

(3) Before subsection (4) insert—

“(3B) For the purposes of subsection (2)(aza) (but subject to subsections (3D) and (3E)) a draft neighbourhood development plan is a “post-examination draft neighbourhood development plan” if—

- (a) a local planning authority have made a decision under paragraph 12(4) of Schedule 4B with the effect that a referendum or referendums are to be held on the draft plan under that Schedule,
- (b) the Secretary of State has directed under paragraph 13B(2)(a) of that Schedule that a referendum or referendums are to be held on the draft plan under that Schedule,
- (c) an examiner has recommended under paragraph 13(2)(a) of Schedule A2 to the Planning and Compulsory Purchase Act 2004 (examination of modified plan) that a local planning authority should make the draft plan, or
- (d) an examiner has recommended under paragraph 13(2)(b) of that Schedule that a local planning authority should make the draft plan with modifications.

(3C) In the application of subsection (2)(aza) in relation to a post-examination draft neighbourhood development plan within subsection (3B)(d), the local planning authority must take the plan into account as it would be if modified in accordance with the recommendations.

(3D) A draft neighbourhood development plan within subsection (3B)(a) or (b) ceases to be a post-examination draft neighbourhood development plan for the purposes of subsection (2)(aza) if—

- (a) section 38A(4)(a) (duty to make plan) or (6) (cases in which duty does not apply) of the Planning and Compulsory Purchase Act 2004 applies in relation to the plan,
- (b) section 38A(5) (power to make plan) of that Act applies in relation to the plan and the plan is made by the local planning authority,
- (c) section 38A(5) of that Act applies in relation to the plan and the local planning authority decide not to make the plan,
- (d) a single referendum is held on the plan and half or fewer of those voting in the referendum vote in favour of the plan, or
- (e) two referendums are held on the plan and half or fewer of those voting in each of the referendums vote in favour of the plan.

(3E) A draft neighbourhood development plan within subsection (3B)(c) or (d) ceases to be a post-examination draft neighbourhood development plan for the purposes of subsection (2)(aza) if—

- (a) the local planning authority make the draft plan (with or without modifications), or
- (b) the local planning authority decide not to make the draft plan.

(3F) The references in subsection (3B) to Schedule 4B are to that Schedule as applied to neighbourhood development plans by section 38A(3) of the Planning and Compulsory Purchase Act 2004.”

Modifications etc. (not altering text)

C21 Act excluded in part (22.7.2020) by [The Norfolk Vanguard Offshore Wind Farm Order 2020 \(S.I. 2020/706\)](#), arts. 1, 7(2) (with arts. 41, 42, Sch. 16 para. 66)

Commencement Information

I1 S. 1 in force at 19.7.2017 by [S.I. 2017/767, reg. 2\(a\)](#)

2 Notification of applications to neighbourhood planning bodies

(1) Schedule 1 to the Town and Country Planning Act 1990 (local planning authorities: distribution of functions) is amended as follows.

(2) Paragraph 8 (duty to notify parish council of planning application etc) is amended in accordance with subsections (3) to (5).

(3) After sub-paragraph (3) insert—

“(3A) Sub-paragraph (3B) applies to a local planning authority who have the function of determining applications for planning permission or permission in principle if—

- (a) there is a relevant neighbourhood development plan for a neighbourhood area all or part of which falls within the authority's area, and
- (b) a parish council are authorised to act in relation to the

neighbourhood area as a result of section 61F.

- (3B) The local planning authority must notify the parish council of—
- (a) any relevant planning application, and
 - (b) any alteration to that application accepted by the authority.
- (3C) Sub-paragraph (3B) does not apply if the parish council have notified the local planning authority in writing that they do not wish to be notified of any such application.
- (3D) If the parish council have notified the local planning authority in writing that they only wish to be notified under sub-paragraph (3B) of applications of a particular description, that sub-paragraph only requires the authority to notify the council of applications of that description.
- (3E) For the purposes of sub-paragraphs (3A) to (3D)—
- “neighbourhood area” means an area designated as such under section 61G;
- “relevant neighbourhood development plan” means—
- (a) a post-examination draft neighbourhood development plan as defined by section 70(3B) to (3F), or
 - (b) a neighbourhood development plan which forms part of a development plan by virtue of section 38(3) or (3A) of the Planning and Compulsory Purchase Act 2004 (plans which have been made or approved in a referendum);
- “relevant planning application” means an application which relates to land in the neighbourhood area and is an application for—
- (a) planning permission or permission in principle, or
 - (b) approval of a matter reserved under an outline planning permission within the meaning of section 92.”
- (4) In the opening words of sub-paragraph (4) for “the duty” substitute “ a duty under this paragraph ”.
- (5) In the opening words of sub-paragraph (5) for “their duty” substitute “ a duty under this paragraph ”.
- (6) Paragraph 8A (duty to notify neighbourhood forums) is amended in accordance with subsections (7) to (9).
- (7) After sub-paragraph (1) insert—
- “(1A) Sub-paragraph (1B) applies to a local planning authority who have the function of determining applications for planning permission or permission in principle if—
- (a) there is a relevant neighbourhood development plan for a neighbourhood area all or part of which falls within the authority’s area, and
 - (b) a neighbourhood forum are authorised to act in relation to the neighbourhood area as a result of section 61F.
- (1B) The local planning authority must notify the neighbourhood forum of—
- (a) any relevant planning application, and
 - (b) any alteration to that application accepted by the authority.
- (1C) Sub-paragraph (1B) does not apply if the neighbourhood forum has notified the local planning authority in writing that it does not wish to be notified of any such application.
- (1D) If the neighbourhood forum has notified the local planning authority in writing that it only wishes to be notified under sub-paragraph (1B) of applications of a particular description, that sub-paragraph only requires the authority to notify the forum of applications of that description.”
- (8) In sub-paragraph (2)—
- (a) before the definition of “neighbourhood forum” insert—
- ““neighbourhood area” means an area designated as such under section 61G;”, and
- (b) after the definition of “neighbourhood forum” insert—
- ““relevant neighbourhood development plan” means—
- (a) a post-examination draft neighbourhood development plan as defined by section 70(3B) to (3F), or
 - (b) a neighbourhood development plan which forms part of a development plan by virtue of section 38(3) or (3A) of the Planning and Compulsory Purchase Act 2004 (development plans which have been approved in a referendum or made).”
- (9) In sub-paragraph (3) for “(3) to (6)” substitute “ (3) and (4) to (6) ”.
- (10) Section 62C of the Town and Country Planning Act 1990 (notification of parish

councils of applications made to Secretary of State) is amended in accordance with subsections (11) and (12).

- (11) In subsection (2) after "paragraph 8(1)" insert " or (3B) ".
- (12) In subsection (3) after "Schedule 1" insert "or notifications received by the authority under paragraph 8(3C) or (3D) of that Schedule.

Commencement Information

- I2 S. 2 in force for specified purposes at Royal Assent, see s. 46
- I3 S. 2 in force at 31.1.2018 in so far as not already in force by [S.I. 2018/38, reg. 3\(a\)](#)

3 Status of approved neighbourhood development plan

In section 38 of the Planning and Compulsory Purchase Act 2004 (development plan) after subsection (3) insert—

“(3A) For the purposes of any area in England (but subject to subsection (3B)) a neighbourhood development plan which relates to that area also forms part of the development plan for that area if—

- (a) section 38A(4)(a) (approval by referendum) applies in relation to the neighbourhood development plan, but
- (b) the local planning authority to whom the proposal for the making of the plan has been made have not made the plan.

(3B) The neighbourhood development plan ceases to form part of the development plan if the local planning authority decide under section 38A(6) not to make the plan.”

Commencement Information

- I4 S. 3 in force at 19.7.2017 by [S.I. 2017/767, reg. 2\(b\)](#)

4 Modification of neighbourhood development order or plan

- (1) Section 61M of the Town and Country Planning Act 1990 (revocation or modification of neighbourhood development orders) is amended in accordance with subsections (2) and (3).

- (2) After subsection (4) insert—

“(4A) A local planning authority may at any time by order modify a neighbourhood development order they have made if they consider that the modification does not materially affect any planning permission granted by the order.”

- (3) In subsection (5)—

- (a) for “that order” substitute “ the neighbourhood development order mentioned in subsection (4) or (4A) ”, and
- (b) after “(4)” insert “ or (4A) ”.

- (4) The Planning and Compulsory Purchase Act 2004 is amended in accordance with subsections (5) to (10).

- (5) In section 38A (meaning of “neighbourhood development plan”) after subsection (11) insert—

“(11A) Subsection (11) is subject to Schedule A2, which makes provision for the modification of a neighbourhood development plan.”

- (6) Section 38C (neighbourhood development plans: supplementary provisions) is amended in accordance with subsections (7) to (9).

- (7) After subsection (2) insert—

“(2A) Section 61F of the principal Act is to apply in accordance with subsection (2) of this section as if—

- (a) subsections (8)(a) and (8B) also referred to a proposal for the modification of a neighbourhood development plan,
- (b) subsection (13)(b) also referred to a proposal for the modification of a neighbourhood development plan made by a neighbourhood forum, and
- (c) subsection (13)(c) also referred to any duty of a local planning authority under paragraph 7, 8 or 9 of Schedule A2 to this Act.”

- (8) In subsection (3)—

- (a) the words from “the words” to the end of the subsection become paragraph (a), and
- (b) at the end of that paragraph insert “, and
 - (b) the reference in subsection (4A) to a modification materially affecting any planning permission granted by the order were

to a modification materially affecting the policies in the plan.”

- (9) In subsection (6)—
- (a) the words from “on proposals” to the end of the subsection become paragraph (a), and
 - (b) at the end of that paragraph insert “, or
 - (b) on proposals for the modification of neighbourhood development plans, or on modifications of neighbourhood development plans, that have already been made.”
- (10) After Schedule A1 insert the Schedule A2 set out in Schedule 1 to this Act.

Commencement Information

- 15 S. 4 in force for specified purposes at Royal Assent, see s. 46
- 16 S. 4 in force at 31.1.2018 in so far as not already in force by [S.I. 2018/38, reg. 3\(b\)](#)

5 Changes to neighbourhood areas etc

- (1) The Town and Country Planning Act 1990 is amended in accordance with subsections (2) to (4).
- (2) In section 61F (authorisation to act in relation to neighbourhood areas) after subsection (8) insert—
- “(8A) A designation ceases to have effect if—
- (a) a new parish council is created or there is a change in the area of a parish council, and
 - (b) as a result, the neighbourhood area for which the neighbourhood forum is designated consists of or includes the whole or any part of the area of the parish council.
- (8B) The operation of subsection (8A) does not affect the validity of any proposal for a neighbourhood development order made before the event mentioned in paragraph (a) of that subsection took place.”
- (3) In section 61G (meaning of “neighbourhood area”) after subsection (6) insert—
- “(6A) The power in subsection (6) to modify designations already made includes power—
- (a) to change the boundary of an existing neighbourhood area,
 - (b) to replace an existing neighbourhood area with two or more separate neighbourhood areas, and
 - (c) to replace two or more existing neighbourhood areas with a single neighbourhood area.
- (6B) A neighbourhood area created by virtue of subsection (6A)(b) may have the boundary created by splitting it from the existing area or a different boundary.
- (6C) A neighbourhood area created by virtue of subsection (6A)(c) may have the boundary created by combining the existing areas or a different boundary.
- (6D) A modification under subsection (6) of a designation already made does not affect the continuation in force of a neighbourhood development order even though as a result of the modification—
- (a) it no longer relates to a neighbourhood area, or
 - (b) it relates to more than one neighbourhood area.”

(4) In section 61J (provision that may be made by neighbourhood development order) after subsection (5) insert—

“(5A) Subsection (5) is subject to section 61G(6D) (effect of modification of existing neighbourhood area).”

(5) The Planning and Compulsory Purchase Act 2004 is amended in accordance with subsections (6) to (8).

(6) In section 38A (meaning of “neighbourhood development plan”) after subsection (11A) (as inserted by section 4) insert—

“(11B) Subsection (11C) applies if, as a result of a modification of a neighbourhood area under section 61G(6) of the principal Act, a neighbourhood development plan relates to more than one neighbourhood area.

(11C) The replacement of the plan by a new plan in relation to one or some of those areas does not affect the continuation in force of the plan in relation to the other area or areas.”

(7) In section 38B (provision that may be made by neighbourhood development plans) after subsection (2) insert—

“(2A) Subsections (1)(c) and (2) are subject to section 61G(6D) of the principal

Act (as applied by section 38C(5A) of this Act)."

(8) In section 38C (supplementary provisions) after subsection (5) insert—

"(5A) Section 61G(6D) of the principal Act is to apply in relation to neighbourhood development plans as if it also provided that a modification under section 61G(6) of that Act of a designation of a neighbourhood area does not affect the continuation in force of a neighbourhood development plan even though, as a result of the modification, more than one plan has effect for the same area."

Commencement Information

17 S. 5 in force at 31.1.2018 by [S.I. 2018/38, reg. 3\(c\)](#)

6 Assistance in connection with neighbourhood planning

(1) Section 18 of the Planning and Compulsory Purchase Act 2004 (statement of community involvement) is amended as follows.

(2) At the beginning of subsection (2A) insert " Subject to subsection (2B), "

(3) After subsection (2A) insert—

"(2B) A statement of community involvement must set out the local planning authority's policies for giving advice or assistance under—

(a) paragraph 3 of Schedule 4B to the principal Act (advice or assistance on proposals for making of neighbourhood development orders), and

(b) paragraph 3 of Schedule A2 to this Act (advice or assistance on proposals for modification of neighbourhood development plans).

(2C) The reference in subsection (2B)(a) to Schedule 4B to the principal Act includes that Schedule as applied by section 38A(3) of this Act (process for making neighbourhood development plans).

(2D) Subsection (2B) applies regardless of whether, at any given time—

(a) an area within the area of the authority has been designated as a neighbourhood area, or

(b) there is a qualifying body which is entitled to submit proposals to the authority for the making by the authority of a neighbourhood development order or a neighbourhood development plan."

Commencement Information

18 S. 6 in force at 31.7.2018 by [S.I. 2018/38, reg. 4\(a\)](#)

Prospective

7 Engagement by examiners with qualifying bodies etc

In Schedule 4B to the Town and Country Planning Act 1990 (process for making neighbourhood development orders), in paragraph 11 (regulations about independent examinations) after sub-paragraph (2) insert—

"(3) The regulations may in particular impose duties on an examiner which are to be complied with by the examiner in considering the draft order under paragraph 8 and which require the examiner—

(a) to provide prescribed information to each person within sub-paragraph (4);

(b) to publish a draft report containing the recommendations which the examiner is minded to make in the examiner's report under paragraph 10;

(c) to invite each person within sub-paragraph (4) or representatives of such a person to one or more meetings at a prescribed stage or prescribed stages of the examination process;

(d) to hold a meeting following the issuing of such invitations if such a person requests the examiner to do so.

(4) Those persons are—

(a) the qualifying body,

(b) the local planning authority, and

(c) such other persons as may be prescribed.

(5) Where the regulations make provision by virtue of sub-paragraph (3) (c) or (d), they may make further provision about—

(a) the procedure for a meeting;

(b) the matters to be discussed at a meeting.”

Local development documents

8 Content of development plan documents

- (1) In section 19 of the Planning and Compulsory Purchase Act 2004 (preparation of local development documents) after subsection (1A) insert—
- “(1B) Each local planning authority must identify the strategic priorities for the development and use of land in the authority’s area.
- (1C) Policies to address those priorities must be set out in the local planning authority’s development plan documents (taken as a whole).
- (1D) Subsection (1C) does not apply in the case of a London borough council or a Mayoral development corporation if and to the extent that the council or corporation are satisfied that policies to address those priorities are set out in the spatial development strategy.
- (1E) If a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009 has the function of preparing the spatial development strategy for the authority’s area, subsection (1D) also applies in relation to—
- (a) a local planning authority whose area is within, or the same as, the area of the combined authority, and
- (b) the spatial development strategy published by the combined authority.”
- (2) In section 34 of that Act (guidance)—
- (a) the existing words become subsection (1), and
- (b) after that subsection insert—
- “(2) The Secretary of State must issue guidance for local planning authorities on how their local development documents (taken as a whole) should address housing needs that result from old age or disability.”
- (3) In section 35 of that Act (local planning authorities’ monitoring reports) after subsection (3) insert—
- “(3A) Subsection (3B) applies if a London borough council or a Mayoral development corporation have determined in accordance with section 19(1D) that—
- (a) policies to address the strategic priorities for the development and use of land in their area are set out in the spatial development strategy, and
- (b) accordingly, such policies will not to that extent be set out in their development plan documents.
- (3B) Each report by the council or corporation under subsection (2) must—
- (a) indicate that such policies are set out in the spatial development strategy, and
- (b) specify where in the strategy those policies are set out.
- (3C) If a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009 has the function of preparing the spatial development strategy for the authority’s area, subsections (3A) and (3B) also apply in relation to—
- (a) a local planning authority whose area is within, or the same as, the area of the combined authority, and
- (b) the spatial development strategy published by the combined authority.”

Commencement Information

19 S. 8(1)(3) in force at 16.1.2018 by [S.I. 2018/38, reg. 2\(a\)](#)

110 S. 8(2) in force at 4.7.2019 by [S.I. 2019/1081, reg. 2](#)

9 Power to direct preparation of joint development plan documents

- (1) The Planning and Compulsory Purchase Act 2004 is amended as follows.
- (2) After section 28 insert—
- 28A Power to direct preparation of joint development plan documents**
- (1) The Secretary of State may direct two or more local planning authorities to prepare a joint development plan document.
- (2) The Secretary of State may give a direction under this section in relation to a document whether or not it is specified in the local development

schemes of the local planning authorities in question as a document which is to be prepared jointly with one or more other local planning authorities.

- (3) The Secretary of State may give a direction under this section only if the Secretary of State considers that to do so will facilitate the more effective planning of the development and use of land in the area of one or more of the local planning authorities in question.
- (4) A direction under this section may specify—
 - (a) the area to be covered by the joint development plan document to which the direction relates;
 - (b) the matters to be covered by that document;
 - (c) the timetable for preparation of that document.
- (5) The Secretary of State must, when giving a direction under this section, notify the local planning authorities to which it applies of the reasons for giving it.
- (6) If the Secretary of State gives a direction under this section, the Secretary of State may direct the local planning authorities to which it is given to amend their local development schemes so that they cover the joint development plan document to which it relates.
- (7) A joint development plan document is a development plan document which is, or is required to be, prepared jointly by two or more local planning authorities pursuant to a direction under this section.

28B Application of Part to joint development plan documents

- (1) This Part applies for the purposes of any step which may be or is required to be taken in relation to a joint development plan document as it applies for the purposes of any step which may be or is required to be taken in relation to a development plan document.
- (2) For the purposes of subsection (1) anything which must be done by or in relation to a local planning authority in connection with a development plan document must be done by or in relation to each of the authorities mentioned in section 28A(1) in connection with a joint development plan document.
- (3) If the authorities mentioned in section 28A(1) include a London borough council or a Mayoral development corporation, the requirements of this Part in relation to the spatial development strategy also apply.
- (4) Those requirements also apply if—
 - (a) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009 has the function of preparing the spatial development strategy for the combined authority's area, and
 - (b) the authorities mentioned in section 28A(1) include a local planning authority whose area is within, or is the same as, the area of the combined authority.

28C Modification or withdrawal of direction under section 28A

- (1) The Secretary of State may modify or withdraw a direction under section 28A by notice in writing to the authorities to which it was given.
- (2) The Secretary of State must, when modifying or withdrawing a direction under section 28A, notify the local planning authorities to which it was given of the reasons for the modification or withdrawal.
- (3) The following provisions of this section apply if—
 - (a) the Secretary of State withdraws a direction under section 28A, or
 - (b) the Secretary of State modifies a direction under that section so that it ceases to apply to one or more of the local planning authorities to which it was given.
- (4) Any step taken in relation to the joint development plan document to which the direction related is to be treated as a step taken by—
 - (a) a local planning authority to which the direction applied for the purposes of any corresponding document prepared by them, or
 - (b) two or more local planning authorities to which the direction applied for the purposes of any corresponding joint development plan document prepared by them.
- (5) Any independent examination of a joint development plan document to which the direction related must be suspended.
- (6) If before the end of the period prescribed for the purposes of this subsection a local planning authority to which the direction applied request the Secretary of State to do so, the Secretary of State may direct that—
 - (a) the examination is resumed in relation to—

- (i) any corresponding document prepared by a local planning authority to which the direction applied, or
 - (ii) any corresponding joint development plan document prepared by two or more local planning authorities to which the direction applied, and
- (b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.
- (7) The Secretary of State may by regulations make provision as to what is a corresponding document or a corresponding joint development plan document for the purposes of this section.”
- (3) In section 21 (intervention by Secretary of State) after subsection (11) insert—
- “(12) In the case of a joint local development document or a joint development plan document, the Secretary of State may apportion liability for the expenditure on such basis as the Secretary of State thinks just between the local planning authorities who have prepared the document.”
- (4) In section 27 (Secretary of State's default powers) after subsection (9) insert—
- “(10) In the case of a joint local development document or a joint development plan document, the Secretary of State may apportion liability for the expenditure on such basis as the Secretary of State thinks just between the local planning authorities for whom the document has been prepared.”
- (5) Section 28 (joint local development documents) is amended in accordance with subsections (6) and (7).
- (6) In subsection (9) for paragraph (a) substitute—
- “(a) the examination is resumed in relation to—
- (i) any corresponding document prepared by an authority which were a party to the agreement, or
 - (ii) any corresponding joint local development document prepared by two or more other authorities which were parties to the agreement;”.
- (7) In subsection (11) (meaning of “corresponding document”) at the end insert “or a corresponding joint local development document for the purposes of this section.
- (8) In section 37 (interpretation) after subsection (5B) insert—
- “(5C) Joint local development document must be construed in accordance with section 28(10).
- (5D) Joint development plan document must be construed in accordance with section 28A(7).”
- (9) Schedule A1 (default powers exercisable by Mayor of London, combined authority and county council) is amended in accordance with subsections (10) and (11).
- (10) In paragraph 3 (powers exercised by the Mayor of London) after sub-paragraph (3) insert—
- “(4) In the case of a joint local development document or a joint development plan document, the Mayor may apportion liability for the expenditure on such basis as the Mayor thinks just between the councils for whom the document has been prepared.”
- (11) In paragraph 7 (powers exercised by combined authority) after sub-paragraph (3) insert—
- “(4) In the case of a joint local development document or a joint development plan document, the combined authority may apportion liability for the expenditure on such basis as the authority considers just between the authorities for whom the document has been prepared.”

Commencement Information

- I11 S. 9 in force on for specified purposes at Royal Assent, see s. 46
- I12 S. 9 in force at 16.1.2018 in so far as not already in force by [S.I. 2018/38, reg. 2\(b\)](#)

10 County councils' default powers in relation to development plan documents

Schedule 2 makes provision for the exercise of default powers by county councils in relation to development plan documents.

Commencement Information

- I13 S. 10 in force at 16.1.2018 by [S.I. 2018/38, reg. 2\(c\)](#)

11 Format of local development schemes and documents

- (1) Section 36 of the Planning and Compulsory Purchase Act 2004 (regulations under Part 2) is amended in accordance with subsections (2) and (3).

- (2) In the heading after "Regulations" insert " and standards ".
- (3) After subsection (2) insert—
- “(3) The Secretary of State may from time to time publish data standards for—
- (a) local development schemes,
 - (b) local development documents, or
 - (c) local development documents of a particular kind.
- (4) For this purpose a "data standard" is a written standard which contains technical specifications for a scheme or document or the data contained in a scheme or document.
- (5) A local planning authority must comply with the data standards published under subsection (3) in preparing, publishing, maintaining or revising a scheme or document to which the standards apply.”
- (4) In section 15(8AA) of that Act (cases in which direction to revise local development scheme may be given by Secretary of State or Mayor of London)—
- (a) after "only if" insert "—(a)", and
 - (b) at the end of paragraph (a) insert ", or
- (b) the Secretary of State has published data standards under section 36(3) which apply to the local development scheme and the person giving the direction thinks that the scheme should be revised so that it complies with the standards.”

Commencement Information

I14 S. 11 in force at 19.7.2017 by [S.I. 2017/767, reg. 2\(c\)](#)

12 Review of local development documents

In section 17 of the Planning and Compulsory Purchase Act 2004 (local development documents) after subsection (6) insert—

- “(6A) The Secretary of State may by regulations make provision requiring a local planning authority to review a local development document at such times as may be prescribed.
- (6B) If regulations under subsection (6A) require a local planning authority to review a local development document—
- (a) they must consider whether to revise the document following each review, and
 - (b) if they decide not to do so, they must publish their reasons for considering that no revisions are necessary.
- (6C) Any duty imposed by virtue of subsection (6A) applies in addition to the duty in subsection (6).”

Commencement Information

I15 S. 12 in force for specified purposes at Royal Assent, see s. 46

I16 S. 12 in force at 19.7.2017 in so far as not already in force by [S.I. 2017/767, reg. 2\(d\)](#)

13 Statements of community involvement

- (1) Section 18 of the Planning and Compulsory Purchase Act 2004 (statement of community involvement) is amended as follows.
 - (2) In subsection (2) after "sections" insert " 13, 15, ".
 - (3) After subsection (3A) insert—
- “(3B) The Secretary of State may by regulations prescribe matters to be addressed by a statement of community involvement in addition to the matters mentioned in subsection (2).”

Commencement Information

I17 S. 13 in force for specified purposes at Royal Assent, see s. 46

I18 S. 13(2) in force at 31.7.2018 in so far as not already in force by [S.I. 2018/38, reg. 4\(b\)](#) (with [reg. 5](#))

Planning conditions

14 Restrictions on power to impose planning conditions

- (1) After section 100 of the Town and Country Planning Act 1990 insert—

“Power to impose conditions on grant of planning permission in England

100ZA Restrictions on power to impose planning conditions in England

- (1) The Secretary of State may by regulations provide that—
 - (a) conditions of a prescribed description may not be imposed in any circumstances on a relevant grant of planning permission for the development of land in England,
 - (b) conditions of a prescribed description may be imposed on any such grant only in circumstances of a prescribed description, or
 - (c) no conditions may be imposed on any such grant in circumstances of a prescribed description.
- (2) Regulations under subsection (1) may make provision only if (and in so far as) the Secretary of State is satisfied that the provision is appropriate for the purposes of ensuring that any condition imposed on a relevant grant of planning permission for the development of land in England is—
 - (a) necessary to make the development acceptable in planning terms,
 - (b) relevant to the development and to planning considerations generally,
 - (c) sufficiently precise to make it capable of being complied with and enforced, and
 - (d) reasonable in all other respects.
- (3) Before making regulations under subsection (1) the Secretary of State must carry out a public consultation.
- (4) Subsection (5) applies in relation to an application for a relevant grant of planning permission for the development of land in England.
- (5) Planning permission for the development of the land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition.
- (6) But the requirement under subsection (5) for the applicant to agree to the terms of a pre-commencement condition does not apply in such circumstances as may be prescribed.
- (7) Before making regulations under subsection (6) the Secretary of State must carry out a public consultation.
- (8) "Pre-commencement condition" means a condition imposed on a grant of planning permission (other than a grant of outline planning permission within the meaning of section 92) which must be complied with—
 - (a) before any building or other operation comprised in the development is begun, or
 - (b) where the development consists of a material change in the use of any buildings or other land, before the change of use is begun.
- (9) A power conferred by any provision of this Part to impose a condition on a relevant grant of planning permission for the development of land in England is subject to—
 - (a) regulations under subsection (1), and
 - (b) subsection (5).
- (10) The Secretary of State must issue guidance to local planning authorities about the operation of this section and regulations made under it.
- (11) The Secretary of State may, from time to time, revise guidance issued under subsection (10).
- (12) The Secretary of State must arrange for guidance issued or revised under this section to be published in such manner as the Secretary of State considers appropriate.
- (13) In this section—
 - (a) references to a relevant grant of planning permission are to any grant of permission to develop land which is granted on an application made under this Part;
 - (b) references to a grant include the modification of any such grant;
 - (c) references to a condition include a limitation,
 and "prescribed" means prescribed by the Secretary of State."
- (2) In section 333 of the Town and Country Planning Act 1990 (regulations and orders) after subsection (3ZA) insert—

"(3ZAA) No regulations may be made under section 100ZA(1) unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament."
- (3) Section 100ZA of the Town and Country Planning Act 1990 (as inserted by subsection (1) of this section) has effect in relation to conditions on a grant or modification of planning permission only if the permission is granted or modified on or after the coming into force of this section.

- (4) Schedule 3 contains amendments in consequence of subsection (1).

Commencement Information

- I19 S. 14 in force at 19.7.2017 for specified purposes by [S.I. 2017/767, reg. 2\(e\)](#)
 I20 S. 14(1)(3) in force at 1.10.2018 for specified purposes by [S.I. 2018/567, reg. 3\(a\)](#)
 I21 S. 14(4) in force at 1.10.2018 for specified purposes by [S.I. 2018/567, reg. 3\(b\)](#)

Permitted development rights relating to drinking establishments

15 Permitted development rights relating to drinking establishments

- (1) As soon as reasonably practicable after the coming into force of this section, the Secretary of State must make a development order under the Town and Country Planning Act 1990 which—
- removes any planning permission which is granted by a development order for development consisting of a change in the use of any building or land in England from a use within Class A4 to a use of a kind specified in the order (subject to paragraph (c)),
 - removes any planning permission which is granted by a development order for a building operation consisting of the demolition of a building in England which is used, or was last used, for a purpose within Class A4 or for a purpose including use within that class, and
 - grants planning permission for development consisting of a change in the use of a building in England and any land within its curtilage from a use within Class A4 to a mixed use consisting of a use within that Class and a use within Class A3.
- (2) Subsection (1) does not require the development order to remove planning permission for development which has been carried out before the coming into force of the order.
- (3) Subsection (1) does not prevent—
- the inclusion of transitional, transitory or saving provision in the development order, or
 - the subsequent exercise of the Secretary of State's powers by development order to grant, remove or otherwise make provision about planning permission for the development of buildings or land used, or last used, for a purpose within Class A4 or for a purpose including use within that class.
- (4) A reference in this section to Class A3 or Class A4 is to the class of use of that name listed in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (SI 1987/764).
- (5) Expressions used in this section that are defined in the Town and Country Planning Act 1990 have the same meaning as in that Act.

Modifications etc. (not altering text)

- C83 [S. 15](#): power to amend conferred (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), [ss. 132, 255\(3\)\(a\)](#) (with [s. 247](#))

Development of new towns by local authorities

16 Development of new towns by local authorities

- (1) The New Towns Act 1981 is amended as follows.
 (2) After section 1 insert—

***1A Local authority to oversee development of new town**

- This section applies where the Secretary of State is considering designating an area of land in England as the site of a proposed new town in an order under section 1.
- The Secretary of State may, in an order under section 1, appoint one or more local authorities to oversee the development of the area as a new town.
- But a local authority may only be appointed if the area of land mentioned in subsection (1) is wholly or partly within the area of the local authority.
- The Secretary of State may by regulations make provision about how a local authority is to oversee the development of an area as a new town.
- Regulations under subsection (4) may, for example—
 - provide that a local authority is to exercise specified functions under this Act which would otherwise be exercisable by the Secretary of State, the appropriate Minister or the Treasury;
 - provide that a local authority is to exercise such functions subject to

- specified conditions or limitations;
- (c) provide that specified functions under this Act may be exercised only with the consent of a local authority;
 - (d) make provision about the membership of a corporation established under section 3, including the proportion of the members of the corporation who may be members of or employed by a local authority;
 - (e) modify provisions of this Act;
 - (f) make different provision for different purposes;
 - (g) make incidental, supplementary or consequential provision.
- (6) In subsection (5)(a) the reference to "functions" does not include a power to make regulations or other instruments of a legislative character.
- (7) Where two or more local authorities are appointed in an order containing provision by virtue of subsection (2), the Secretary of State may in that order provide—
- (a) that a specified function is to be exercised by a specified local authority, or
 - (b) that a specified function is to be exercised by two or more specified local authorities jointly.
- (8) In this section—
- "local authority" means—
- (a) a district council,
 - (b) a county council, or
 - (c) a London borough council;
- "specified" means specified in—
- (a) an order containing provision by virtue of subsection (2), or
 - (b) regulations under subsection (4)."

(3) In section 77 (regulations and orders)—

 - (a) in subsection (2), after "which" insert " , subject to subsection (2A), ", and
 - (b) after subsection (2) insert—

"(2A) A statutory instrument containing regulations under section 1A(4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Commencement Information

I22 S. 16 in force at 19.7.2017 by [S.I. 2017/767, reg. 2\(f\)](#)

Planning register

17 Register of planning applications etc

After section 69 of the Town and Country Planning Act 1990 insert—

*69A The register: additional requirements in relation to England

- (1) A register kept under section 69 by a local planning authority in England must (in addition to the information prescribed under that section) also contain such information as is prescribed as to—
- (a) prior approval applications made in connection with planning permission granted by a development order;
 - (b) the manner in which such applications have been dealt with by the authority;
 - (c) notifications of proposed development made in connection with planning permission granted by a development order;
 - (d) any actions taken by the authority following such notifications.
- (2) A "prior approval application", in connection with planning permission granted by a development order, means an application made to a local planning authority for—
- (a) any approval of the authority required under the order, or
 - (b) a determination from the authority as to whether such approval is required.
- (3) A "notification of proposed development", in connection with planning permission granted by a development order, means a notification made to a local planning authority to meet a requirement under the order.
- (4) The power in subsection (1)(b) to prescribe information as to the manner in which applications have been dealt with by a local planning authority includes power to prescribe information as to cases where the authority

does not respond to an application.

- (5) Where the register is kept in two or more parts, each part must contain such information as is prescribed relating to the matters mentioned in subsection (1)(a) and (c).
- (6) A development order may also make provision—
 - (a) for a specified part of the register to contain copies of applications or notifications and of any documents or material submitted with them;
 - (b) for the entry relating to an application (and everything relating to it) to be removed from that part of the register when the application (including any appeal arising out of it) has been finally disposed of;
 - (c) for the entry relating to a notification (and everything relating to it) to be removed from that part of the register in such circumstances as may be prescribed.
- (7) Provision under subsection (6)(b) or (c) does not prevent the inclusion of a different entry relating to the application or notification in another part of the register.
- (8) Anything prescribed under this section must be prescribed by development order.
- (9) A development order—
 - (a) may make different provision for different kinds of application or notification;
 - (b) may make provision which applies generally or only in relation to particular kinds of notification or application."

PART 2

COMPULSORY PURCHASE ETC

CHAPTER 1

TEMPORARY POSSESSION OF LAND

Modifications etc. (not altering text)

- C84** Pt. 2 Ch. 1 excluded (26.9.2018) by [The Network Rail \(Felixstowe Branch Line Improvements Level Crossings Closure\) Order 2018 \(S.I. 2018/937\)](#), arts. 1, **28**
- C85** Pt. 2 Ch. 1 excluded (12.10.2018) by [The Eggborough Gas Fired Generating Station Order 2018 \(S.I. 2018/1020\)](#), arts. 1, **26(12)** (with arts. 6, 42)
- C86** Pt. 2 Ch. 1 excluded (14.4.2020) by [The Reinforcement to the North Shropshire Electricity Distribution Network Order 2020 \(S.I. 2020/325\)](#), arts. 1, **26(12)** (with arts. 7, 27(8))
- C87** Pt. 2 Ch. 1 excluded (14.4.2020) by [The Reinforcement to the North Shropshire Electricity Distribution Network Order 2020 \(S.I. 2020/325\)](#), arts. 1, **27(13)** (with arts. 7, 27(8))
- C88** Pt. 2 Ch. 1 excluded (W.) (22.12.2021) by [The Morlais Demonstration Zone Order 2021 \(S.I. 2021/1478\)](#), arts. 1, **51** (with arts. 15, 50, Sch. 11)
- C89** Pt. 2 Ch. 1 excluded (5.12.2022) by [The Portishead Branch Line \(MetroWest Phase 1\) Order 2022 \(S.I. 2022/1194\)](#), arts. 1, **4(1)** (with art. 51)

Prospective

18 Power to take temporary possession of land

- (1) Subsection (2) applies where a person (an "acquiring authority")—
 - (a) has a power conferred by an Act to acquire land compulsorily (with or without authorisation from another person), or
 - (b) is or has been, at any time, otherwise authorised to acquire land compulsorily.
- (2) The acquiring authority may, for purposes connected with the purposes for which it could acquire land compulsorily, take temporary possession of land—
 - (a) by agreement, or
 - (b) compulsorily, if authorised to do so in accordance with section 19.
- (3) Subject to any express provision in another Act, the power in subsection (2) is the only power under which a person may take temporary possession of land compulsorily.
- (4) For the purposes of this Chapter references to acquiring land include references to acquiring a right over land by creation.

Prospective

19 Procedure for authorising temporary possession etc

- (1) This section sets out how an acquiring authority may be authorised to take temporary possession of land compulsorily under section 18(2).
- (2) The temporary possession of the land must be authorised by the type of instrument (the "authorising instrument") that would be required if the acquiring authority proposed to acquire that land compulsorily for the purposes for which it proposes to take temporary possession of that land.
- (3) Accordingly, the authorising instrument—
 - (a) may make provision relating to temporary possession of land as well as, or instead of, compulsory acquisition,
 - (b) if it authorises the compulsory acquisition of land, may authorise temporary possession of the same or other land, and
 - (c) if it makes provision relating to temporary possession, is to be subject to the same procedures for authorising and challenging it as if the provision relating to temporary possession were provision relating to compulsory acquisition.
- (4) But in so far as an authorising instrument authorises the temporary possession of land, the instrument is not to be subject to special parliamentary procedure by virtue of any enactment applying that procedure to an instrument authorising the compulsory acquisition of land, unless the land which is proposed to be subject to temporary possession is held by the National Trust inalienably.
- (5) For the purposes of subsection (4)—
 - (a) "the National Trust" means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907, and
 - (b) land is held by the National Trust "inalienably" if it is inalienable under section 21 of the National Trust Act 1907 or section 8 of the National Trust Act 1939.
- (6) For the purposes of subsection (3)(c), the reference to compulsory acquisition does not include the compulsory acquisition of a right over land by creation unless section 18(2) applies in relation to the acquiring authority by virtue only of a power or authorisation to acquire a right over land by creation.
- (7) The authorising instrument must—
 - (a) identify the land which is to be subject to temporary possession,
 - (b) describe the purposes for which temporary possession is required, and
 - (c) specify the total period of time for which the land may be subject to temporary possession.
- (8) The authorising instrument does not need to include the dates of any particular period of temporary possession (but see section 20).

Prospective

20 Notice requirements

- (1) Before taking temporary possession of land compulsorily for a period of time by virtue of section 18(2) an acquiring authority must give a notice of intended entry to each person who has an interest in or a right to occupy the land, so far as known to the authority after making diligent inquiry.
- (2) The notice must specify the period after the end of which the acquiring authority may take temporary possession of the land ("the notice period").
- (3) The notice period must not end earlier than the end of the period of three months beginning with the day on which the notice is given.
- (4) The notice must specify the period for which the acquiring authority is to take temporary possession of the land.
- (5) For the purposes of this section an acquiring authority is to be treated as taking temporary possession of land at the beginning of the first day of any period of temporary possession.
- (6) The notice period may be reduced by agreement between the acquiring authority and all persons to whom a notice must be given under subsection (1).
- (7) An acquiring authority must comply with this section again in relation to each subsequent period of temporary possession even if there is to be no gap between periods.
- (8) Where the authorising instrument mentioned in section 19 is a compulsory purchase order, a notice of intended entry under this section may not be served after the end of the period of three years beginning with the day on which the

authorising instrument becomes operative.

- (9) In any other case, a notice of intended entry under this section may not be served after the end of the period of five years beginning with the day on which the authorising instrument becomes operative.

[F1(1) For the purposes of subsection (1), a person entitled to the benefit of an obligation under a conservation covenant is to be treated as having an interest in the land to which the obligation relates.]

Textual Amendments

F1 S. 20(10) inserted (30.9.2022) by [Environment Act 2021 \(c. 30\), s. 147\(3\), Sch. 20 para. 9](#) (with s. 144); S.I. 2022/48, reg. 5(d)

Prospective

21 Counter-notice

- (1) This section applies where an acquiring authority gives a notice of intended entry under section 20 in relation to land to a person (the "owner") who—
- has a leasehold interest in, and the right to occupy, the land, or
 - has the freehold interest in the land.
- (2) The owner may give the acquiring authority a counter-notice which provides that the total period of time for which the land may be subject to temporary possession is limited to—
- 12 months where the land is or is part of a dwelling, or
 - 6 years in any other case.
- (3) If the owner falls within subsection (1)(a), the owner may instead give the acquiring authority a counter-notice which provides that the authority may not take temporary possession of the land.
- (4) A counter-notice under subsection (2) or (3) must be given within the period of 28 days beginning with the day on which the notice of intended entry was given.
- (5) On receiving a counter-notice under subsection (2), the acquiring authority must decide whether to—
- accept the counter-notice,
 - withdraw the notice of intended entry, or
 - proceed as if the land were subject to compulsory acquisition.
- (6) On receiving a counter-notice under subsection (3), the acquiring authority must decide whether to—
- accept the counter-notice, or
 - proceed as if the land were subject to compulsory acquisition.
- (7) The acquiring authority must give a notice of its decision in response to a counter-notice to the owner within the period of 28 days beginning with the day on which the counter-notice was given.
- (8) If the acquiring authority decides to proceed as if the land were subject to compulsory acquisition—
- the instrument which authorised temporary possession of the land is to be treated as authorising the compulsory acquisition of the owner's interest in the land (as well as the temporary possession of the land, if there are other interests in it), and
 - the authority may proceed as if it had given any notice or taken any step required in relation to the authorisation or confirmation of the instrument.
- (9) See Schedule 2A to the Compulsory Purchase Act 1965 and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 for options available to the owner if, in response to a counter-notice under this section, the acquiring authority decides to purchase the owner's interest in part of a house, building or factory.
- (10) Nothing in this section prevents an acquiring authority acquiring land compulsorily after accepting a counter-notice or withdrawing a notice of intended entry in respect of that land.

Prospective

22 Refusal to give up possession

Section 13 of the Compulsory Purchase Act 1965 (refusal to give up possession of land to acquiring authority) applies in relation to temporary possession by

virtue of section 18(2) of this Act as if—

- (a) the reference to “this Act” in subsection (1) were a reference to section 18(2) of this Act, and
- (b) the references to taking possession of land were references to taking temporary possession of land compulsorily by virtue of section 18(2) of this Act.

Prospective

23 Compensation

- (1) This section applies if an acquiring authority takes or is authorised to take temporary possession of land compulsorily by virtue of section 18(2).
 - (2) A person (a “claimant”) who has an interest in or a right to occupy the land is entitled to receive compensation from the authority for any loss or injury the claimant sustains as a result.
 - (3) A person (a “beneficial claimant”) is entitled to receive compensation from the authority for any loss or injury the beneficial claimant sustains as a result of the authority—
 - (a) interfering with a relevant right or interest annexed to land belonging to the beneficial claimant, or
 - (b) breaching a restriction as to the user of land arising by virtue of a contract where—
 - (i) the beneficial claimant is a party to the contract, or
 - (ii) the restriction benefits land which belongs to the beneficial claimant.
 - (4) Where the claimant is carrying on a trade or business on the land, the compensation to which the claimant is entitled includes compensation for any loss which the claimant sustains by reason of the disturbance of the trade or business consequent upon the claimant having to quit the land for the period of the temporary possession.
 - (5) In estimating loss for the purposes of subsection (4) regard is to be had—
 - (a) to the period for which the land occupied by the claimant may reasonably have been expected to be available for the purposes of the claimant’s trade or business,
 - (b) to the terms on which the land may reasonably have been expected to be available for those purposes, and
 - (c) to the availability of other land suitable for those purposes during the period of temporary possession.
- [F2**(5) For the purposes of subsections (2) and (3), the person is not entitled to
- A) compensation under this section by virtue of being the person entitled to the benefit of an obligation under a conservation covenant.]
 - (6) For the purposes of section 9 of the Limitation Act 1980, a cause of action for compensation under this section which, apart from this subsection, would accrue before or during a period of compulsory temporary possession for which notice is given under section 20 is to be treated as accruing on the last day of the period.
 - (7) Compensation under this section in relation to a particular head of loss or injury carries interest from the day after the last day on which that loss or injury occurs.
 - (8) The interest is to be at the rate prescribed by regulations under section 32 of the Land Compensation Act 1961 in relation to the compulsory acquisition of land.
 - (9) Any dispute about compensation payable under this section may be referred to and determined by the Upper Tribunal.
 - (10) In this Chapter “relevant right or interest” means any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support).

Textual Amendments

- F2** S. 23(5A) inserted (30.9.2022) by [Environment Act 2021 \(c. 30\), s. 147\(3\), Sch. 20 para. 10](#) (with [s. 144](#)); [S.I. 2022/48, reg. 5\(d\)](#)

Prospective

24 Advance payments

- (1) This section applies where a person (a "claimant") to whom compensation is or will be payable under section 23 makes a request in accordance with subsection (3).
- (2) The acquiring authority—
 - (a) must make an advance payment on account of the compensation if it has given a notice of intended entry under section 20 in relation to the land in respect of which the claimant is or will be entitled to compensation, but
 - (b) may not do so if it has not given such a notice.
- (3) A request for advance payment must be made in writing by the claimant and must include—
 - (a) details of the basis on which the claimant is or is going to be entitled to compensation, and
 - (b) information which is sufficient to enable the acquiring authority to estimate the amount of the compensation in respect of which the advance payment is to be made.
- (4) Before the end of the period of 28 days beginning with the day on which the acquiring authority receives a request under subsection (3), the authority must —
 - (a) determine whether it has enough information to estimate the amount of compensation, and
 - (b) if it needs more information, require the claimant to provide it.
- (5) The amount of an advance payment is to be equal to 90% of—
 - (a) if the acquiring authority and the claimant have agreed on the amount of the compensation, the agreed amount, or
 - (b) in any other case, an amount equal to the compensation as estimated by the acquiring authority.
- (6) An advance payment must be made—
 - (a) before the end of the day on which the authority takes temporary possession of the land, or
 - (b) if later, before the end of the period of two months beginning with the day on which the authority—
 - (i) receives the request for the advance payment, or
 - (ii) receives any further information required under subsection (4)(b).
- (7) If, after making an advance payment on the basis of its estimate of the compensation, the acquiring authority considers that its estimate was too low, the authority must pay the claimant the balance of the amount of the advance payment calculated on the basis of the authority's new estimate of the compensation.
- (8) Where the total amount of any payments under this section made on the basis of the acquiring authority's estimate of the compensation exceeds the compensation as finally determined or agreed, the excess is to be repaid.
- (9) If, after a payment under this section has been made to a person, it is discovered that the person was not entitled to it, the person must repay it.

Prospective

25 Interest on advance payments of compensation paid late

- (1) If an acquiring authority is required by section 24(2) to make an advance payment of compensation but pays some or all of it after the day or (as the case may be) the end of the period specified in section 24(6), the authority must pay interest on the amount which is paid after that period (the "unpaid amount").
- (2) Interest under subsection (1) accrues on the unpaid amount for the period beginning with the day after the day or (as the case may be) the end of the period specified in section 24(6).
- (3) If the total amount of any advance payment made under section 24 is greater than the compensation as finally determined or agreed (the "actual amount"), the claimant must repay any interest paid under this section that is attributable to the amount by which the advance payment exceeded the actual amount.
- (4) The Treasury must by regulations specify the rate of interest for the purposes of subsection (1).
- (5) Regulations under subsection (4) may contain further provision in connection with the payment of interest under subsection (1).

26 Consequential amendments

- (1) The Town and Country Planning Act 1990 is amended in accordance with

- subsections (2) to (7).
- (2) In section 150 (notices requiring purchase of blighted land), in subsection (1)(b), for "or paragraph 24" substitute " , paragraph 24 or paragraph 24A ".
- (3) In section 151 (counter-notice objecting to blight notices)—
- (a) in subsection (4)(b), after "to acquire" insert " or (in the case of land to which paragraph 24A of Schedule 13 applies) take temporary possession of ", and
 - (b) in subsection (8), for "to acquire that land" substitute " to acquire or (in the case of land to which paragraph 24A of Schedule 13 applies) to take temporary possession of that land ".
- (4) In section 155 (effect on powers of compulsory acquisition of counter-notice disclaiming intention to acquire)—
- (a) in the heading, after "acquire" insert " etc. ", and
 - (b) in subsection (2)—
 - (i) in paragraph (a), after "appropriate enactment" insert " , or, in a case to which paragraph 24A of Schedule 13 applies, the temporary possession of land has been authorised by the appropriate enactment, ",
 - (ii) in the closing words, after "that order" insert " or appropriate enactment, ", and
 - (iii) after "claimant in" insert " , or the temporary possession of, ".
- (5) In section 169 (meaning of "appropriate authority" in relation to blighted land), in subsection (1)—
- (a) the words from "by whom" to the end become paragraph (a), and
 - (b) after that paragraph insert " , or
 - (b) which is authorised to take temporary possession of the land as mentioned in paragraph 24A of Schedule 13."
- (6) In section 170 (meaning of "appropriate enactment" in relation to blighted land), after subsection (8B) insert—
- "(8BA) In relation to land falling within paragraph 24A of that Schedule "the appropriate enactment" is the instrument mentioned in section 19(2) of the Neighbourhood Planning Act 2017 (procedure for authorising temporary possession etc.) under which the acquiring authority mentioned in section 18(1) of that Act (power to take temporary possession of land) is authorised to take temporary possession of the land."
- (7) In Schedule 13 (list of categories of land which are blighted land as a result of planning proposals etc. by public authorities), after paragraph 24 insert—
- "24A Land the temporary possession of which is authorised by virtue of section 18(2) of the Neighbourhood Planning Act 2017."
- (8) In section 172 of the Housing and Planning Act 2016 (right to enter and survey land in connection with proposal to acquire land etc.)—
- (a) in subsection (1)—
 - (i) the words from "to" to the end become paragraph (a), and
 - (ii) after paragraph (a) insert " , or
 - (b) take temporary possession of land compulsorily under section 18(2) of the Neighbourhood Planning Act 2017." and
 - (b) in subsection (6) for the words from "acquiring authority" to the end of the subsection substitute "—
 - (a) "acquiring authority" means a person who could be authorised to acquire compulsorily the land to which the proposal mentioned in subsection (1) relates (regardless of whether the proposal is to acquire an interest in or a right over the land or to take temporary possession of it), and
 - (b) "owner" has the meaning given in section 7 of the Acquisition of Land Act 1981."

Commencement Information

123 S. 26(8)(b) in force at 22.9.2017 by [S.I. 2017/936](#), [reg. 3\(a\)](#) (with [reg. 5](#))

Prospective

27 Powers of acquiring authority in relation to land

- (1) Subject to subsection (4) and to any regulations under section 29, where an acquiring authority takes temporary possession of land compulsorily by virtue of section 18(2), the authority may use the land as if it had acquired all interests in

it.

- (2) In particular, the acquiring authority may—
- (a) remove or erect buildings or other works, and
 - (b) remove any vegetation,
- to the extent that it would be able to do so if it had acquired all interests in the land.
- (3) The acquiring authority may use land as described in subsection (1) even if this involves—
- (a) interfering with a relevant right or interest, **F3**...
 - (b) breaching a restriction as to the user of land arising by virtue of a contract **[F4**, or
 - (c) causing a person to be in breach of an obligation under a conservation covenant relating to the land.]
- (4) But the acquiring authority may use the land only for the purposes for which temporary possession was required, as described in the authorising instrument (see section 19(7)(b)).

[F5(4) The acquiring authority is not bound by an obligation under a conservation A) covenant relating to the land by virtue of acquiring a right to use the land under this section.]

- (5) Nothing in this section authorises an interference with—
- (a) a right of way on, under or over land that is a protected right, or
 - (b) a right of laying down, erecting, continuing or maintaining apparatus on, under or over land if it is a protected right.
- (6) Nothing in this section authorises—
- (a) an interference with a relevant right or interest annexed to land belonging to the National Trust which is held by the National Trust inalienably, **F6**...
 - (b) a breach of a restriction as to the user of land which does not belong to the National Trust—
 - (i) arising by virtue of a contract to which the National Trust is a party, or
 - (ii) benefiting land which does belong to the National Trust **[F7**, or
 - (c) a use of land that causes a person (or, if the person were to permit or suffer the use, would cause the person) to be in breach of an obligation under a conservation covenant relating to the land owed to the National Trust.]
- (7) For the purposes of subsection (6)—
- (a) “the National Trust” means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907, and
 - (b) land is held by the National Trust “inalienably” if it is inalienable under section 21 of the National Trust Act 1907 or section 8 of the National Trust Act 1939.

- (8) In this section—
- “protected right” means—
- (a) a right vested in, or belonging to, a statutory undertaker for the purpose of carrying on its statutory undertaking, or
 - (b) a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network (and expressions used in this paragraph have the meaning given by paragraph 1(1) of Schedule 17 to the Communications Act 2003);

“statutory undertaker” means a person who is, or who is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990;

“statutory undertaking” is to be read in accordance with section 262 of the Town and Country Planning Act 1990 (meaning of “statutory undertakers”).

Textual Amendments

F3 Word in s. 27(3)(a) omitted (30.9.2022) by virtue of [Environment Act 2021 \(c. 30\)](#), s. 147(3), [Sch. 20 para. 11\(2\)\(a\)](#) (with s. 144); S.I. 2022/48, reg. 5(d)

F4 S. 27(3)(c) and word inserted (30.9.2022) by [Environment Act 2021 \(c. 30\)](#), s. 147(3), [Sch. 20 para. 11\(2\)\(b\)](#) (with s. 144); S.I. 2022/48, reg. 5(d)

F5 S. 27(4A) inserted (30.9.2022) by [Environment Act 2021 \(c. 30\)](#), s. 147(3), [Sch. 20 para. 11\(3\)](#) (with s. 144); S.I. 2022/48, reg. 5(d)

- F6** Word in s. 27(6)(a) omitted (30.9.2022) by virtue of [Environment Act 2021 \(c. 30\)](#), s. 147(3), [Sch. 20 para. 11\(4\)\(a\)](#) (with s. 144); S.I. 2022/48, reg. 5(d)
- F7** S. 27(6)(c) and word inserted (30.9.2022) by [Environment Act 2021 \(c. 30\)](#), s. 147(3), [Sch. 20 para. 11\(4\)\(b\)](#) (with s. 144); S.I. 2022/48, reg. 5(d)

Prospective

28 Impact of temporary possession on tenancies etc

- (1) Subsection (2) applies where an acquiring authority takes temporary possession under section 18(2) of land subject to a tenancy.
- (2) A person is not to be treated as being in breach of—
 - (a) any term of the tenancy, or
 - (b) any other obligation associated with the tenancy or the land subject to temporary possession,
 to the extent that the person cannot reasonably comply with the term or other obligation as a result of the temporary possession.
- (3) Subsection (2) does not affect terms or obligations about—
 - (a) the length of the tenancy, or
 - (b) the payment of rent.
- (4) Subsection (5) applies where—
 - (a) an acquiring authority takes temporary possession of land subject to a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business tenants) applies immediately before the period of temporary possession,
 - (b) the tenancy expires during the period of temporary possession, and
 - (c) prior to the period of temporary possession the tenant notifies in writing both the acquiring authority and the landlord that the tenant intends to resume occupation of the land after the period of temporary possession.
- (5) For the purposes of Part 2 of the Landlord and Tenant Act 1954 the tenant is to be deemed to continue to occupy the land in accordance with the tenancy mentioned in subsection (4)(b), and any tenancy which succeeds that tenancy, despite the period of temporary possession.
- (6) But if the tenant notifies in writing both the acquiring authority and the landlord that the tenant no longer intends to resume occupation of the land after the period of temporary possession subsection (5) ceases to apply.
- (7) In this section “tenancy” includes a sub-tenancy.

29 Supplementary provisions

- (1) The appropriate national authority must by regulations make provision about—
 - (a) the reinstatement of land subject to a period of temporary possession, and
 - (b) the resolution by an independent person of disputes about reinstatement.
- (2) The Secretary of State may by regulations exclude the application of any provision of this Chapter in relation to a person who is an acquiring authority as a result of an authorisation by virtue of—
 - (a) section 11, 12 or 12A of the Pipe-lines Act 1962 (compulsory purchase of land or rights over land in connection with pipe-lines),
 - (b) section 12 or 13 of the Gas Act 1965 (compulsory purchase of rights in relation to storage of gas etc),
 - (c) paragraph 1 of Schedule 3 to the Gas Act 1986 (compulsory purchase of land by gas transporter), or
 - (d) paragraph 1 of Schedule 3 to the Electricity Act 1989 (compulsory purchase of land by licence holder).
- (3) The appropriate national authority may by regulations make further provision in relation to—
 - (a) the authorisation and exercise of the power to take temporary possession of land by virtue of section 18(2), and
 - (b) the circumstances in which an acquiring authority may be authorised to acquire land after being authorised to take temporary possession of it.
- (4) Regulations under subsection (3) may for example—
 - (a) make provision that appears to the appropriate national authority to be necessary or expedient for giving full effect to a provision of this Chapter in relation to particular cases or types of case, including by modifying that provision so that it is effective in relation to those cases or types of case,
 - (b) limit the period for which an acquiring authority may take temporary

- possession of land,
- (c) limit the circumstances in which an acquiring authority may take temporary possession of land,
- (d) make provision about the use by an acquiring authority of land of which it has taken temporary possession (for example, by limiting what an acquiring authority may do or by requiring an acquiring authority to do certain things),
- (e) limit the types of land which may be subject to temporary possession in specified circumstances,
- (f) require an acquiring authority to provide specified information relating to a period of temporary possession to specified persons before, during or after the period,
- (g) make provision in relation to the sale by a person with an interest in land where that land is or may be subject to temporary possession, and
- (h) make provision for a person who has a right to occupy land subject to temporary possession to be deemed to occupy that land for specified purposes during the period of temporary possession.
- (5) Before making regulations under this section the Secretary of State or the Welsh Ministers, as the case may be, must carry out a public consultation.
- (6) In this section—
- “appropriate national authority” means—
- (a) in relation to cases where the Welsh Ministers are the acquiring authority or the confirming authority, the Welsh Ministers, and
- (b) in all other cases, the Secretary of State;
- “confirming authority” means the authority having power to authorise the acquiring authority to take temporary possession of land;
- “specified” means specified in regulations under subsection (3).

Commencement Information

124 S. 29 in force at 19.7.2017 by [S.I. 2017/767, reg. 2\(g\)](#)

30 Interpretation

In this Chapter—

“acquiring authority” has the meaning given in section 18(1);

“the notice period” has the meaning given in section 20(2);

[F8“obligation under a conservation covenant” has the same meaning as in Part 7 of the Environment Act 2021;**]**

“possession” means exclusive occupation;

“relevant right or interest” has the meaning given by section 23(10).

Textual Amendments

F8 Words in [s. 30](#) inserted (30.9.2022) by [Environment Act 2021 \(c. 30\), s. 147\(3\), Sch. 20 para. 12](#) (with [s. 144](#)); [S.I. 2022/48, reg. 5\(d\)](#)

Commencement Information

125 S. 30 in force at 19.7.2017 by [S.I. 2017/767, reg. 2\(h\)](#)

Prospective

31 Application to Crown land

- (1) This Chapter applies in relation to Crown land.
- (2) An acquiring authority may exercise the power conferred by section 18(2) in relation to Crown land only if the acquiring authority has the consent of the appropriate authority.
- (3) In this section “Crown land” and “the appropriate authority” have the meanings given in section 293 of the Town and Country Planning Act 1990.

CHAPTER 2

OTHER PROVISIONS RELATING TO COMPULSORY PURCHASE

32 No-scheme principle

- (1) The Land Compensation Act 1961 is amended in accordance with subsections (2) to (4).
- (2) In section 5, after rule (2) insert—
- “(2A) The value of land referred to in rule (2) is to be assessed in the light of the

no-scheme principle set out in section 6A.”

- (3) For sections 6 to 9 (provisions about how scheme is to be disregarded when assessing compensation in respect of compulsory acquisition) substitute—

6A No-scheme principle

- (1) The no-scheme principle is to be applied when assessing the value of land in order to work out how much compensation should be paid by the acquiring authority for the compulsory acquisition of the land (see rule 2A in section 5).
- (2) The no-scheme principle is the principle that—
 - (a) any increase in the value of land caused by the scheme for which the authority acquires the land, or by the prospect of that scheme, is to be disregarded, and
 - (b) any decrease in the value of land caused by that scheme or the prospect of that scheme is to be disregarded.
- (3) In applying the no-scheme principle the following rules in particular (the “no-scheme rules”) are to be observed.
- (4) Rule 1: it is to be assumed that the scheme was cancelled on the relevant valuation date.
- (5) Rule 2: it is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme.
- (6) Rule 3: it is to be assumed that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers.
- (7) Rule 4: it is to be assumed that no other projects would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the scheme had been cancelled on the relevant valuation date.
- (8) Rule 5: if there was a reduction in the value of land as a result of—
 - (a) the prospect of the scheme (including before the scheme or the compulsory acquisition in question was authorised), or
 - (b) the fact that the land was blighted land as a result of the scheme, that reduction is to be disregarded.
- (9) In this section—

“blighted land” means land of a description listed in Schedule 13 to the Town and Country Planning Act 1990;

“relevant valuation date” has the meaning given by section 5A.
- (10) See also section 14 for assumptions to be made in respect of planning permission.

6B Lower compensation if other land gains value

- (1) This section applies where—
 - (a) a person is entitled to compensation for the compulsory acquisition of land (the “original land”) for the purposes of a scheme,
 - (b) on the date the notice to treat is served in respect of the original land, the person is entitled to an interest in other land (the “other land”) which is contiguous or adjacent to the original land,
 - (c) the person is entitled to the interest in the other land in the same capacity as the person is entitled to the interest in the original land, and
 - (d) the person's interest in the other land has increased in value as a result of the scheme.
- (2) The amount of compensation to which the person is entitled in respect of the compulsory acquisition of the original land is to be reduced by the amount of the increase in the value of the person's interest in the other land as at the relevant valuation date (determined in accordance with section 5A).
- (3) An amount by which the other land increases in value may not be set off against compensation payable to the person (for the original land or otherwise) in accordance with subsection (2) more than once.
- (4) If the other land is subsequently subject to compulsory acquisition for the purposes of the scheme mentioned in subsection (1), the compensation to which the person is entitled for the other land includes the amount which was deducted from the person's compensation for the original land in accordance with subsection (2) (despite the no-scheme principle).
- (5) If part only of the other land is subject to compulsory acquisition, the

compensation to which the person is entitled by virtue of subsection (4) is to be reduced accordingly.

- (6) Subsections (4) and (5) apply in relation to a person (a "successor") who derives title from the person mentioned in that subsection as if the original land had been acquired from the successor.
- (7) This section does not apply in relation to compensation which is to be assessed in accordance with section 261 of the Highways Act 1980 (benefit to vendor to be taken into account in assessing compensation on certain compulsory acquisitions for highway purposes).

6C Increased compensation if other land loses value

- (1) This section applies where—
 - (a) land (the "original land") belonging to a person is acquired for the purposes of a scheme,
 - (b) as a result of the acquisition of the original land the person receives compensation for injurious affection in relation to other land, and
 - (c) the other land is subsequently subject to compulsory acquisition for the purposes of that scheme.
- (2) The compensation to which the person is entitled as a result of the compulsory acquisition of the other land is to be reduced by the amount which the person received in compensation for injurious affection in relation to the other land as a result of the acquisition of the original land.
- (3) Subsection (2) applies in relation to a person (a "successor") who derives title from the person mentioned in that subsection as if the compensation for injurious affection had been paid to the successor.

6D Meaning of "scheme" etc.

- (1) For the purposes of sections 6A, 6B and 6C, the "scheme" in relation to a compulsory acquisition means the scheme of development underlying the acquisition (subject to subsections (2) to (5)).
- (2) Where the acquiring authority is authorised to acquire land in connection with the development of an area designated as—
 - (a) an urban development area by an order under section 134 of the Local Government, Planning and Land Act 1980,
 - (b) a new town by an order under section 1 of the New Towns Act 1981, or
 - (c) a Mayoral development area by a designation under section 197 of the Localism Act 2011,

the scheme is the development of any land for the purposes for which the area is or was designated.
- (3) Where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the scheme includes the relevant transport project (subject to section 6E).
- (4) For the purposes of subsection (3) and section 6E—
 - (a) a "relevant transport project" means a transport project carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers (regardless of whether it is carried out before, after or at the same time as the regeneration or redevelopment), and
 - (b) where different parts of the works comprised in such a transport project are first opened for use on different dates, each part is to be treated as a separate relevant transport project.
- (5) If there is a dispute as to what is to be taken to be the scheme (the "underlying scheme") then, for the purposes of this section, the underlying scheme is to be identified by the Upper Tribunal as a question of fact, subject as follows—
 - (a) the underlying scheme is to be taken to be the scheme provided for by the Act, or other instrument, which authorises the compulsory acquisition unless it is shown (by either party) that the underlying scheme is a scheme larger than, but incorporating, the scheme provided for by that instrument, and
 - (b) except by agreement or in special circumstances, the Upper Tribunal may permit the acquiring authority to advance evidence of such a larger scheme only if that larger scheme is one identified in the following read together—
 - (i) the instrument which authorises the compulsory acquisition, and
 - (ii) any documents made available with it.

- (6) In the application of no-scheme rule 3 in relation to the acquisition of land for or in connection with the construction of a highway (the "scheme highway") the reference in that rule to "any other project" includes a reference to any other highway that would meet the same or substantially the same need as the scheme highway would have been constructed to meet.

6E Further provisions in relation to relevant transport projects

- (1) This section has effect for the purposes of section 6D(3).
- (2) The scheme referred to in that section includes the relevant transport project only if—
- regeneration or redevelopment was part of the published justification for the relevant transport project,
 - the works comprised in the relevant transport project are first opened for use after the period of 5 years beginning with **[F9 22nd September 2017]**,
 - the instrument authorising the compulsory acquisition of the land which is acquired for regeneration or redevelopment was made or prepared in draft on or after **[F10 22nd September 2017]**,
 - the compulsory acquisition of that land is authorised before the end of the period of 5 years beginning with the day on which the works comprised in the relevant transport project are first opened for use, and
 - that land is in the vicinity of land comprised in the relevant transport project.
- (3) In assessing compensation payable to a person in respect of the compulsory acquisition of that land, the scheme is to be treated as if it did not include the relevant transport project if the person acquired the land—
- after plans for the relevant transport project were announced, but
 - before 8 September 2016.
- (4) Subsections (5) and (6) set out how subsection (2)(b) should be applied if a claim for compensation is made by a person (the "claimant")—
- during the period of 5 years mentioned in that subsection, and
 - before the works are first opened for use.
- (5) Compensation is to be assessed on the basis that the works will first be opened for use after the period of 5 years unless the acquiring authority confirms that, in the authority's opinion, the works will first be opened during that period (in which case compensation is to be assessed on the basis that the works will first be opened for use during that period).
- (6) If the basis on which compensation was assessed proves to be incorrect—
- the claimant's entitlement to any compensation which the claimant has already been awarded is not affected,
 - the acquiring authority must give the claimant a notice informing the claimant that the basis on which the compensation was assessed was incorrect,
 - the claimant may make a further claim for compensation in respect of the compulsory acquisition, and
 - for the purposes of the Limitation Act 1980, the further claim for compensation accrues on the day the claimant receives the notice."
- (4) Omit—
- section 15 (planning permission to be assumed for acquiring authority's proposals), and
 - Schedule 1 (actual or prospective development relevant for purposes of sections 6, 7 and 8).
- (5) In section 6(3) of the Land Compensation Act 1973 (reduction of compensation where land is benefited)—
- for "section 6" substitute " section 6A ", and
 - for "section 7" substitute " section 6B ".
- (6) In section 78 of the Housing Act 1988 (supplementary provisions relating to vesting, acquisition and compensation) omit subsections (3) and (4).

Textual Amendments

F9 Words in s. 32(3) substituted (22.9.2017) by [The Neighbourhood Planning Act 2017 \(Commencement No. 2\) Regulations 2017 \(S.I. 2017/936\)](#), [reg. 6](#)

F10 Words in s. 32(3) substituted (22.9.2017) by [The Neighbourhood Planning Act 2017](#)

(Commencement No. 2) Regulations 2017 (S.I. 2017/936), [reg. 7](#)

Commencement Information

126 S. 32 in force at 22.9.2017 by [S.I. 2017/936, reg. 3\(b\)](#) (with [reg. 4](#))

33 Repeal of Part 4 of the Land Compensation Act 1961

- (1) In the Land Compensation Act 1961 omit—
- (a) Part 4 (compensation where permission for additional development granted after acquisition), and
 - (b) Schedule 3 (application of Part 4 to certain cases).
- (2) In section 38(1) of that Act (service of notices) omit "or Part IV".
- (3) In section 141 of the Local Government, Planning and Land Act 1980 (vesting by order of land in urban development corporation) omit subsection (5A) (no compensation payable under Part 4 of the Land Compensation Act 1961 by virtue of such an order).
- (4) In consequence of the amendments made by this section the following are repealed or revoked—
- (a) section 66 of the Planning and Compensation Act 1991;
 - (b) Schedule 14 to that Act;
 - (c) paragraph 25 of Schedule 15 to that Act;
 - (d) paragraph 14 of Schedule 14 to the Government of Wales Act 1998;
 - (e) paragraph 15 of Schedule 1 to the Fire and Rescue Services Act 2004;
 - (f) the first paragraph 3 in Part 1 of Schedule 2 to the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (SI 2005/3226);
 - (g) paragraph 2 of Schedule 8 to the Housing and Regeneration Act 2008;
 - (h) paragraph 1 of Schedule 2 to the Localism Act 2011 (Consequential Amendments) Order 2012 (SI 2012/961).
- (5) The repeals and revocations made by this section have effect in relation only to an acquisition or sale of an interest in land in relation to which the date of completion (within the meaning of Part 4 of the Land Compensation Act 1961) falls on or after the day on which this section comes into force.

Commencement Information

127 S. 33 in force at 22.9.2017 by [S.I. 2017/936, reg. 3\(c\)](#)

34 Time limit for confirmation notices

- (1) In section 15 of the Acquisition of Land Act 1981 (notices to be served and published etc after confirmation of compulsory purchase order) after subsection (3) insert—
- “(3A) The acquiring authority must comply with subsections (1) and (3) before the end of—
- (a) the period of 6 weeks beginning with the day on which the order is confirmed, or
 - (b) such longer period beginning with that day as may be agreed in writing between the acquiring authority and the confirming authority.
- (3B) If the acquiring authority fails to comply with subsections (1) and (3) in accordance with subsection (3A), the confirming authority may—
- (a) take any steps that the acquiring authority was required but has failed to take to comply with those subsections, and
 - (b) recover the reasonable costs of doing so from the acquiring authority.”
- (2) The amendment made by this section applies only in relation to a compulsory purchase order which is confirmed after this section comes into force.

Commencement Information

128 S. 34 in force at 22.9.2017 by [S.I. 2017/936, reg. 3\(d\)](#)

35 Compensation for disturbance

For section 47 of the Land Compensation Act 1973 (compensation in respect of land subject to business tenancy) substitute—

“47 **Compensation in respect of land subject to business tenancy**

- (1) This section applies where—

- (a) in pursuance of an enactment providing for the acquisition or taking of possession of land compulsorily an acquiring authority—
 - (i) acquires the interest of the landlord in land subject to a tenancy, or
 - (ii) acquires the interest of the tenant in, or takes possession of, land subject to a tenancy, and
 - (b) before the authority acquired the interest or took possession of the land, the tenant under the tenancy was carrying on a trade or business on the land.
- (2) The principles in subsections (3) and (4) are to be applied in assessing the compensation payable by the authority to the landlord or the tenant in respect of the acquisition of the interest in or the taking of possession of the land or, as the case may be, under section 121 of the Lands Clauses Consolidation Act 1845 or section 20 of the Compulsory Purchase Act 1965 (tenants from year to year etc).
- (3) Regard must be had to—
- (a) the likelihood of the continuation or renewal of the tenancy,
 - (b) in the case of a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business tenants) applies, the right of the tenant to apply for the grant of a new tenancy,
 - (c) the total period for which the tenancy may reasonably have been expected to continue, including after any renewal, and
 - (d) the terms and conditions on which a tenancy may reasonably have been expected to be renewed or continued.
- (4) It is to be assumed that neither the acquiring authority nor any other authority possessing compulsory purchase powers have acquired or propose to acquire any interest in the land."

Commencement Information

129 S. 35 in force at 22.9.2017 by [S.I. 2017/936](#), [reg. 3\(e\)](#) (with [reg. 4](#))

36 GLA, MDCs and TfL: joint acquisition of land

- (1) The Greater London Authority Act 1999 is amended as follows.
- (2) After section 403 insert—

"Acquisition of land for shared purposes

403A Acquisition of land by the Authority and TfL for shared purposes

- (1) This section applies where the Authority and Transport for London agree that the purposes for which they may acquire land compulsorily under—
 - (a) section 333ZA of this Act, and
 - (b) paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980,
 would be advanced by one or both of them acquiring land for a joint project.
- (2) The purposes for which the Authority may acquire land compulsorily under section 333ZA(1) are to be read as if they included the purposes for which Transport for London may acquire land compulsorily.
- (3) The purposes for which Transport for London may acquire land compulsorily under paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980 are to be read as if they included the purposes for which the Authority may acquire land compulsorily.
- (4) The Authority and Transport for London may agree that one of them is to acquire land on behalf of the other.
- (5) Where subsection (4) applies, a compulsory acquisition is to proceed under—
 - (a) section 333ZA if it is agreed that the Authority will acquire the land, or
 - (b) paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980 if it is agreed that Transport for London will acquire the land.
- (6) Subsection (7) applies where—
 - (a) the Authority and Transport for London both propose to acquire land compulsorily for a joint project, and
 - (b) the proposed compulsory acquisitions require authorisation by different confirming authorities.

- (7) The proposed compulsory acquisitions are to be treated as requiring the joint authorisation of the confirming authorities.
- (8) The Authority or Transport for London may acquire land by agreement for the same purposes as those for which that body may acquire land compulsorily by virtue of subsection (2) or (3).
- (9) The joint project mentioned in subsection (1) is to be treated as the scheme for the purposes of the no-scheme principle in section 6A of the Land Compensation Act 1961 (impact of scheme to be disregarded when assessing value of land for compulsory purchase).

403B Acquisition of land by MDC and TfL for shared purposes

- (1) This section applies where a Mayoral development corporation and Transport for London agree that the purposes for which they may acquire land compulsorily under—
 - (a) section 207 of the Localism Act 2011, and
 - (b) paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980,
 would be advanced by one or both of them acquiring land for a joint project.
 - (2) The purposes for which the Mayoral development corporation may acquire land compulsorily under section 207 of the Localism Act 2011 are to be read as if they included the purposes for which Transport for London may acquire land compulsorily.
 - (3) The purposes for which Transport for London may acquire land compulsorily under paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980 are to be read as if they included the purposes for which the Mayoral development corporation may acquire land compulsorily.
 - (4) The Mayoral development corporation and Transport for London may agree that one of them is to acquire land on behalf of the other.
 - (5) Where subsection (4) applies, a compulsory acquisition is to proceed under—
 - (a) section 207 of the Localism Act 2011 if it is agreed that the Mayoral development corporation will acquire the land, or
 - (b) paragraph 19(1) of Schedule 11 to this Act or Part 12 of the Highways Act 1980 if it is agreed that Transport for London will acquire the land.
 - (6) Subsection (7) applies where—
 - (a) the Mayoral development corporation and Transport for London both propose to acquire land compulsorily for a joint project, and
 - (b) the proposed compulsory acquisitions require authorisation by different confirming authorities.
 - (7) The proposed compulsory acquisitions are to be treated as requiring the joint authorisation of the confirming authorities.
 - (8) The Mayoral development corporation or Transport for London may acquire land by agreement for the same purposes as those for which that body may acquire land compulsorily by virtue of subsection (2) or (3).
 - (9) The joint project mentioned in subsection (1) is to be treated as the scheme for the purposes of the no-scheme principle in section 6A of the Land Compensation Act 1961 (impact of scheme to be disregarded when assessing value of land for compulsory purchase)."
- (3) In paragraph 20 of Schedule 11 (limitations on Transport for London's power to acquire land compulsorily), after "provided by" insert " section 403A, 403B or ".

Commencement Information

130 S. 36 in force at 22.9.2017 by [S.I. 2017/936, reg. 3\(f\)](#)

37 Overriding easements: land held on behalf of GLA or TfL

- (1) The Housing and Planning Act 2016 is amended in accordance with subsections (2) to (4).
- (2) In section 203 (power to override easements and other rights)—
 - (a) in the opening words of subsection (2)(b), for "13 July 2016" substitute " the relevant day ",
 - (b) in subsection (2)(b)(i), after "specified authority" insert " or a specified company acting on behalf of a specified authority ",
 - (c) in the opening words of subsection (5)(b), for "13 July 2016" substitute " the relevant day ", and

- (d) in subsection (5)(b)(i), after “specified authority” insert “ or a specified company acting on behalf of a specified authority ”.
- (3) In section 204 (compensation for overridden easements), for subsection (4) substitute—
- “(4) The authority against which a liability is enforceable by virtue of subsection (3)(a) is—
- (a) where the land to which the compensation relates was vested in or acquired by a company through which the Greater London Authority exercises or has exercised functions in relation to housing or regeneration, the Greater London Authority,
- (b) where the land was vested in or acquired by a company through which Transport for London exercises or has exercised any of its functions, Transport for London, or
- (c) in all other cases, the specified or qualifying authority in which the land was vested, or by which the land was acquired or appropriated.”
- (4) In section 205 (interpretation of sections 203 and 204)—
- (a) in the definition of “other qualifying land”, in the opening words of paragraph (g), after “regeneration,” insert “ or vested in or acquired by a company or body through which the Greater London Authority exercises functions in relation to housing or regeneration, ”,
- (b) in the definition of “qualifying authority”—
- (i) for the words from “authority in” to “or which” substitute “ person in whom the land was vested, or who ”, and
- (ii) at the end insert “ (but, for the purposes of section 203(3)(c) and (6) (c), where that person is a company or body through which the Greater London Authority exercises functions in relation to housing or regeneration, the qualifying authority is the Greater London Authority) ”,
- (c) after the definition of “qualifying authority” insert—
- ““relevant day” means—
- (a) in relation to a specified company which is a company or body through which Transport for London exercises any of its functions, [\[F11 19th July 2017\]](#), and
- (b) in all other cases, 13 July 2016.”, and
- (d) after the definition of “specified authority” insert—
- ““specified company” means—
- (a) a company or body through which the Greater London Authority exercises functions in relation to housing or regeneration, or
- (b) a company or body through which Transport for London exercises any of its functions;”.
- (5) In the Housing and Planning Act 2016 (Commencement No. 2, Transitional Provisions and Savings) Regulations 2016 (S.I. 2016/733), the following regulations are revoked—
- (a) regulation 10 (savings in relation to company through which Greater London Authority exercises functions), and
- (b) regulation 12(3) (substitution of actual date for reference to commencement date).

Textual Amendments

[F11](#) Words in s. 37(4)(c) substituted (19.7.2017) by [The Neighbourhood Planning Act 2017 \(Commencement No. 1\) Regulations 2017 \(S.I. 2017/767\)](#), [reg. 3](#)

Commencement Information

[I31](#) S. 37 in force at 19.7.2017 by [S.I. 2017/767](#), [reg. 2\(i\)](#)

38 Timing of advance payments of compensation

- (1) The Land Compensation Act 1973 is amended as follows.
- (2) In section 52 (right to advance payment of compensation)—
- (a) in subsection (4)(b)—
- (i) omit the “or” before sub-paragraph (ii), and
- (ii) at the end insert “, or
- (iii) received any further information required under section 52ZC(2)(b).”, and

- (b) in subsection (4ZA)(b)—
 - (i) omit the “or” before sub-paragraph (ii), and
 - (ii) at the end insert “, or
 - (iii) received any further information required under section 52ZC(2)(b).”
- (3) In section 52ZC (land subject to mortgage: supplementary provisions)—
 - (a) in subsection (3A)(b)—
 - (i) omit the “or” before sub-paragraph (ii), and
 - (ii) at the end insert “, or
 - (iii) received any further information required under section 52(2A)(b).”, and
 - (b) in subsection (3B)(b)—
 - (i) omit the “or” before sub-paragraph (ii), and
 - (ii) at the end insert “, or
 - (iii) received any further information required under section 52(2A)(b).”

Commencement Information

132 S. 38 in force at 6.4.2018 by [S.I. 2018/252, reg. 3](#) (with [reg. 4](#))

Prospective

39 Interest on advance payments of compensation

In section 52A of the Land Compensation Act 1973 (right to interest where advance payment made), in subsection (2B), for “the paid amount” substitute “the amount in respect of which the authority is required to pay interest under section 52B”.

Prospective

40 Interest on payments to mortgagee paid late

- (1) Section 52B of the Land Compensation Act 1973 (interest on advance payments of compensation paid late) is amended as follows.
- (2) In the heading, after “compensation” insert “etc.”
- (3) In subsection (1)—
 - (a) after “(1B)” insert “, 52ZA(3) or 52ZB(3)”,
 - (b) after “compensation” insert “ or (as the case may be) a payment to a mortgagee”, and
 - (c) after “interest” insert “ to the claimant”.
- (4) In subsection (2), after “(4ZA)” insert “ or (as the case may be) section 52ZC(3A) or (3B)”.
- (5) In subsection (3)—
 - (a) for “the amount of the advance payment” substitute “ the total amount which the acquiring authority pays under section 52, 52ZA or 52ZB in respect of the claimant (the “paid amount”)”, and
 - (b) for “by which the advance payment” substitute “ by which the paid amount”.

41 Compensation for temporary severance of land after vesting declaration

In Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 (counter-notice requiring purchase of land not in general vesting declaration), in paragraph 16, after sub-paragraph (3) insert—

- “(4) If the vesting date for the specified land is after the vesting date for any land proposed to be acquired, the Upper Tribunal’s power to award compensation under section 7 of the Compulsory Purchase Act 1965 includes power to award compensation for any loss suffered by the owner by reason of the temporary severance of the land proposed to be acquired from the specified land.”

Commencement Information

133 S. 41 in force at 19.7.2017 by [S.I. 2017/767, reg. 2\(j\)](#)

CONSEQUENTIAL PROVISION

42 Consequential provision

- (1) The Secretary of State may by regulations make provision in consequence of any provision of this Part.
- (2) Regulations under subsection (1) may amend, repeal or revoke any enactment.
- (3) In subsection (2) "enactment" includes—
 - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978, and
 - (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales.

Commencement Information

134 S. 2 in force for specified purposes at Royal Assent, see s. 46

PART 3

FINAL PROVISIONS

43 Financial provisions

The following are to be paid out of money provided by Parliament—

- (a) any expenditure incurred under or by virtue of this Act by a Minister of the Crown, a person holding office under Her Majesty or a government department, and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

Commencement Information

135 S. 2 in force for specified purposes at Royal Assent, see s. 46

44 Regulations

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) A statutory instrument containing (whether alone or with any other provision) any of the following regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—
 - (a) regulations under section 29(1), (2) or (3) made by the Secretary of State;
 - (b) regulations under section 42(1) which amend or repeal a provision of primary legislation.
- (3) A statutory instrument containing (whether alone or with any other provision) regulations under section 29(1) or (3) made by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (4) A statutory instrument containing any of the following regulations and to which subsection (2) does not apply is subject to annulment in pursuance of a resolution of either House of Parliament—
 - (a) regulations under section 25(4);
 - (b) regulations under section 42(1) which do not amend or repeal a provision of primary legislation.
- (5) Regulations under this Act—
 - (a) may make different provision for different purposes or areas;
 - (b) may make provision which applies generally or for particular purposes or areas;
 - (c) may make transitional, transitory or saving provision;
 - (d) may make incidental, supplementary or consequential provision.
- (6) If a draft of regulations under section 29(3) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the Standing Orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.
- (7) In this section "primary legislation" means—
 - (a) an Act of Parliament, or
 - (b) a Measure or Act of the National Assembly for Wales.

Commencement Information

136 S. 2 in force for specified purposes at Royal Assent, see s. 46

45 Extent

- (1) This Act extends to England and Wales only, subject to subsection (2).
- (2) Section 42 and this Part extend to England and Wales, Scotland and Northern Ireland.

Commencement Information

137 S. 2 in force for specified purposes at Royal Assent, see s. 46

46 Commencement

- (1) This Act comes into force on such day as the Secretary of State appoints by regulations, subject to subsection (3).
- (2) Regulations under subsection (1) may appoint different days for different purposes or areas.
- (3) The following provisions come into force on the day on which this Act is passed—
 - (a) section 2, for the purposes only of enabling the Secretary of State to make provision by development order under paragraph 8(6) of Schedule 1 to the Town and Country Planning Act 1990;
 - (b) sections 4, 9, 12 and 13 and Schedule 1, to the extent that they confer power on the Secretary of State to make regulations;
 - (c) section 15;
 - (d) section 17;
 - (e) section 42;
 - (f) this Part.
- (4) The Secretary of State may by regulations make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.

Commencement Information

138 S. 2 in force for specified purposes at Royal Assent, see s. 46

47 Short title

This Act may be cited as the Neighbourhood Planning Act 2017.

Commencement Information

139 S. 2 in force for specified purposes at Royal Assent, see s. 46

SCHEDULES

SCHEDULE 1

Section 4

NEW SCHEDULE A2 TO THE PLANNING AND COMPULSORY PURCHASE ACT 2004

- 1** This is the new Schedule A2 to the Planning and Compulsory Purchase Act 2004 referred to in section 4—

"SCHEDULE A2

Section 38A(11A)

MODIFICATION OF NEIGHBOURHOOD DEVELOPMENT PLANS

Proposals for modification of neighbourhood development plan

- 1** (1) This Schedule applies if a neighbourhood development plan has effect for a neighbourhood area within the area of a local planning authority.
- (2) A qualifying body is entitled to submit a proposal to the local planning authority for the modification of the neighbourhood development plan.
- (3) The proposal must be accompanied by—
 - (a) a draft of the neighbourhood development plan as proposed to be modified (the "draft plan"), and
 - (b) a statement which contains a summary of the proposals and sets out the reasons why the plan should be modified as proposed.
- (4) The proposal must—
 - (a) be made in the prescribed form, and
 - (b) be accompanied by other documents and information of a

prescribed description.

- (5) The qualifying body must send to prescribed persons a copy of—
 - (a) the proposal,
 - (b) the draft plan, and
 - (c) such of the other documents and information accompanying the proposal as may be prescribed.
 - (6) The Secretary of State may publish a document setting standards for—
 - (a) the preparation of a draft of a neighbourhood development plan as proposed to be modified and other documents accompanying the proposal,
 - (b) the coverage in any document accompanying the proposal of a matter falling to be dealt with in it, and
 - (c) all or any of the collection, sources, verification, processing and presentation of information accompanying the proposal.
 - (7) The documents and information accompanying the proposal (including the draft plan) must comply with those standards.
- 2 (1) A qualifying body may withdraw a proposal at any time before the local planning authority act in relation to the proposal under paragraph 14.
 - (2) If—
 - (a) a proposal by a qualifying body is made by an organisation or body designated as a neighbourhood forum, and
 - (b) the designation is withdrawn at any time before the proposal is submitted for independent examination under paragraph 9,
 the proposal is to be treated as withdrawn by the qualifying body at that time.
 - (3) If the withdrawal of the designation occurs after the proposal is submitted for independent examination under that paragraph, the withdrawal is not to affect the validity of the proposal.

Advice and assistance in connection with proposals

- 3 (1) A local planning authority must give such advice or assistance to a qualifying body as, in all the circumstance, they consider appropriate for the purpose of, or in connection with, facilitating the making of a proposal for the modification of a neighbourhood development plan for a neighbourhood area within their area.
- (2) Nothing in this paragraph is to be read as requiring the giving of financial assistance.

Requirements to be complied with before proposals made or considered

- 4 (1) The Secretary of State may by regulations make provision as to requirements that must be complied with before proposals for the modification of a neighbourhood development plan may be submitted to a local planning authority or fall to be considered by a local planning authority.
- (2) The regulations may in particular make provision—
 - (a) as to the giving of notice and publicity,
 - (b) as to the information and documents that are to be made available to the public,
 - (c) as to the making of reasonable charges for anything provided as a result of the regulations,
 - (d) as to consultation with and participation by the public,
 - (e) as to the making and consideration of representations (including the time by which they must be made),
 - (f) requiring prescribed steps to be taken before a proposal of a prescribed description falls to be considered by a local planning authority, and
 - (g) conferring powers or imposing duties on local planning authorities, the Secretary of State or other public authorities.
- (3) The power to make regulations under this paragraph must be exercised to secure that—
 - (a) prescribed requirements as to consultation with and participation by the public must be complied with before a proposal for the modification of a neighbourhood development plan may be submitted to a local planning authority, and
 - (b) a statement containing the following information in relation to that consultation and participation must accompany the proposal

submitted to the authority—

- (i) details of those consulted,
- (ii) a summary of the main issues raised, and
- (iii) any other information of a prescribed description.

Consideration of proposals by authority

- 5 (1) A local planning authority may decline to consider a proposal submitted to them if they consider that it is a repeat proposal.
- (2) A proposal (“the proposal in question”) is a “repeat” proposal for the purposes of this paragraph if it meets conditions A and B.
- (3) Condition A is that—
- (a) in the period of two years ending with the date on which the proposal in question is received, the authority received a proposal under this Schedule (“the earlier proposal”),
 - (b) the authority did not make a neighbourhood development plan in response to the earlier proposal as a result of paragraph 8(4) or 14(4) or (8), and
 - (c) the earlier proposal was the same as or similar to the proposal in question.
- (4) Condition B is that the local planning authority consider that there has been no significant change in circumstances since the earlier proposal was dealt with as mentioned in sub-paragraph (3)(b).
- 6 If a local planning authority decline to consider a proposal under paragraph 5 they must notify the qualifying body of that fact and of their reasons for declining to consider it.
- 7 (1) This paragraph applies if—
- (a) a proposal has been made to a local planning authority,
 - (b) the authority have not exercised their powers under paragraph 5 to decline to consider it, and
 - (c) the authority consider that the modifications contained in the draft plan to which it relates are so significant or substantial as to change the nature of the neighbourhood development plan which the draft plan would replace.
- (2) The local planning authority must instead consider the proposal under paragraph 6 of Schedule 4B to the principal Act (as applied by sections 38A(3) and 38C(5) of this Act).
- (3) That Schedule is to apply in relation to the proposal as if the proposal had been submitted to the local planning authority under that Schedule.
- 8 (1) This paragraph applies if—
- (a) a proposal has been made to a local planning authority,
 - (b) the authority have not exercised their power under paragraph 5 to decline to consider it, and
 - (c) paragraph 7 does not apply.
- (2) The authority must consider—
- (a) whether the qualifying body is authorised for the purposes of a neighbourhood development plan to act in relation to the neighbourhood area concerned as a result of section 61F of the principal Act (as applied by section 38C(2)(a) of this Act),
 - (b) whether the proposal by the body complies with provision made by or under that section,
 - (c) whether the proposal and the documents and information accompanying it (including the draft plan) comply with provision made by or under paragraph 1, and
 - (d) whether the body has complied with the requirements of regulations made under paragraph 4 imposed on it in relation to the proposal.
- (3) The authority must also consider whether the draft plan complies with the provision made by or under sections 38A and 38B.
- (4) The authority must—
- (a) notify the qualifying body as to whether or not they are satisfied that the matters mentioned in sub-paragraphs (2) and (3) have been met or complied with, and
 - (b) in any case where they are not so satisfied, refuse the proposal and notify the body of their reasons for refusing it.

Requirement to appoint examiner

- 9 (1) This paragraph applies if—
- (a) a local planning authority have considered the matters mentioned in paragraph 8(2) and (3), and
 - (b) they are satisfied that the matters mentioned there have been met or complied with.
- (2) The local planning authority must submit for independent examination—
- (a) the draft plan, and
 - (b) such other documents as may be prescribed.
- (3) The authority must make such arrangements as they consider appropriate in connection with the holding of the examination.
- (4) The authority may appoint a person to carry out the examination, but only if the qualifying body consents to the appointment.
- (5) If—
- (a) it appears to the Secretary of State that no person may be appointed under sub-paragraph (4), and
 - (b) the Secretary of State considers that it is expedient for an appointment to be made under this sub-paragraph,
- the Secretary of State may appoint a person to carry out the examination.
- (6) The person appointed must be someone who, in the opinion of the person making the appointment—
- (a) is independent of the qualifying body and the authority,
 - (b) does not have an interest in any land that may be affected by the draft plan, and
 - (c) has appropriate qualifications and experience.
- (7) The Secretary of State or another local planning authority may enter into arrangements with the authority for the provision of the services of any of their employees as examiners.
- (8) Those arrangements may include—
- (a) provision requiring payments to be made by the authority to the Secretary of State or other local planning authority, and
 - (b) other provision in relation to those payments and other financial matters.

What examiner must consider

- 10 (1) The examiner must first determine whether the modifications contained in the draft plan are so significant or substantial as to change the nature of the neighbourhood development plan which the draft plan would replace.
- (2) The following provisions of this paragraph apply if the examiner determines that the modifications would have that effect.
- (3) The examiner must—
- (a) notify the qualifying body and the local planning authority of the determination, and
 - (b) give reasons for the determination.
- (4) The qualifying body must decide whether it wishes to proceed with the proposal or withdraw it, and must notify the examiner and the local planning authority of that decision.
- (5) If the qualifying body notifies the examiner that it wishes to proceed with the proposal, the examiner must consider the draft plan and the documents submitted with it under paragraph 8 of Schedule 4B to the principal Act (as applied by sections 38A(3) and 38C(5) of this Act).
- (6) In that event that Schedule is to apply in relation to the draft plan and the documents submitted with it as if they had been submitted to the examiner under that Schedule.
- 11 (1) If paragraph 10(2) does not apply, the examiner must consider the following—
- (a) whether the draft plan meets the basic conditions (see sub-paragraph (2));
 - (b) whether the draft plan complies with the provision made by or under sections 38A and 38B;
 - (c) such other matters as may be prescribed.
- (2) A draft plan meets the basic conditions if—
- (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan,
 - (b) the making of the plan contributes to the achievement of sustainable development,

- (c) the making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
 - (d) the making of the plan does not breach, and is otherwise compatible with, EU obligations, and
 - (e) prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the plan.
- (3) The examiner is not to consider any matter that does not fall within sub-paragraph (1) (apart from considering whether the draft plan is compatible with the Convention rights).

Procedure for examination

- 12 (1) The general rule is that the examination of the issues by the examiner under paragraph 10 or 11 is to take the form of the consideration of written representations.
- (2) But the examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue at the hearing—
- (a) in any case where the examiner considers that there are exceptional reasons for doing so, or
 - (b) in such other cases as may be prescribed.
- (3) The following persons are entitled to make oral representations about the issue at the hearing—
- (a) the qualifying body,
 - (b) the local planning authority, and
 - (c) such other persons as may be prescribed.
- (4) The hearing must be in public.
- (5) It is for the examiner to decide how the hearing is to be conducted, including—
- (a) whether a person making oral representations may be questioned by another person and, if so, the matters to which the questioning may relate, and
 - (b) the amount of time for the making of a person's oral representations or for any questioning by another person.
- (6) In making decisions about the questioning of a person's oral representations by another, the examiner must apply the principle that the questioning should be done by the examiner except where the examiner considers that questioning by another is necessary to ensure—
- (a) adequate examination of a particular issue, or
 - (b) a person has a fair chance to put a case.
- (7) Sub-paragraph (5) is subject to regulations under paragraph 15.

Recommendation by examiner

- 13 (1) After considering a draft plan under paragraph 11, the examiner must make a report on the draft plan containing recommendations in accordance with this paragraph (and no other recommendations).
- (2) The report must recommend either—
- (a) that the local planning authority should make the draft plan,
 - (b) that the local planning authority should make the draft plan with the modifications specified in the report, or
 - (c) that the local planning authority should not make the draft plan.
- (3) The only modifications that may be recommended are—
- (a) modifications that the examiner considers need to be made to secure that the draft plan meets the basic conditions mentioned in paragraph 11(2),
 - (b) modifications that the examiner considers need to be made to secure that the draft plan is compatible with the Convention rights,
 - (c) modifications that the examiner considers need to be made to secure that the draft plan complies with the provision made by or under sections 38A and 38B, and
 - (d) modifications for the purpose of correcting errors.
- (4) The report may not recommend that a plan (with or without modifications) should be made if the examiner considers that the plan does not—
- (a) meet the basic conditions mentioned in paragraph 11(2), or
 - (b) comply with the provision made by or under sections 38A and 38B.

- (5) The report must—
 - (a) give reasons for each of its recommendations, and
 - (b) contain a summary of its main findings.
- (6) The examiner must send a copy of the report to the qualifying body and the local planning authority.
- (7) The local planning authority must then arrange for the publication of the report in such manner as may be prescribed.

Functions of authority: modifications proposed by qualifying body

- 14 (1) This paragraph applies if an examiner has made a report under paragraph 13.
- (2) If the report recommends that the local planning authority should make the draft plan, the authority must do so (subject as follows).
- (3) But if the examiner's report recommends that the authority should make the draft plan with the modifications specified in the report, the authority must make the draft plan with those modifications (subject as follows).
- (4) Sub-paragraph (2) or (3) does not apply if the authority consider that to make the draft plan or (as the case may be) to do so with those modifications would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights.
- (5) If the authority do not make the draft plan on that ground, they must give reasons to the qualifying body for doing so.
- (6) Where sub-paragraph (2) or (3) applies, the authority may make the draft plan with modifications or (as the case may be) modifications other than those specified in the report if—
 - (a) the authority considers the modifications need to be made to secure that the draft plan is compatible with EU obligations and the Convention rights, or
 - (b) the modifications are for the purpose of correcting errors.
- (7) The authority must make the draft plan or (as the case may be) the draft plan with modifications permitted by this paragraph as soon as reasonably practicable and, in any event, by such date as may be prescribed.
- (8) If the examiner's report recommends that the local planning authority should not make the draft plan, the authority must not make the draft plan.

Regulations about examinations

- 15 (1) The Secretary of State may by regulations make provision in connection with examinations under paragraph 9.
- (2) The regulations may in particular make provision as to—
 - (a) the giving of notice and publicity in connection with an examination,
 - (b) the information and documents relating to an examination that are to be made available to the public,
 - (c) the making of reasonable charges for anything provided as a result of the regulations,
 - (d) the making of written or oral representations in relation to draft plans (including the time by which written representations must be made),
 - (e) the written representations which are to be, or which may be or may not be, considered at an examination,
 - (f) the refusal to allow oral representations of a prescribed description to be made at a hearing,
 - (g) the procedure to be followed at an examination (including the procedure to be followed at a hearing),
 - (h) the payment by a local planning authority of remuneration and expenses of the examiner, and
 - (i) the award of costs by the examiner.
- (3) The regulations may in particular impose duties on an examiner which are to be complied with by the examiner in considering the draft plan under paragraphs 10 and 11 and which require the examiner—
 - (a) to provide prescribed information to each person within sub-paragraph (4);
 - (b) to publish a draft report containing the recommendations which the examiner is minded to make in the examiner's report under paragraph 13;
 - (c) to invite each person within sub-paragraph (4) or representatives of such a person to one or more meetings at a prescribed stage or

- prescribed stages of the examination process;
- (d) to hold a meeting following the issuing of such invitations if such a person requests the examiner to do so.
- (4) Those persons are—
- the qualifying body,
 - the local planning authority, and
 - such other persons as may be prescribed.
- (5) Where the regulations make provision by virtue of sub-paragraph (3)(c) or (d), they may make further provision about—
- the procedure for a meeting;
 - the matters to be discussed at a meeting.

Interpretation

- 16 In this Schedule—
- “the Convention rights” has the same meaning as in the Human Rights Act 1998;
- “the development plan”—
- includes a development plan for the purposes of paragraph 1 of Schedule 8 (transitional provisions);
 - does not include so much of a development plan as consists of a neighbourhood development plan under section 38A;
- “draft plan” has the meaning given by paragraph 1(3);
- “prescribed” means prescribed by regulations made by the Secretary of State.”

Commencement Information

- I40 [Sch. 1](#) in force for specified purposes at Royal Assent, see [s. 46](#)
- I41 [Sch. 1 para. 1](#) in force at 31.1.2018 in so far as not already in force by [S.I. 2018/38, reg. 3\(b\)](#)

SCHEDULE 2

Section 10

COUNTY COUNCILS' DEFAULT POWERS IN RELATION TO DEVELOPMENT PLAN DOCUMENTS

- 1 The Planning and Compulsory Purchase Act 2004 is amended as follows.

Commencement Information

- I42 [Sch. 2 para. 1](#) in force at 16.1.2018 by [S.I. 2018/38, reg. 2\(c\)](#)

- 2 Schedule A1 (default powers exercisable by Mayor of London or combined authority) is amended in accordance with paragraphs 3 to 8.

Commencement Information

- I43 [Sch. 2 para. 2](#) in force at 16.1.2018 by [S.I. 2018/38, reg. 2\(c\)](#)

- 3 In the heading for “or combined authority” substitute “ , combined authority or county council ”.

Commencement Information

- I44 [Sch. 2 para. 3](#) in force at 16.1.2018 by [S.I. 2018/38, reg. 2\(c\)](#)

- 4 After paragraph 7 insert—

“Default powers exercisable by county council

- 7A In this Schedule—
- “upper-tier county council” means a county council for an area for which there is also a district council;
- “lower-tier planning authority”, in relation to an upper-tier county council, means a district council which is the local planning authority for an area within the area of the upper-tier county council.
- 7B If the Secretary of State—
- thinks that a lower-tier planning authority are failing or omitting to do anything it is necessary for them to do in connection with the

- preparation, revision or adoption of a development plan document,
and
- (b) invites the upper-tier county council to prepare or revise the document,
- the upper-tier county council may prepare or revise (as the case may be) the development plan document.
- 7C (1) This paragraph applies where a development plan document is prepared or revised by an upper-tier county council under paragraph 7B.
- (2) The upper-tier county council must hold an independent examination.
- (3) The upper-tier county council—
- (a) must publish the recommendations and reasons of the person appointed to hold the examination, and
- (b) may also give directions to the lower-tier planning authority in relation to publication of those recommendations and reasons.
- (4) The upper-tier county council may—
- (a) approve the document, or approve it subject to specified modifications, as a local development document, or
- (b) direct the lower-tier planning authority to consider adopting the document by resolution of the authority as a local development document.
- 7D (1) Subsections (4) to (7C) of section 20 apply to an examination held under paragraph 7C(2)—
- (a) with the reference to the local planning authority in subsection (7C) of that section being read as a reference to the upper-tier county council, and
- (b) with the omission of subsections (5)(c), (7)(b)(ii) and (7B)(b).
- (2) The upper-tier county council must give reasons for anything they do in pursuance of paragraph 7B or 7C(4).
- (3) The lower-tier planning authority must reimburse the upper-tier county council—
- (a) for any expenditure that the upper-tier county council incur in connection with anything which is done by them under paragraph 7B and which the lower-tier planning authority failed or omitted to do as mentioned in that paragraph;
- (b) for any expenditure that the upper-tier county council incur in connection with anything which is done by them under paragraph 7C(2).
- (4) In the case of a joint local development document or a joint development plan document, the upper-tier council may apportion liability for the expenditure on such basis as the council considers just between the authorities for whom the document has been prepared."

Commencement Information

145 [Sch. 2 para. 4](#) in force at 16.1.2018 by [S.I. 2018/38](#), [reg. 2\(c\)](#)

- 5 (1) Paragraph 8 is amended as follows.
- (2) In sub-paragraph (1)—
- (a) omit the "or" at the end of paragraph (a), and
- (b) at the end of paragraph (b) insert ", or
- (c) under paragraph 7B by an upper-tier county council."
- (3) In sub-paragraph (2)(a)—
- (a) for "or 6(4)(a)" substitute " , 6(4)(a) or 7C(4)(a) ", and
- (b) for "or the combined authority" substitute " , the combined authority or the upper-tier county council ".
- (4) In sub-paragraph (3)(a) for "or the combined authority" substitute " , the combined authority or the upper-tier county council ".
- (5) In sub-paragraph (5) for "or 6(4)(a)" substitute " , 6(4)(a) or 7C(4)(a) ".
- (6) In sub-paragraph (7)—
- (a) in paragraph (b) for "or 6(4)(a)" substitute " , 6(4)(a) or 7C(4)(a) ", and
- (b) in the words following that paragraph for "or the combined authority" substitute " , the combined authority or the upper-tier county council ".

Commencement Information

146 [Sch. 2 para. 5](#) in force at 16.1.2018 by [S.I. 2018/38](#), [reg. 2\(c\)](#)

- 6 In paragraph 9(8) for "or the combined authority" substitute " , the combined authority or the upper-tier county council ".

Commencement Information

147 [Sch. 2 para. 6](#) in force at 16.1.2018 by [S.I. 2018/38, reg. 2\(c\)](#)

- 7 In paragraph 12—
- (a) for "or the combined authority" substitute " , the combined authority or the upper-tier county council ", and
- (b) for "or the authority" substitute " , the authority or the council ".

Commencement Information

148 [Sch. 2 para. 7](#) in force at 16.1.2018 by [S.I. 2018/38, reg. 2\(c\)](#)

- 8 In paragraph 13(1)—
- (a) for "or a combined authority" substitute " , a combined authority or an upper-tier county council ", and
- (b) for "or the authority" substitute " , the authority or the council ".

Commencement Information

149 [Sch. 2 para. 8](#) in force at 16.1.2018 by [S.I. 2018/38, reg. 2\(c\)](#)

- 9 In section 17(8) (document a local development document only if adopted or approved) after paragraph (d) insert—
- "(e) is approved by an upper-tier county council (as defined in that Schedule) under paragraph 7C of that Schedule."

Commencement Information

150 [Sch. 2 para. 9](#) in force at 16.1.2018 by [S.I. 2018/38, reg. 2\(c\)](#)

- 10 In section 27A (default powers exercisable by Mayor of London or combined authority) for "or combined authority" in both places substitute " , combined authority or county council ".

Commencement Information

151 [Sch. 2 para. 10](#) in force at 16.1.2018 by [S.I. 2018/38, reg. 2\(c\)](#)

SCHEDULE 3

Section 14

PLANNING CONDITIONS: CONSEQUENTIAL AMENDMENTS

- 1 The Town and Country Planning Act 1990 is amended as follows.

Commencement Information

152 [Sch. 3 para. 1](#) in force at 1.10.2018 by [S.I. 2018/567, reg. 3\(b\)](#)

Prospective

- 2 In section 70 (determination of applications: general considerations), after subsection (3) insert—
- "(3A) See also section 100ZA, which makes provision about restrictions on the power to impose conditions under subsection (1)(a) on a grant of planning permission in relation to land in England."

- 3 In section 72 (conditional grant of planning permission), after subsection (5) insert—
- "(6) See also section 100ZA, which makes provision about restrictions on the power to impose conditions by virtue of this section on a grant of planning permission in relation to land in England."

Commencement Information

153 [Sch. 3 para. 3](#) in force at 1.10.2018 by [S.I. 2018/567, reg. 3\(b\)](#)

- 4 In section 73 (determination of applications to develop land without compliance with conditions previously attached), after subsection (2) insert—

“(2A) See also section 100ZA, which makes provision about restrictions on the power to impose conditions under subsection (2) on a grant of planning permission in relation to land in England.”

Commencement Information

154 [Sch. 3 para. 4](#) in force at 1.10.2018 by [S.I. 2018/567, reg. 3\(b\)](#)

5 In section 90(3) (effect of deemed planning permission) after “except” insert “ section 100ZA and ”.

Commencement Information

155 [Sch. 3 para. 5](#) in force at 1.10.2018 by [S.I. 2018/567, reg. 3\(b\)](#)

Prospective

6 In section 93 (provisions supplementary to sections 91 and 92), after subsection (4) insert—

“(5) Section 100ZA(1) (power to provide for restrictions in relation to conditions or limitations that may be imposed on a grant of planning permission in relation to land in England) does not apply in the case of conditions attached to a grant of planning permission as a result of section 91(1)(a) or 92(2).

(6) But section 100ZA(1) applies to the exercise of the powers conferred by section 91(1)(b) and 92(4) and (5).”

Prospective

7 In section 141 (action by Secretary of State in relation to purchase notice), after subsection (5) insert—

“(6) Section 100ZA(1) (which confers power to provide for restrictions in relation to conditions or limitations that may be imposed on a grant of planning permission for the development of land in England) applies in relation to conditions imposed under or by virtue of subsection (2) or (3) as it applies in relation to conditions imposed on a grant of planning permission to develop land which is granted on an application made under Part 3.”

8 In section 177 (grant or modification of planning permission on appeals against enforcement notices), after subsection (4) insert—

“(4A) Section 100ZA (which makes provision about restrictions on the power to impose conditions or limitations on a grant of planning permission in relation to land in England) applies in relation to conditions substituted under subsection (4) as it applies in relation to conditions imposed on a grant of planning permission to develop land which is granted on an application made under Part 3.”

Commencement Information

156 [Sch. 3 para. 8](#) in force at 1.10.2018 by [S.I. 2018/567, reg. 3\(b\)](#)

[◀ Previous](#)

[Next ▶](#)

[Back to top](#)

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CPO and compensation: important changes to planning and CPO law

This article looks at a number of provisions relevant to compulsory acquisition in the Neighbourhood Planning Act 2017 and Housing and Planning Act 2016 that come into force on 6 April 2018.

28 March 2018

On 6 April 2018, important changes are being made to planning and CPO law and practice. The changes were introduced by the Housing and Planning Act (HPA) 2016 and the Neighbourhood Planning Act (NPA) 2017 and are now being brought into play by commencement regulations (SI 2018/251 and SI 2018/252).

Compulsory purchase orders and compensation

The amendments address a number of issues. They are intended to benefit those that are due compensation and to speed up the process of confirmation of compulsory purchase orders. The changes relate to:

- the timetable for the confirmation of CPOs
- the ability for inspectors to confirm CPOs instead of the Secretary of State
- compensation after withdrawal of a notice to treat
- advance payment of CPO compensation.

[See amendments that will come into force on 6 April 2018.](#)

Neighbourhood Planning Act 2017 provisions

This article also considers other relevant provisions of the NPA 2017 which were brought in on 22 September 2017 relating to:

- the no scheme principle
- second bite compensation
- confirmation notices
- disturbance compensation
- joint CPOs in London
- the model claim form for those claiming CPO compensation.

These amendments are part of a wider suite of changes that are gradually being phased in and this article notes other elements contained in the NPA 2017 and HPA 2016, which have yet to come into force.

[See provisions that were brought in on 22 September 2017.](#)

Which CPO schemes are affected?

The new provisions discussed below come into force on 6 April 2018. The provisions relating to confirmation of CPOs (by inspectors and timetables) will apply to any CPOs submitted for confirmation on or after 6 April 2018, whereas the remaining changes apply to CPOs authorised (i.e. confirmed) on or after that date.

The September 2017 changes in respect of the no scheme principle and disturbance apply to all CPOs authorised on or after that date.

What changes are being brought in on 6 April 2018?

1. Confirmation of CPOs

From 6 April 2018, the HPA 2016 introduces a new section 14B to the Acquisition of Land Act 1981, which requires the Secretary of State to publish a timetable(s) in relation to steps to be taken when confirming a compulsory purchase order.

This provision has already been reflected in a recent update to the MHCLG "Guidance on compulsory purchase and the Crichel Down Rules", which now includes target timescales in relation to confirmation. These targets apply to all confirming authorities other than the Welsh Ministers (who are able to introduce their own timeframes, but have not yet done so).

The targets mean that acquiring authorities must be notified within 10 days of the close of the public inquiry into the CPO of the expected date of the Secretary of State's decision. Target dates for confirmation of CPOs are also included in the updated guidance. There is a target that 80% of cases should be decided within 20 weeks of the close of the public inquiry – with the remaining cases decided within 24 weeks. However, there is no real sanction for failing to comply with the timescales (other than the shame of being named in a published annual report as having failed to meet the target), and the timescales are not statutory, so it remains to be seen whether they will have the desired effect of speeding up the CPO process.

In addition, the Secretary of State will (from 6 April) be able to appoint an inspector to act on its behalf in relation to the confirmation of a CPO for which there are remaining objectors. An inspector can perform the same functions as the confirming authority including holding a public inquiry. Again, this is a step intended to speed up the process and impacts the timetables set out in the guidance, which states that where confirmation has been delegated to an Inspector, 80% of cases should be decided within 8 weeks – with the remainder being determined within 12 weeks.

If these timeframes are followed, there is real potential (particularly with delegated confirmation) to speed up the CPO process and provide certainty to all those involved in the process. This could have great benefits for acquiring authorities and enable development to be brought forward more quickly.

However, the targets are ambitious and there is no real way of enforcing them so it remains to be seen how effective they will be.

2. Claims for CPO compensation

The HPA 2016 allows further regulations to be made in relation to the specific information that must be provided by a claimant when giving notice of a claim for compensation following CPO. We are yet to see what these changes will be, although there is now in place a model claim form, which claimants are encouraged to use to assist in complying with the requirement to make a properly evidenced claim.

New provisions are also being introduced to enable a successor in title to the claimant to claim compensation for loss or expenses caused by the giving and withdrawal of a notice to treat for the compulsory acquisition of land.

3. Advance payments of CPO compensation

An acquiring authority may make an advance payment of compensation following the exercise of compulsory acquisition powers if a request is made by a claimant. The amount payable is 90% of the agreed sum for compensation or 90% of the acquiring authority's estimate of the compensation due, if possession is taken before compensation has been agreed. A model claim form is available, which claimants are strongly advised to use when making a claim for advance payment.

Under the current position, advance payments must be made within three months from the date of request or when possession is taken (if later). However, under this regime there is no penalty for late payment and no timescale for addressing an acquiring authority's request for further particulars of the claim. These provisions have therefore been subject to calls for reform for some time.

Under the new provisions, an acquiring authority must, within 28 days of receiving a request for an advance payment, decide whether or not it has enough information to estimate the amount of compensation payable. If the acquiring authority needs more information, it must then require the claimant to provide it.

Payment of advance payments must be made by the date of service of a notice of entry or GVD – or within two months of a request from a claimant (if later). This means that a claimant can obtain payment more quickly and – most importantly – before possession is taken. This will be of significance to claimants as the need for compensation often arises prior to possession being taken, particularly for issues such as relocation of a business.

It is worth noting that a claimant will be required to repay any advance payment made prior to possession being taken, if possession is not subsequently taken.

The changes also enable a penalty rate of interest to be applied to any late payment but this rate has not yet been set (there has been rumour of around 8% above base rate) and the MHCLG confirmed on 28 February 2018 that it wishes to engage further with stakeholders to discuss “potential gaming risks” associated with this approach so this is still one to watch.

From 6 April 2018, section 38 of the NPA 2017 also makes further technical amendments to the provisions on advance payments and the information requested from the claimant by an acquiring authority.

What changes were brought in on 22 September

2017?

1. The no-scheme principle

These provisions essentially put the assessment of compensation for land taken by compulsory purchase on a statutory footing. They also provided clarity to the no-scheme principle that in determining compensation, any increase or decrease in value caused by the scheme of acquisition should be disregarded.

The new sections (s6A-6E inserted into the LCA 1961) embodied the no-scheme principle and set out the parameters of how the “scheme” is to be approached. These new sections replaced the previous legislation (s6-s9).

The key addition was the extension of the definition of the scheme to allow for specific transport infrastructure projects to be disregarded. The reason for this change was to prevent those owners facing a CPO for, say, a regeneration scheme securing increased compensation for their site when that increased land value could be attributed to a transport scheme, such as a new road which opened up that site for redevelopment.

Acquiring authorities will be looking at these provisions to limit compensation. Claimants will need to be careful to ensure that any pre-existing value, such as a ransom, doesn't fall foul of these changes.

2. Removal of second-bite compensation

Claimants are no longer entitled to claim additional compensation where, within 10 years of the completion of the compulsory purchase by the acquiring authority, a planning decision is made granting consent for additional development on the land. This repealed Part 4 of the LCA 1961. The previous law was considered unnecessary as the prospects of obtaining planning permission in the future should have already been taken into account when assessing compensation as part of the application of the statutory planning assumptions.

3. Time period for confirmation notices

A requirement on acquiring authorities was introduced to serve and publish a confirmation notice within six weeks of a CPO being confirmed (unless a longer period is agreed between the acquiring and confirming authorities). The result of this is that a CPO now becomes operative on the date of the confirmation notice. This triggers the statutory six week period within which any challenge must be made and the three year implementation period. Previously there was no set period for a confirmation notice to be served. The amendment therefore gave those affected by a CPO more certainty.

4. Compensation for disturbance

The new law regularised the assessment of compensation for disturbance for licensees with no interest in land with that for business tenants and lessees with a break clause (via a new section 47 LCA 1973).

Prior to the amendments, those with a minor interest in land may have been entitled to more

compensation than someone with a leasehold interest as, in assessing the compensation entitlement for tenancies, it was assumed that the landlord would terminate the tenant's interest at the first available opportunity.

However, under the new provisions, the prospect of continuation or renewal of the tenancy is to be taken into account. The effect of this is to overcome the decision in *Bishopsgate Space Management v London Underground* [2004] and place all interests which do not benefit from security of tenure on the same footing.

5. Joint CPOs – GLA and TfL

The Greater London Authority, a Mayoral Development Corporation or Transport for London are now allowed to acquire land authorised by a compulsory purchase order on behalf of each other for a joint project. It is considered by the government that these changes will assist in bringing forward comprehensive developments, particularly for housing. These changes should make the CPO process more efficient and cost effective in such circumstances.

6. Model claim form

As well as bringing into force the above changes, the government also published a [model claim form](#) on 22 September with accompanying guidance.

This advises acquiring authorities to send the form to potential claimants at the earliest opportunity and encourages claimants to complete and return it as early as possible. It is not to be treated as a “once and for all” process as the form can be updated or supplemented by correspondence throughout negotiation in the usual way.

The intention is to make it clearer to claimants and acquiring authorities what information and what level of detail should be provided by claimants and to encourage early disclosure and transparency in negotiations.

The claim form is intended to assist a claimant in complying with the statutory requirement to make a detailed and properly evidenced claim. It highlights that, where a reference is made, a claimant risks an award of costs against them if they have not provided the information in time to enable the acquiring authority to make a proper offer.

The indication is that if the model claim form is not used, provided late and either not completed by the claimant or poorly completed, the Tribunal may rely on this as justification to award costs against claimants. It will be important for claimants to use the new forms and for their advisers to ensure it is completed as fully and as early as possible.

Future changes

There are still some important changes to the CPO regime contained within both the NPA 2017 and the HPA 2016 which are not yet operative.

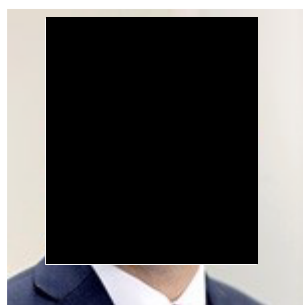
For instance, it is not yet possible to take advantage of the new powers to take temporary possession of land in the NPA 2017. These provisions could prove very useful for acquiring authorities and are long awaited by many. In addition (and as discussed above) a provision in the HPA 2016 concerning a penal rate of interest where advance payments are paid late has not

yet been brought into force. MHCLG intend to consult further on the level of the interest rate to ensure it is fair to both acquiring authorities and claimants.

There is still a lot of detail to be worked through to ensure that these unimplemented provisions work in practice. As such, it is not possible to say with any certainty when we might expect to see the full extent of the amendments to the CPO regime in operation or what their impact will be.

If you have any questions about the above changes or about CPO or compensation more generally, please contact [Gary Soloman](#) or [Jen Ashwell](#).

Key contact



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2009 No. 2265

INFRASTRUCTURE PLANNING

The Infrastructure Planning
(Model Provisions) (England
and Wales) Order 2009

<i>Made - - - - -</i>	<i>1st September 2009</i>
<i>Laid before Parliament</i>	<i>8th September 2009</i>
<i>Coming into force - -</i>	<i>1st October 2009</i>



2009 No. 2265

INFRASTRUCTURE PLANNING

The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009

<i>Made</i>	- - - -	<i>1st September 2009</i>
<i>Laid before Parliament</i>		<i>8th September 2009</i>
<i>Coming into force</i>	- -	<i>1st October 2009</i>

The Secretary of State, in exercise of the powers conferred by section 38 of the Planning Act 2008(a), makes the following Order:

Citation and commencement

1. This Order may be cited as the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 and shall come into force on 1st October 2009.

Model provisions

2. The provisions set out in the Schedules to this Order, of which those contained in Schedules 1 and 4 are of general application and those contained in Schedules 2 and 3 are of application to development relating to railways and harbours, respectively, are prescribed as model provisions for the purposes of section 38 of the Planning Act 2008.

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

1st September 2009

Bill McKenzie
Parliamentary Under Secretary of State
Department for Communities and Local Government

SCHEDULE 1

Article 2

General model provisions

CONTENTS

1. Interpretation
2. Development consent etc. granted by the Order

(a) 2008 c.29.

3. Maintenance of authorised project
4. Benefit of Order
5. Consent to transfer benefit of Order
6. Application and modification of legislative provisions
7. Defence to proceedings in respect of statutory nuisance
8. Street works
9. Stopping up of streets
10. Public rights of way
11. Temporary stopping up of streets
12. Access to works
13. Agreements with street authorities
14. Discharge of water
15. Protective work to buildings
16. Authority to survey and investigate the land
17. Removal of human remains
18. Compulsory acquisition of land
19. Compulsory acquisition of land – incorporation of the mineral code
20. Time limit for exercise of authority to acquire land compulsorily
21. Compulsory acquisition of rights
22. Private rights of way
23. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
24. Acquisition of subsoil only
25. Acquisition of land limited to subsoil lying more than 9 metres beneath surface
26. Acquisition of part of certain properties
27. Rights under or over streets
28. Temporary use of land for carrying out the authorised project
29. Temporary use of land for maintaining authorised project
30. Special category land
31. Statutory undertakers
32. Apparatus and rights of statutory undertakers in stopped-up streets
33. Recovery of costs of new connections
34. Railway and navigation undertakings
35. Application of landlord and tenant law
36. Operational land for purposes of the 1990 Act
37. Deemed consent under section 34 of the Coast Protection Act 1949
38. Deemed licence under Part 2 of the Food and Environment Protection Act 1985
39. Felling or lopping of trees
40. Trees subject to tree preservation orders
41. Certification of plans etc
42. Arbitration

Schedule A
AUTHORISED PROJECT
Part 1
AUTHORISED DEVELOPMENT

Part 2
ANCILLARY WORKS

Schedule B
STREETS SUBJECT TO STREET WORKS

Schedule C
STREETS TO BE STOPPED UP
Part 1
STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

Part 2
STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

Schedule D
STREETS TO BE TEMPORARILY STOPPED UP

Schedule E
ACCESS TO WORKS

Schedule F
LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE
MAY BE ACQUIRED

Schedule G
LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Schedule H
DEEMED CONSENT UNDER COAST PROTECTION ACT 1949

Schedule I
DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT
1985

Schedule J
TREES SUBJECT TO TREE PRESERVATION ORDERS

Interpretation

1.—(1) In this Order—

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

(a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

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

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

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

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

“the 2008 Act” means the Planning Act 2008(e);

“ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;

“the authorised project” means the authorised development and the ancillary works authorised by this Order;

“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

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

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

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the decision-maker” has the same meaning as in section 103 of the 2008 Act;

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

“the land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order;

“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

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- (a) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991(c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (b) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (c) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (d) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (e) 2008 c.29.

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

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

“relevant planning authority” means—

- (i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;
- (ii) a National Park Authority;
- (iii) the Broads Authority; and
- (iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;

“rights plan” means the plan certified as the rights plan by the decision-maker for the purposes of this Order;

“the sections” means the sections shown on the plan certified as the section drawings plan by the decision-maker for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 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;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

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

“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act;

“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

“the works plan” means the plan certified as the works plan by the decision-maker 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 air-space above its surface.

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

[NOTE: In the case of off-shore development, which is outside the area of any planning authority, it will be necessary to identify another appropriate body as the relevant planning authority.]

Development consent etc. granted by the Order

2. Subject to the provisions of this Order and to the requirements in the Schedule (requirements) attached to this Order the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

Maintenance of authorised project

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

Benefit of Order

4. Subject to article 5 (consent to transfer benefit of Order), the provisions of articles [] and [] *[specify relevant articles]* shall have effect solely for the benefit of *[specify person, body or class of person]*.

[NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2) of the 2008 Act).]

Consent to transfer benefit of Order

5.—(1) The undertaker may, with the consent of the *[specify person or body]*—

- (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), shall 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) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Application and modification of legislative provisions

6.—(1) Subject to the modifications set out in paragraph (2) the following provisions of the *[insert short title of the relevant Act]* shall be incorporated in this Order—

- (a) section[s] X *[specify relevant section(s)]*.

(2) The modifications are: *[insert relevant modifications]*.

(3) In construing the *[insert short title of the relevant Act]* as incorporated the following expressions shall have the following meanings: *[insert relevant expressions and definitions]*

Defence to proceedings in respect of statutory nuisance

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

- (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 project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given

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

under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(a); or

- (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25; or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall 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 project.

Street works

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

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

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

(3) The provisions of 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.

[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]

Stopping up of streets

9.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.

(a) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

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

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

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

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

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

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

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

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

(7) This article is subject to article 32 (apparatus etc. of statutory undertakers).

Public rights of way

10.—(1) With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan], [the section of] the public right of way (being a [*insert one of: footpath/bridleway/byway open to all traffic/restricted byway*]) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.

(2) With effect from [that same date] [*insert later date*] an alternative section of [*insert description of right of way of that same type*] as marked in [green] between the points [C] and [D] on the rights plan is created.

(3) In this article—

“implementation plan” means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.

Temporary stopping up of streets

11.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.

(4) The undertaker shall not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

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

Access to works

12. The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule E (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Agreements with street authorities

13.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street over or under a *[insert description of development]* authorised by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a *[insert description of development]*;
- (c) any stopping up, alteration or diversion of a street authorised by this Order; or
- (d) the carrying out in the street of any of the works referred to in article 8(1) (street works).

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

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street 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.

Discharge of water

14.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project 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 pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

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

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

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

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

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

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(b) (offences of polluting water).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

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

Protective work to buildings

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

(b) after the completion of that part of the authorised project 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 project is first opened for use.

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

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

(a) enter the building and any land within its curtilage; and

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(b) 1991 c.57. 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) of Part 1 of Schedule 21 to S.I. 2007/3538.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

(7) The undertaker shall 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 project 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 project,

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

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

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

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised project; 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 project.

Authority to survey and investigate the land

16.—(1)The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

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

- (a) in 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 shall not be unreasonably withheld.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of human remains

17.—(1) In this article “the specified land” means *[insert description of the land]*.

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

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

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to *[insert relevant local authority]*.

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

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

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

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

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

(8) The undertaker shall pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

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

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

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

- (a) a certificate of re-interment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to *[insert relevant local authority]* mentioned in paragraph (4).

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

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

(14) Section 25 of the Burial Act 1857^(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project [or to facilitate, or is incidental, to it][or is required as replacement land].

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

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

(4) This article is subject to article 25 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and article 28 (temporary use of land for carrying out the authorised project).

(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.

Compulsory acquisition of land – incorporation of the mineral code

19. [Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(a)(minerals) [is/are] incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”;
- (c) *[insert additional modifications]*.

Time limit for exercise of authority to acquire land compulsorily

20.—(1) After the end of the period of [5 years] beginning on the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(b).

(2) The authority conferred by article 28 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

21.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the *{insert name}* plan.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, as substituted by article 26 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

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

Private rights of way

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

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

whichever is the earlier.

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- (a) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.
 - (b) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes

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

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of 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 shall not apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right of way 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 shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

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

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

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

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

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

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

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

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

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

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

(b) subsection (2) shall be omitted.

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

24.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) shall not prevent article 26 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of land limited to subsoil lying more than 9 metres beneath surface

25.—(1) This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired).

(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 18 (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.

(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—

(a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;

(b) in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or

(c) in any other case, ground surface level.

Acquisition of part of certain properties

26.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rights under or over streets

27.—(1) The undertaker may enter on 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 project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) 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 project

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule G (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

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

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

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

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

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

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 21 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 24 (acquisition of subsoil only) or in accordance with article 25 (acquisition of land limited to subsoil lying more than 9 metres beneath surface).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply 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 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised project

29.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

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

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

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

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

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

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

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the 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, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other

enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply 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 of the 2008 Act (application of compulsory acquisition provisions).

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

Special category land

30.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and *[insert name of relevant body]* has certified that a scheme for the provision of the replacement land as *[common/open space/fuel or field garden allotment]* has been implemented to its satisfaction.

(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in *[insert name of relevant body]* subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

“the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled “Special Category Land Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and

“the replacement land” means the land identified in the book of reference and on the plan entitled “Replacement Land Plan” attached to the land plan.

Statutory undertakers

31. The undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference.

Apparatus and rights of statutory undertakers in stopped-up streets

32.—(1) Where a street is stopped up under article 9 (stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street shall have 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 stopped up under article 9, 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 shall—

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

- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

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

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

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

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall 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 shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this 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)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

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

(8) In this article—

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

“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 section 151(1) of the Communications Act 2003(a).

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

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31, any person who is—

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

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

(3) This article shall not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“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.

Railway and navigation undertakings

34.—(1) Subject to the following provisions of this article, the undertaker may not under article 8 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

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

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

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

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

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

Application of landlord and tenant law

35.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project 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 project, 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 shall prejudice the operation of any agreement to which this article applies.

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

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

Operational land for purposes of the 1990 Act

36. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Deemed consent under section 34 of the Coast Protection Act 1949

37. The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949(a) to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.

Deemed licence under Part 2 of the Food and Environment Protection Act 1985

38. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(b) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.

Felling or lopping of trees

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

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

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

(a) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order.

(b) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order.

Trees subject to tree preservation orders

40.—(1) The undertaker may fell or lop any tree described in Schedule J [and identified on the *[insert name]* plan, 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 project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to passengers or other persons using the authorised project.

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

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

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

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

Certification of plans etc

41.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference;
- (b) the land plan;
- (c) the rights plan;
- (d) the works plan;
- (e) the sections; and
- (f) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

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

Arbitration

42. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the *[insert appropriate body]*.

Schedule A

AUTHORISED PROJECT

Part 1

AUTHORISED DEVELOPMENT

[NOTE: This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]

Part 2

ANCILLARY WORKS

[NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the 2008 Act and which would not be the subject of a separate provision [article] in this Order.]

Schedule B

STREETS SUBJECT TO STREET WORKS

(1)	(2)
<i>Area</i>	<i>Street subject to street works</i>

Schedule C

STREETS TO BE STOPPED UP

Part 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1)	(2)	(3)	(4)
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>	<i>New street to be substituted</i>

Part 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1)	(2)	(3)
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>

Schedule D

STREETS TO BE TEMPORARILY STOPPED UP

(1)	(2)	(3)
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>

Schedule E

ACCESS TO WORKS

(1)	(2)
<i>Area</i>	<i>Description of access</i>

Schedule F

LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE MAY BE ACQUIRED

(1)	(2)
<i>Area</i>	<i>Number of land shown on land plan</i>

Schedule G

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1)	(2)	(3)	(4)
<i>Area</i>	<i>Number of land shown on land plan</i>	<i>Purpose for which temporary possession may be taken</i>	<i>Relevant part of the Authorised project</i>

Schedule H

DEEMED CONSENT UNDER COAST PROTECTION ACT 1949

[Insert details of deemed consent]

Schedule I

DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT 1985

[Insert details of deemed licence]

Schedule J

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1)	(2)	(3)
<i>Type of tree</i>	<i>Number[reference] of tree shown on land plan</i>	<i>Work to be carried out</i>

SCHEDULE 2

Article 2

Model provisions for railways

CONTENTS

Preliminary

1. Interpretation
2. Incorporation of the Railway Clauses Acts

3. Application and modification of legislative provisions

Principal powers

4. Development consent etc. granted by the Order
5. Maintenance of authorised project
6. Limits of Deviation
7. Benefit of Order
8. Consent to transfer benefit of Order

Streets

9. Street works
10. Construction and maintenance of new or altered streets
11. Stopping up of streets
12. Application of the 1991 Act
13. Public rights of way
14. Temporary stopping up of streets
15. Access to works
16. Agreements with street authorities
17. Construction of bridges and tunnels
18. Level Crossings
19. Railway and navigation undertakings

Supplemental powers

20. Discharge of water
21. Protective work to buildings
22. Authority to survey and investigate the land
23. Removal of human remains

Powers of acquisition

24. Compulsory acquisition of land
25. Compulsory acquisition of land – incorporation of the mineral code
26. Time limit for exercise of authority to acquire land compulsorily
27. Compulsory acquisition of rights
28. Private rights of way
29. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
30. Acquisition of subsoil only
31. Acquisition of land limited to subsoil lying more than 9 metres beneath surface
32. Acquisition of part of certain properties
33. Application of the Land Compensation Act 1973
34. Rights under or over streets
35. Temporary use of land for carrying out the authorised project
36. Temporary use of land for maintaining authorised project
37. Special category land
38. Statutory undertakers
39. Apparatus and rights of statutory undertakers in stopped up streets
40. Recovery of costs of new connections

Operations

41. Operation and use of railways
42. Fares
43. Deemed consent under section 34 of the Coast Protection Act 1949
44. Deemed licence under Part 2 of the Food and Environment Protection Act 1985
45. Felling or lopping of trees
46. Trees subject to tree preservation orders

Miscellaneous and general

47. Application of landlord and tenant law
48. Operational land for purposes of the 1990 Act
49. Defence to proceedings in respect of statutory nuisance
50. Protections of Interests
51. Certification of plans etc
52. Arbitration

Schedule A

AUTHORISED PROJECT

Part 1

AUTHORISED DEVELOPMENT

Part 2

ANCILLARY WORKS

Schedule B

STREETS SUBJECT TO STREET WORKS

Schedule C

STREETS TO BE STOPPED UP

Part 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

Part 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

Schedule D

STREETS TO BE TEMPORARILY STOPPED UP

Schedule E

ACCESS TO WORKS

Schedule F

LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE MAY BE ACQUIRED

Schedule G
LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Schedule H
DEEMED CONSENT UNDER COAST PROTECTION ACT 1949

Schedule I
DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT
1985

Schedule J
TREES SUBJECT TO TREE PRESERVATION ORDERS

Schedule K
LEVEL CROSSINGS

Schedule L
PROTECTIVE PROVISIONS

Preliminary

Interpretation

1.—(1) In this Order—

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

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

-
- (a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

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

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

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

“the 2008 Act” means the Planning Act 2008(d);

“ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;

“the authorised project” means the authorised development and the ancillary works authorised by this Order;

“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

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

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

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the decision-maker” has the same meaning as in section 103 of the 2008 Act;

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

“the land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 6;

“maintain” and any of its derivatives include to inspect repair, adjust, alter, remove, reconstruct or replace the authorised project and any derivative of “maintain” shall be construed accordingly;

“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

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

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

-
- (a) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1990 c.8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a),(c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (c) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (d) 2008 c.29.
- (e) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

“relevant planning authority” means—

- (i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;
- (ii) a National Park Authority;
- (iii) the Broads Authority; and
- (iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;

“rights plan” means the plan certified as the rights plan by the decision-maker for the purposes of this Order;

“the sections” means the sections shown on the plan certified as the section drawings plan by the decision-maker for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 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;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

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

“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act;

“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

“the works plan” means the plan certified as the works plan by the decision-maker 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 air-space above its surface.

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

Incorporation of the Railway Clauses Acts

2.—(1) The following provisions of the Railways Clauses Consolidation Act 1845^(a) shall be incorporated in this Order—

section 46 (crossing of roads—level crossings), subject to paragraph (4) and article 18 (level crossings);

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

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

section 68 (accommodation works by company);

(a) 1845 c. 20. Section 46 was amended by sections 109(1) and (3) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c.39). Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c.101). Section 78 was amended by section 39(3) of, and Schedule 7 to, the Compulsory Purchase Act 1968 (c.56) and articles 5(1) and (2) of, and paras 1 and 3 of Schedule 7 to, S.I. 2009/1307. Section 105 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c.101), and section 31(6) of the Criminal Law Act 1977 (c.45), and sections 37 and 49 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1845 Act not relevant to this Order.

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

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

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(a); and

section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”.

(2) The following provisions of the Railways Clauses Act 1863(b) shall be incorporated in this Order—

sections 5 and 7 (level crossings); and

section 12 (signals, watchmen etc.).

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

“the company” means the undertaker;

“goods” includes any thing conveyed on the railway authorised to be constructed by this Order;

“lease” includes an agreement for a lease;

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

“the railway” means any railway authorised to be constructed by this Order and any other authorised development; and

“the special Act” means this Order.

(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order, for the proviso there shall be substituted “Provided always that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level.”.

Application and modification of legislative provisions

3.—(1) Subject to the modifications set out in paragraph (2) [the following provisions of] the *[insert short title of the relevant Act]* shall be incorporated in this Order—

(a) section X [specify relevant section(s)]; and

(b) section X [specify relevant section(s)].

(4) The provisions of the *[insert relevant Act]* Act [date] as incorporated in this Order shall be modified as follows *[insert relevant modifications]*.

(5) In construing the *[insert relevant Act]* Act [date] as incorporated the following expressions shall have the following meanings *[insert relevant expressions and definitions]*.

Principal powers

Development consent etc. granted by the Order

4. Subject to the provisions of this Order and to the requirements in the Schedule (requirements) attached to this Order the undertaker is granted—

(a) 1923 c. 20. Section 15 was amended by section 10(1) of the Decimal Currency Act 1969 (c.19).

(b) 1863 c. 92.

- (a) development consent for the authorised development; and
 - (b) consent for the ancillary works,
- to be carried out within the Order limits.

Maintenance of authorised project

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

Limits of Deviation

6. In carrying out linear works the undertaker may—
- (a) deviate laterally from the lines or situations of the authorised development shown on the works plan to the extent of the limits of deviation shown on that plan; and
 - (b) deviate vertically from the levels of the authorised development shown on the sections—
 - (i) to any extent not exceeding *[insert number]* metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Benefit of Order

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of articles [] and [] *[specify relevant articles]* shall have effect solely for the benefit of *[specify person, body or class of person]*.

[NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2) of the 2008 Act).]

Consent to transfer benefit of Order

- 8.—(1) The undertaker may, with the consent of the *[specify person or body]* —
- (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), shall 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) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Streets

Street works

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

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

- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

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

(3) The provisions of 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.

[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]

Construction and maintenance of new or altered streets

10.—(1) Any street (other than *[insert relevant private streets]*) to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed with the highway authority, shall be maintained by and at the expense of the undertaker for a period of [12 months] from its completion and at the expiry of that period by and at the expense of the highway authority.

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

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of the undertaker.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

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

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(6) Nothing in this article shall—

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

Stopping up of streets

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.

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

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

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

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

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

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

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

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

(7) This article is subject to article 39 (apparatus etc. of statutory undertakers).

Application of the 1991 Act

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

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or

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

Public rights of way

13.—(1) With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan], [the section of] the public right of way (being a [*insert one of: footpath/bridleway/byway open to all traffic/restricted byway*]) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.

(2) With effect from [that same date] [*insert later date*] an alternative section of [*insert description of right of way of that same type*] as marked in [green] between the points [C] and [D] on the rights plan is created.

(3) In this article—

“implementation plan” means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.

(4) The undertaker shall not temporarily stop up, alter or divert—

(a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and

(b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

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

Access to works

15. The undertaker may, for the purposes of the authorised project—

(a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule E (access to works); and

(b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Agreements with street authorities

- 16.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street, including any structure carrying the street over or under a railway authorised by this Order;
 - (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
 - (c) any stopping up, alteration or diversion of a street authorised by this Order; or
 - (d) the carrying out in the street of any of the works referred to in article 9(1) (street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street 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.

Construction of bridges and tunnels

17. Any bridge or tunnel to be constructed under this Order for carrying a highway over or under a railway shall be constructed in accordance with the plans and specifications approved by the relevant planning authority after consultation with the highway authority.

Level Crossings

18.—(1) The undertaker may construct the railway so as to carry it on the level across the highways specified in Schedule K.

(2) The undertaker may in constructing any new level crossing alter the level of any highway specified in Schedule K.

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

(4) In this article—

“new level crossing” means the place at which the railway is authorised by this article to cross a highway on the level; and

“the railway” means the railway authorised to be constructed by this Order.

Railway and navigation undertakings

19.—(1) Subject to the following provisions of this article, the undertaker may not under article 9 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

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

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

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

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

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

Supplemental powers

Discharge of water

20.—(1) 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 of the authorised project 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 pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

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

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

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

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

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(b) (offences of polluting water).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective work to buildings

21.—(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—

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- (a) 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37), sections 36(2) and 99 subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641. There are other amendments to section 106 which are not relevant to this Order.
 - (b) 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) in Part 1 of Schedule 21 to S.I. 2007/3538.
 - (c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5).

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or
- (b) after the completion of that part of the authorised project 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 project is first opened for use.

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

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

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

(5) Before exercising—

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

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

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

(7) The undertaker shall 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 project 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 project,

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

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

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

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised project; 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 project.

Authority to survey and investigate the land

22.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

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

- (a) in 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 shall not be unreasonably withheld.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

Removal of human remains

23.—(1) In this article “the specified land” means *[insert description of the land]*.

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

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

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to *[insert relevant local authority]*.

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

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

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

(b) removed to, and cremated in, any crematorium,
and that person shall, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

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

(8) The undertaker shall pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

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

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

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

- (a) a certificate of re-interment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to *[insert relevant local authority]* mentioned in paragraph (4).

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

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

(14) Section 25 of the Burial Act 1857^(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.

(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.

Powers of acquisition

Compulsory acquisition of land

24.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project [or to facilitate, or is incidental, to it][or is required as replacement land].

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

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

(4) This article is subject to article 31 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and article 35 (temporary use of land for carrying out the authorised project).

Compulsory acquisition of land – incorporation of the mineral code

25. [Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(a)(minerals) [is/are] incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”;
- (c) [*insert additional modifications*].

Time limit for exercise of authority to acquire land compulsorily

26.—(1) After the end of the period of [5 years] beginning on the day on which the Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 29 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(b).

(2) The authority conferred by article 35 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

27.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plan [rights plan].

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was

(a) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule 2 was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act as substituted by article 32 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

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

Private rights of way

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

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

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

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 38 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of 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 shall not apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right of way 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 shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”

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

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

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

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

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

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

30.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in article 24(1) (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) shall not prevent article 32 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.

Acquisition of land limited to subsoil lying more than 9 metres beneath surface

31.—(1) This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired).

(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 24 (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.

(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—

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

Acquisition of part of certain properties

32.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Application of the Land Compensation Act 1973

33.—(1) Any regulations made by the Secretary of State under section 20 (sound proofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973(a) which apply to a railway provided or used in the exercise of statutory powers shall apply to the railway comprised in the authorised project as if that railway was provided or used in the exercise of statutory powers.

(2) Section 28 (power to pay expenses) of the Land Compensation Act 1973 shall have effect as if any works comprised in the authorised project were public works for the purposes of that section.

Rights under or over streets

34.—(1) The undertaker may enter on 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 project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(a) 1973 c.26. Section 20 was amended by subsections (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984 (c.27). Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highway Act 1980 (c.66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c.42). There are other amendments to the 1973 Act which are not relevant to this Order.

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) 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 project

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule G (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

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

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

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

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

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

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 27 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 30 (acquisition of subsoil only) or in accordance with article 31 (acquisition of land limited to subsoil lying more than 9 metres beneath surface).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply 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 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised project

36.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

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

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

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

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

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

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

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the 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, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply 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 of the 2008 Act (application of compulsory acquisition provisions).

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

Special category land

37.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and [*insert name of relevant body*] has certified that a scheme for the provision of the replacement land as [*common/open space/fuel or field garden allotment*] has been implemented to its satisfaction.

(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in *[insert name of relevant body]* subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

“the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled “Special Category Land Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and

“the replacement land” means the land identified in the book of reference and on the plan entitled “Replacement Land Plan” attached to the land plan.

Statutory undertakers

38. The undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference.

Apparatus and rights of statutory undertakers in stopped up streets

39.—(1) Where a street is stopped up under article 11 (stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street shall have 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 stopped up under article 11 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 shall—

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

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

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

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

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case

may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall 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 shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this 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)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

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

(8) In this article—

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

“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 section 151(1) of the Communications Act 2003(a).

Recovery of costs of new connections

40.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 38 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 38, any person who is—

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

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

(3) This article shall not have effect in relation to apparatus to which article 39 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

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

“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.

Operations

Operation and use of railways

41.—(1) The undertaker may operate and use the railway and any other elements of the authorised project as a system, or part of a system, of transport for the carriage of passengers and goods.

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

Fares

42. The undertaker may demand, take and recover or waive such charges for carrying passengers or goods on the railway comprised in the authorised project, or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

Deemed consent under section 34 of the Coast Protection Act 1949

43. The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949(b) to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.

Deemed licence under Part 2 of the Food and Environment Protection Act 1985

44. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(c) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.

Felling or lopping of trees

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

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

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

(a) 1993 c.43. This Act has been amended by the Transport Act 2000 (c. 38), the Railways and Transport Safety Act 2003 (c.20) and the Railways Act 2005 (c.14). There are other amendments to this Act which are not relevant to this Order.

(b) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order.

(c) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order.

Trees subject to tree preservation orders

46.—(1) The undertaker may fell or lop any tree described in Schedule J and identified on the [*insert name*] plan, 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 project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to passengers or other persons using the authorised project.

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

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

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

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

Miscellaneous and general

Application of landlord and tenant law

47.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project 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 project, 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 shall prejudice the operation of any agreement to which this article applies.

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

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

Operational land for purposes of the 1990 Act

48. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

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

- (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 project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974^(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25; or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall 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 project.

Protections of Interests

50. Schedule L to this Order has effect.

Certification of plans etc

51.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference;
- (b) the land plan;
- (c) the rights plan;
- (d) the works plan;
- (e) the sections; and
- (f) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall 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 this Act which are not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

Arbitration

52. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the *[insert appropriate body]*.

Schedule A

AUTHORISED PROJECT

Part 1

AUTHORISED DEVELOPMENT

[NOTE: This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]

Part 2

ANCILLARY WORKS

[NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the 2008 Act and which are not be the subject of a separate provision [article] in this Order.]

Schedule B

STREETS SUBJECT TO STREET WORKS

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Street subject to street works</i>

Schedule C

STREETS TO BE STOPPED UP

Part 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>	<i>New street to be substituted</i>

Part 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>

Schedule D

STREETS TO BE TEMPORARILY STOPPED UP

(1)	(2)	(3)
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>

Schedule E

ACCESS TO WORKS

(1)	(2)
<i>Area</i>	<i>Description of access</i>

Schedule F

LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE MAY BE ACQUIRED

(1)	(2)
<i>Area</i>	<i>Number of land shown on land plan</i>

Schedule G

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1)	(2)	(3)	(4)
<i>Area</i>	<i>Number of land shown on land plan</i>	<i>Purpose for which temporary possession may be taken</i>	<i>Relevant part of the Authorised project</i>

Schedule H

DEEMED CONSENT UNDER COAST PROTECTION ACT 1949

[Insert details of deemed consent]

Schedule I

DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT 1985

[Insert details of deemed licence]

Schedule J

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1)	(2)	(3)
<i>Type of tree</i>	<i>Number[reference] of tree shown on land plan</i>	<i>Work to be carried out</i>

Schedule K

LEVEL CROSSINGS

[Insert details of level crossings]

Schedule L

PROTECTIVE PROVISIONS

[Insert details of protective provisions]

SCHEDULE 3

Article 2

Model provisions for harbours

CONTENTS

Preliminary

1. Interpretation
2. Incorporation of the Harbours, Docks and Piers Clauses Act 1847

Principal powers

3. Development consent etc. granted by the Order
4. Period for completion of work
5. Limits of harbour
6. Maintenance of authorised project
7. Subsidiary works
8. Benefit of Order
9. Consent to transfer benefit of Order

Streets

10. Street works
11. Stopping up of streets
12. Temporary stopping up of streets
13. Access to works
14. Agreements with street authorities
15. Public rights of way

Supplemental powers

16. Discharge of water
17. Protective work to buildings
18. Authority to survey and investigate the land
19. Removal of human remains
20. Right to dredge
21. Tidal works not to be executed without approval of Secretary of State
22. Abatement of works abandoned or decayed
23. Survey of tidal works
24. Lights on tidal works etc. during construction
25. Provision against danger to navigation
26. Permanent lights on tidal works
27. Rights to lease etc.

Powers of acquisition

28. Compulsory acquisition of land
29. Compulsory acquisition of land – incorporation of the mineral code
30. Time limit for exercise of authority to acquire land compulsorily
31. Compulsory acquisition of rights
32. Private rights of way
33. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
34. Acquisition of subsoil only
35. Acquisition of land limited to subsoil lying more than 9 metres beneath surface
36. Acquisition of part of certain properties
37. Rights under or over streets
38. Temporary use of land for carrying out the authorised project
39. Temporary use of land for maintaining authorised project
40. Special category land
41. Statutory undertakers
42. Apparatus and rights of statutory undertakers in stopped up streets
43. Recovery of costs of new connections

Miscellaneous and general

44. Deemed consent under section 34 of the Coast Protection Act 1949
45. Deemed licence under Part 2 of the Food and Environment Protection Act 1985
46. Felling or lopping of trees
47. Trees subject to tree preservation orders
48. Railway and navigation undertakings
49. Application of landlord and tenant law
50. Operational land for purposes of the 1990 Act
51. Defence to proceedings in respect of statutory nuisance
52. Protection of interests
53. Saving for Trinity House
54. Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994
55. Planning, etc. jurisdiction

- 56. Certification of plans etc
- 57. Arbitration

Schedule A
AUTHORISED PROJECT
Part 1
AUTHORISED DEVELOPMENT

Part 2
ANCILLARY WORKS

Schedule B
STREETS SUBJECT TO STREET WORKS

Schedule C
STREETS TO BE STOPPED UP
Part 1
STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

Part 2
STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

Schedule D
STREETS TO BE TEMPORARILY STOPPED UP

Schedule E
ACCESS TO WORKS

Schedule F
LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE
MAY BE ACQUIRED

Schedule G
LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Schedule H
DEEMED CONSENT UNDER COAST PROTECTION ACT 1949

Schedule I
DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT
1985

Schedule J
TREES SUBJECT TO TREE PRESERVATION ORDERS

Schedule K
LIMITS OF HARBOUR

Schedule L
PROTECTIVE PROVISIONS

Preliminary

Interpretation

1.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(a);

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

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

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

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

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

“the 2008 Act” means the Planning Act 2008(g);

“ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not development within the meaning of section 32 of the 2008 Act;

“area of seaward construction activity” means the area of the sea within the Order limits shown on the land plan;

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- (a) 1847 c.27. Sections 24, 94 and 95 were repealed by the Statute Law (Repeals) Act 1993 (c.50); section 26 was repealed by section 56(4) of, and Schedule 11 to, the Courts Act 1971 (c.23); section 28 was amended by section 141 of, and Schedule 11 to, the Post Office Act 1969 (c.48); sections 54, 67 and 98 were amended by section 46 of the Criminal Justice Act 1982 (c.48); section 71 was amended by S.I.1987/37; section 91 was repealed by the Statute Law Revision Act 1894 (c.56); section 93 was repealed by the Statute Law Revision Act 1875 (c.66); and section 96 was repealed by the Perjury Act 1911 (c.6), section 17. There are other amendments to the 1847 Act which are not relevant to this Order.
- (b) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (c) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (d) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted by and section 1(3) was amended by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (e) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3) and (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (f) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (g) 2008 c.29.

“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;

“the authorised project” means the authorised development and the ancillary works authorised by this Order;

“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

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

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

“conservancy authority” has the same meaning as in section 313 of the Merchant Shipping Act 1995(a);

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the decision-maker” has the same meaning as in section 103 the 2008 Act;

“harbour” means the harbour constructed by the undertaker in pursuance of the powers conferred on them by [*insert title of Act/Orders*] Acts and Orders [*insert dates of Act/Orders*] and this Order and includes the open cut or channel also constructed under those powers, and all other works, land, buildings, ancillary works, plant, property and conveniences connected with them, as from time to time existing;

“the harbourmaster” means the harbourmaster appointed under this Order;

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

“the land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order;

“level of high water” means the level of mean high-water springs;

“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

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

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

“relevant planning authority” means—

- (i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;
- (ii) a National Park Authority;
- (iii) the Broads Authority; and
- (iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;

“rights plan” means the plan certified as the rights plan by the decision-maker for the purposes of this Order;

“the sections” means the sections shown on the plan certified as the section drawings plan by the decision-maker for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

(a) 1995 c.21. There are amendments to section 313 which are not relevant to this Order.

(b) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

“street” means a street within the meaning of section 48 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;

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

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

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

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

“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act;

“the undertaking” means the harbour undertaking of the undertaker as authorised from time to time;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“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

“the works plan” means the plan certified as the works plan by the decision-maker 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 air-space above its surface.

(3) All points, directions, lengths, areas and other measurements stated in this Order are approximate and distances between points on a work comprised in the authorised project shall be taken to be measured along that work.

(4) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

[NOTE: In the case of off-shore development, which is outside the area of any planning authority, it will be necessary to identify another appropriate body instead of the planning authority.]

Incorporation of the Harbours, Docks and Piers Clauses Act 1847

2.—(1) With the exception of sections 6 to 23, 25, 31, the proviso to section 32, sections 42, 45, 48 to 50, 60 to 63, 66 to 69, 73, 77 and 79 to 90, 92, 97 and 102, the 1847 Act is incorporated in this Order subject to the modifications stated in paragraphs (2) and (3).

(2) In construing the 1847 Act as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the *[insert relevant body]*;
- (c) the expression “the harbour, dock or pier” means the authorised project within the area of jurisdiction;
- (d) the expressions “limits” and “prescribed limits” mean the area of jurisdiction;
- (e) the expression “near the pier” does not extend beyond the area of jurisdiction;
- (f) the expression “the harbour master”, in relation to the authorised project, means the *[insert relevant body]*.;
- (g) the definition of “vessel” in article 1(1) shall be substituted for the definition in section 3 of the 1847 Act;

- (h) section 53 of the 1847 Act shall not be construed as requiring the harbourmaster to serve written notice on the master of a vessel and directions given under that section may be communicated to the master of a vessel orally or otherwise; and
- (i) any requirement to comply with a notice or direction given by the harbour master shall be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction shall also comply with any relevant notice or direction given by the *[insert relevant authority]* or the harbour master in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).

Principal powers

Development consent etc. granted by the Order

3. Subject to the provisions of this Order and to the requirements in the Schedule (requirements) attached to this Order the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

Period for completion of work

4. If the work is not completed within *[five or such other period as specified]* years from the coming into force of this Order or such extended time as the decision-maker may on the application of the undertaker allow, then on the expiration of that period or such extended time (as the case may be) the rights by this Order granted to the undertaker for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.

Limits of harbour

5.—(1) The limits of the harbour within which the undertaker shall exercise jurisdiction shall be the area described in Schedule K to this Order and shown, for the purpose of identification only, [...]; and in the following provisions of this Order, references to the limits of the harbour shall be construed as references to the limits so described.

(2) Any references to the limits of the harbour contained in the *[insert name of Acts]* Acts and Orders or in any byelaws, orders or regulations made under those Acts or Orders, shall be construed as references to the limits described in Schedule L to this Order.

(3) *[any necessary revocations]*.

Maintenance of authorised project

6. The undertaker may at any time maintain the authorised project and within the limits of the harbour, from time to time alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

Subsidiary works

7.—(1) The undertaker may from time to time within the Order limits provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the work or the operation of the undertaking, and for this purpose the undertaker may construct and maintain roads, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts,

hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without prejudice to paragraph (1), the undertaker may within the Order limits carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the work including—

- (a) works for the accommodation or convenience of vessels (including dolphins and pontoons); and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

(3) Article 3 of, and Parts [*specify any required provisions in respect of permitted development right*] 11 and 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(a) shall apply as if this Order were a grant of planning permission.

Benefit of Order

8. Subject to article 9 (consent to transfer benefit of Order), the provisions of articles [] and [] [*specify relevant articles*] shall have effect solely for the benefit of [*specify person, body or class of person*].

[*NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2)(benefit of order granting development consent) of the 2008 Act.*]

Consent to transfer benefit of Order

9.—(1) The undertaker may, with the consent of the [*specify person or body*]—

- (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), shall 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) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Streets

Street works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;

(a) S.I. 1995/418. Relevant amendments were made by SI 1999/293, 1999/1783 and 2003/956. There are other amendments not relevant to this Order.

- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

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

(3) The provisions of 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.

[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]

Stopping up of streets

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.

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

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

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

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

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

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

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

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

(7) This article is subject to article 42 (apparatus etc. of statutory undertakers).

Temporary stopping up of streets

12.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.

(4) The undertaker shall not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

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

Access to works

13. The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule E (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Agreements with street authorities

14.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street over or under a [insert description of development] authorised by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a [insert description of development];
- (c) any stopping up, alteration or diversion of a street authorised by this Order; or
- (d) the carrying out in the street of any of the works referred to in article 10(1) (street works).

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

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street 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.

Public rights of way

15.—(1) With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard

defined in the implementation plan], [the section of] the public right of way (being a *[insert one of: footpath/bridleway/byway open to all traffic/restricted byway]*) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.

(2) With effect from [that same date] *[insert later date]* an alternative section of *[insert description of right of way of that same type]* as marked in [green] between the points [C] and [D] on the rights plan is created.

(3) In this article—

“implementation plan” means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.

Supplemental powers

Discharge of water

16.—(1) 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 of the authorised project 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 pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

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

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

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

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

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

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(b) (offences of polluting water).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(a) 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37), sections 36(2) and 99. There are other amendments to section 106 which are not relevant to this Order.

(b) 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) in Part 1 of Schedule 21 to S.I. 2007/3538.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5).

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

Protective work to buildings

17.—(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 project; or
- (b) after the completion of that part of the authorised project 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 project is first opened for use.

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

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 57 (arbitration).

(7) The undertaker shall 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 project 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 project,

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

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

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

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised project; 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 project.

Authority to survey and investigate the land

18.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

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

- (a) in 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 shall not be unreasonably withheld.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

Removal of human remains

19.—(1) In this article “the specified land” means *[insert description of the land]*.

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

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

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to *[insert relevant local authority]*.

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

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

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

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

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

(8) The undertaker shall pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

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

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

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

- (a) a certificate of reinterment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to *[insert relevant local authority]* mentioned in paragraph (4).

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

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

(14) Section 25 of the Burial Act 1857^(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.

Right to dredge

20.—(1) The undertaker may, for the purposes of constructing and maintaining the work and of affording access to the work by vessels, from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the river as adjoin or are near to the work and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995) from time to time dredged by them.

(2) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by *[insert relevant body]*.

(3) *[if applicable]* The undertaker shall consult with *[name of separate conservancy port authority]* before exercising the rights conferred on them by this article.

Tidal works not to be executed without approval of Secretary of State

21.—(1) Unless its construction has commenced within five years *[or such other period as is prescribed or specified in the Order]* of the coming into force of this Order, no tidal work shall be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before that work is begun.

(2) Any request for the approval of the Secretary of State under paragraph (1) shall be accompanied by written evidence to demonstrate to the satisfaction of the Secretary of State that Schedule L(protective provisions) has been complied with as respects the tidal work for which approval is being requested.

(3) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that paragraph—

- (a) the Secretary of State may by notice in writing require the undertaker at their own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is served on the undertaker they have failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.

Abatement of works abandoned or decayed

22.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable

(a) 1857 c. 81. There are amendments to this Act which are not relevant to this Order.

apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.

Survey of tidal works

23. If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site on which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the undertaker.

Lights on tidal works etc. during construction

24. The undertaker shall at or near—

- (a) a tidal work, including any temporary work; or
- (b) any plant, equipment or other obstruction placed, in connection with any authorised development or any work authorised by article 7 (subsidiary works), within the area of seaward construction activity,

during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State [*and the conservancy authority if applicable or, failing agreement between them, the Secretary of State*] may from time to time direct.

Provision against danger to navigation

25. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker shall as soon as reasonably practicable notify [*separate conservancy authority if applicable and*] Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House [*and the conservancy authority or, failing agreement between them, the conservancy authority*] may from time to time direct.

Permanent lights on tidal works

26. After the completion of a tidal work the undertaker shall at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as [*the separate conservancy authority if applicable and*] Trinity House [*or, failing agreement between them, the conservancy authority*] may from time to time direct.

Rights to lease etc.

27.—(1) The undertaker may at any time lease or grant for the purposes of the undertaking the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the undertaking for such period or periods and on such terms and conditions as may be agreed between the undertaker and the persons taking the same.

(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the undertaker other than those specified in sub-paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964(a).

Powers of acquisition

Compulsory acquisition of land

28.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project [or to facilitate, or is incidental, to it][or is required as replacement land].

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

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

(4) This article is subject to article 35 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and article 38 (temporary use of land for carrying out the authorised project).

Compulsory acquisition of land – incorporation of the mineral code

29. [Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(b)(minerals) [is/are] incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”;
- (c) *[insert additional modifications]*.

Time limit for exercise of authority to acquire land compulsorily

30.—(1) After the end of the period of [5 years] beginning on the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 33 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(c).

(2) The authority conferred by article 38 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(a) 1964 c.40. Paragraph 9B was inserted by section 63 of, and paragraph 9 of Schedule 3 to, the Transport and Works Act 1992 (c.42).

(b) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.

(c) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

Compulsory acquisition of rights

31.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the *[insert name]* plan.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act as substituted by article 36 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

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

Private rights of way

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

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

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

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 41 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of 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 shall not apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right of way 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 shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

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

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

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month..”.

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

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

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

34.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in article 28(1) (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

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

(3) Paragraph (2) shall not prevent article 36 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of land limited to subsoil lying more than 9 metres beneath surface

35.—(1) This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired).

(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 28 (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.

(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—

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

Acquisition of part of certain properties

36.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rights under or over streets

37.—(1) The undertaker may enter on 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 project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) 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 project

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule G (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

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

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

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

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

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

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 31 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 34 (acquisition of subsoil only) or in accordance with article 35 (acquisition of land limited to subsoil lying more than 9 metres beneath surface).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply 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 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised project

39.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; and
 - (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
 - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the 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, shall be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply 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 of the 2008 Act (application of compulsory acquisition provisions).
- (11) In this article “the maintenance period”, in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project is first opened for use.

Special category land

40.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and *[insert name of relevant body]* has certified that a scheme for the provision of the replacement land as *[common/open space/fuel or field garden allotment]* has been implemented to its satisfaction.

(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in *[insert name of relevant body]* subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

“the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled “Special Category Land Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and

“the replacement land” means the land identified in the book of reference and on the plan entitled “Replacement Land Plan” attached to the land plan.

Statutory undertakers

41. The undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the *[insert name]* plan within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the *[insert name]* plan and described in the book of reference.

Apparatus and rights of statutory undertakers in stopped up streets

42.—(1) Where a street is stopped up under article 11 (stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street shall have 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 stopped up under article 11 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 shall—

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

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

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

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

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall 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 shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this 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)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

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

(b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

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

“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 section 151(1) of the Communications Act 2003(a).

Recovery of costs of new connections

43.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 41 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 41, any person who is—

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

(b) the owner of a private sewer which communicated with that sewer,

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

(3) This article shall not have effect in relation to apparatus to which article 42 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 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.

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

Miscellaneous and general

Deemed consent under section 34 of the Coast Protection Act 1949

44. The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949(a) to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.

Deemed licence under Part 2 of the Food and Environment Protection Act 1985

45. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(b) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.

Felling or lopping of trees

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

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

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

Trees subject to tree preservation orders

47.—(1) The undertaker may fell or lop any tree described in Schedule J and identified on the *[insert name]* plan, 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 project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to passengers or other persons using the authorised project.

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

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

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

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

(a) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order.

(b) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order.

Railway and navigation undertakings

48.—(1) Subject to the following provisions of this article, the undertaker may not under article 10 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

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

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

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

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

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

Application of landlord and tenant law

49.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project 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 project, 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 shall prejudice the operation of any agreement to which this article applies.

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

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

Operational land for purposes of the 1990 Act

50. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

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

- (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 project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25; or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall 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 project.

Protection of interests

52. Schedule L to this Order has effect.

Saving for Trinity House

53. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994

54.—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994(c) (general development orders) (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works authorised by article 7 (subsidiary works) and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order

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

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

(c) 1994/2716 (“the Habitats Regulations”). Relevant amendments were made by SI 2007/1843, SSI 2007/80, and SSI 2007/349. The Habitats Regulations make provision for the purpose of implementing, for Great Britain, Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (OJ No. L 206, 22.07.92, p.7) as last amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 79/409/EEC, 92/43/EEC, 97/68/EC, 2001/80/EC and 2001/81/EC in the field of environment, by reason of the accession of Bulgaria and Romania (OJ No. L 363, 20.12.06, p.368).

1995 for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

- (2) Paragraph (1) does not apply if and to the extent that those works—
- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations (assessment of implications for European Site) in connection with the making of this Order; and
 - (b) are not the subject of a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Planning, etc. jurisdiction

55.—(1) During the period beginning with the date when this Order comes into force and beginning on the accretion date, the area within the Order limits shall, for the purposes of the Control of Pollution Act 1974(a) and the Town and Country Planning Act 1990(b), be annexed to and incorporated with the district of *[insert name of relevant planning authority]*.

(2) In this article “accretion date” means the date when the works authorised by this Order have been completed or, if earlier, the date when the benefits and rights granted by this Order cease to have effect pursuant to article 4 (period for completion of work).

Certification of plans etc

56.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference;
- (b) the land plan;
- (c) the rights plan;
- (d) the works plan;
- (e) the sections; and
- (f) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

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

Arbitration

57. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the *[insert appropriate body]*.

Schedule A

AUTHORISED PROJECT

Part 1

AUTHORISED DEVELOPMENT

[NOTE: This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of

(a) 1974 c.40.
(b) 1990 c.8.

the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]

Part 2

ANCILLARY WORKS

[NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the 2008 Act and which are not be the subject of a separate provision [article] in this Order.]

Schedule B

STREETS SUBJECT TO STREET WORKS

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Street subject to street works</i>

Schedule C

STREETS TO BE STOPPED UP

Part 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>	<i>New street to be substituted</i>

Part 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>

Schedule D

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>

Schedule E

ACCESS TO WORKS

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Description of access</i>

Schedule F

LAND OF WHICH ONLY SUBSOIL MORE THAN 9 METRES BENEATH SURFACE MAY BE ACQUIRED

(1)	(2)
<i>Area</i>	<i>Number of and shown on land plan</i>

Schedule G

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1)	(2)	(3)	(4)
<i>Area</i>	<i>Number of land shown on land plan</i>	<i>Purpose for which temporary possession may be taken</i>	<i>Relevant part of the Authorised project</i>

Schedule H

DEEMED CONSENT UNDER COAST PROTECTION ACT 1949

[Insert details of deemed consent]

Schedule I

DEEMED LICENCE UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT 1985

[Insert details of deemed licence]

Schedule J

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1)	(2)	(3)
<i>Type of tree</i>	<i>Number[reference] of tree shown on land plan</i>	<i>Work to be carried out</i>

Schedule K

LIMITS OF HARBOUR

[Insert details of limits of harbour]

Schedule L

PROTECTIVE PROVISIONS

[Insert details of protective provisions]

Model provisions in respect of requirements

CONTENTS

1. Interpretation
2. Time limits
3. Stages of authorised development
- 4.–6. Detailed design approval
7. Provision of landscaping
8. Implementation and maintenance of landscaping
9. Trees
10. Highway accesses
11. Public rights of way
12. Fencing – special roads
13. Fencing and other means of enclosure
14. Surface water drainage
15. Contaminated land and groundwater
16. Archaeology
17. Ecological management plan
- 18.–19. Code of construction practice
20. Design of roads
21. External lighting
22. Construction traffic
23. Control of noise during construction and maintenance
24. Construction hours
25. Control of noise during operational phase
26. Control of odour emissions
27. Control of artificial light emissions
28. Control of dust emissions
29. Control of smoke emissions
30. Control of steam emissions
31. Control of insects
32. Accumulation or deposit
33. Travel plan
34. European protected species
35. Restoration of land used temporarily for construction
36. Requirement for written approval
37. Amendments to approved details
38. Requirement for consent of Civil Aviation Authority and Ministry of Defence

Interpretation**1.** In this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 2008 Act” means the Planning Act 2008;

“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;

“the authorised project” means the authorised development and the ancillary works authorised by this Order;

“the code of construction practice” means the code of construction practice agreed by *[insert relevant body]* on *[insert date]*;

“the environmental document” means the document certified as the environmental document by the decision-maker for the purposes of this Order;

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

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

“relevant planning authority” means—

- (i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;
- (ii) a National Park Authority;
- (iii) the Broads Authority; and
- (iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;

“stage” 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 Commission pursuant to requirement 3 (stages of authorised development).

Time limits

2. The authorised development must be begun within *[insert number]* years of the date of this Order.

Stages of authorised development

3. No authorised development shall commence until a written scheme setting out all the stages of the authorised development has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.

Detailed design approval

4. No [stage of the] authorised development shall commence until [for that stage] written details of the following have, after consultation with the relevant planning authority, been submitted to and approved by the Commission—

[or

5. No [stage of the] authorised development shall commence until details of the layout, scale and external appearance of the following elements of the authorised development [within that stage] have, after consultation with the relevant planning authority, been submitted to and approved by the Commission]

6. The authorised development must be carried out in accordance with the approved details.

Provision of landscaping

7. No [stage of the] authorised development shall until commence a written landscaping scheme [for that stage] has, after consultation with the relevant planning authority, been submitted to and

approved by the Commission. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (h) details of existing trees to be retained, with measures for their protection during the construction period;
- (i) retained historic landscape features and proposals for restoration, where relevant; and
- (j) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

8.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) The landscaping works must be carried out in accordance with implementation timetables approved under requirement 6.

(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the Commission, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the Commission.

Trees

9.—(1) No [stage of the] authorised development shall commence until written details of any proposed tree planting and the proposed times of planting have, after consultation with the relevant planning authority, been approved in writing by the Commission; and all tree planting shall be carried out in accordance with those details and at those times.

(2) If within a period of [two years] beginning with the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, [or becomes, in the opinion of the Commission, seriously damaged or defective,] another tree of the same species and size as that originally planted shall be planted at the same place, unless the Commission gives its written consent to a variation.

Highway accesses

10.—(1) No [stage of the] authorised development shall commence until [for that stage,] written details of the siting, design and layout of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.

(2) The highway accesses must be constructed in accordance with the approved details.

(3) No [stage of the] authorised development shall be begun until [for that stage,] a written Access Management Scheme has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.

(4) The Access Management Scheme must be carried out in accordance with the approved details.

Public rights of way

11.—(1) No [stage of the] authorised development shall commence that would affect *[insert details of relevant right of way]* until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.

(2) The alternative *[insert details of relevant right of way]* shall be implemented in accordance with the approved plan and specification.

Fencing – special roads

12.—(1) No [stage of the] authorised development shall commence until written details of the design and construction of any boundary fencing for special roads have, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.

(2) The authorised development shall be carried out in accordance with the approved design and construction.

(3) “Special road” has the same meaning as in section 329 of the Highways Act 1980.

Fencing and other means of enclosure

13.—(1) No [stage of the] authorised development shall commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure [for that stage] have, after consultation with the relevant planning authority, been submitted to and approved by the Commission.

(2) The *[insert description]*, and any construction sites, must remain securely fenced at all times during construction of the authorised development.

(3) Any temporary fencing must be removed on completion of the authorised development.

(4) Any approved permanent fencing of the new *[insert description]* must be completed before the *[insert description]* is brought into use.

Surface water drainage

14.—(1) No [stage of the] authorised development shall commence until [for that stage,] written details of the surface and foul water drainage system (including means of pollution control) have, after consultation with the relevant planning authority and the sewerage and drainage authority, been submitted to and approved by the Commission.

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

Contaminated land and groundwater

15.—(1) No [stage of the] authorised development shall commence until a written scheme [applicable to that stage,] to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the Commission.

(2) The scheme shall include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Remediation must be carried out in accordance with the approved scheme.

Archaeology

16.—(1) No [stage of the] authorised development shall commence until [for that stage,] a written scheme for the investigation of areas of archaeological interest [as identified in section []of the environmental document] has, after consultation with the relevant planning authority, been submitted to and approved by the Commission.

(2) The scheme shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the Commission.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Ecological management plan

17.—(1) No [stage of the] authorised development shall commence until a written ecological management plan [for that stage] reflecting the survey results and ecological mitigation and enhancement measures included in the environmental document, after consultation with the relevant planning authority, shall be submitted to and approved by the Commission.

(2) The ecological management plan shall include an implementation timetable and must be carried out as approved.

Code of construction practice

18. Construction works shall be carried out in accordance with the agreed code of construction practice, unless otherwise agreed by the Commission, after consultation with relevant planning authority.

[or

19.—(1) No [stage of the] authorised development shall commence until a code of construction practice shall, after consultation with the relevant planning authority, be submitted to and approved by the Commission.

(2) All construction works shall be undertaken in accordance with the approved code, unless otherwise agreed by the Commission.]

[Note: The code should specify measures designed to minimise the impacts of construction works, such as means of minimising pollution from dust, noise, vibration and lighting, wheel cleansing facilities, routes for construction traffic, working hours etc. To the extent that it does not, or does not do so adequately, separate conditions are likely to be required, some of which are indicated below].

Design of roads

20.—(1) No [stage of the] authorised development consisting of the construction or alteration of a street which is a trunk road or including any traffic management and control measures shall commence until written details of the design of the street shall, after consultation with the Highways Agency, be submitted to and approved by the Commission.

(2) The [authorised development] construction or alteration of the street or the taking of traffic management and control measures shall be carried out in accordance with the approved design.

External lighting

21. No [stage of the] authorised development, shall commence until written details of any external lighting to be installed at any of the construction sites [within that stage], including measures to prevent light spillage, shall, after consultation with the relevant planning authority and

the highway authority, be submitted to and approved by the Commission; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period.

Construction traffic

22.—(1) No [stage of the] authorised development shall commence until written details of the preferred route to be used by construction traffic shall, after consultation with the relevant planning authority and the highway authority, be submitted to and approved by the Commission.

(2) Notices shall be erected and maintained throughout the period of construction at every construction site exit, indicating to drivers the route agreed by the Commission for traffic entering and leaving the site.

Control of noise during construction and maintenance

23.—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for noise management during construction and maintenance [of that stage] has been submitted to and approved by the Commission.

(2) The scheme shall set out the particulars of—

- (a) the works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and
- (c) a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

(3) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the [relevant stage of the] authorised development.

(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.

Construction hours

24.—(1) Construction work shall not take place other than between [0800 and 1800 hours on weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays], unless otherwise agreed by the Commission.

(2) Nothing in paragraph (1) precludes a start-up period from [0730 to 0800] and a shut down period from [1800 to 1830] on weekdays (excluding public holidays).

Control of noise during operational phase

25.—(1) No authorised development shall commence operation until, after consultation with the relevant planning authority, a written scheme for noise management including monitoring and attenuation for the use of the authorised project has been submitted to and approved by the Commission.

(2) The noise management scheme must be implemented as approved and maintained for the duration of use of the authorised project.

Control of odour emissions

26.—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of odour emissions has been submitted to and approved by the Commission.

(2) The approved scheme for the management and mitigation of odour emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

Control of artificial light emissions

27.—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of artificial light emissions has been submitted to and approved by the Commission.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

Control of dust emissions

28.—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of dust emissions has been submitted to and approved by the Commission.

(2) The approved scheme for the management and mitigation of dust emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development

Control of smoke emissions

29.—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of smoke emissions has been submitted to and approved by the Commission.

(2) The approved scheme for the management and mitigation of smoke emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

Control of steam emissions

30.—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of steam emissions has been submitted to and approved by the Commission.

(2) The approved scheme for the management and mitigation of steam emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

Control of insects

31.—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme to ensure the prevention of infestation or emanation of insects from the authorised development has been submitted to and approved by the Commission.

(2) The approved scheme for the prevention of infestation or emanation of insects must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

(3) For the purposes of this requirement, “insects” excludes insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981(a) (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

(a) 1981 c.69. Relevant amendments were made by SI 1988/288, 1989/906, 1992/2350, 1998/878, 2007/1843, 2008/2172, SSI 2007/80. There are other amendments not relevant to this Order.

Accumulations and deposits

32.—(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management of any accumulations [or] and deposits whose effects may be harmful or visible or otherwise noticeable from outside the Order limits has been submitted to and approved by the Commission.

(2) The approved scheme for the management of accumulations and deposits must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.

Travel plan

33.—(1) No [stage of the] of the authorised development shall be begun until, after consultation with the relevant planning authority and the highway authority, a travel plan [for the contractor's workforce], which must include details of the expected means of travel to and from [the authorised [project]][the construction site] and any parking to be provided, has been submitted to and approved by the Commission.

(2) No part of the authorised project shall be brought into use until, after consultation with the relevant planning authority and the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised project and any parking to be provided, has been submitted to and approved by the Commission.

(3) The plan approved under paragraph (1) must be implemented during the construction of the authorised development and the plan approved under paragraph (2) must be implemented [within one month of the authorised project being brought into use] and shall continue to be implemented for as long as the authorised project is used.

European protected species

34.—(1) No [stage of the] authorised development shall commence until [further] survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by the authorised development or in any of the trees to be lopped or felled or buildings to be demolished during [that stage of] the authorised development.

(2) Where a European protected species is shown to be present, no authorised development [of that stage] shall be begun until, after consultation with the relevant planning authority, Natural England and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures has been submitted to and approved by the Commission; and the authorised development shall be carried out in accordance with the approved scheme.

(3) “European protected species” has the same meaning as in regulations 38 and 42 of the Conservation (Natural Habitats, &c.) Regulations 1994(a).

Restoration of land used temporarily for construction

35. Any land within the Order limits which is used temporarily for construction must be reinstated to its former condition, or such condition as the Commission may approve, within [six] months of completion of authorised development.

Requirement for written approval

36. Where under any of the above requirements the approval or agreement of the Commission or another person is required, that approval or agreement must be given in writing.

(a) S.I. 1994/2716.

Amendments to approved details

37. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the Commission, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the Commission.

Requirement for consent of Civil Aviation Authority and Ministry of Defence

38. No [stage of the] authorised development shall commence until [for that stage], after consultation with the Civil Aviation Authority and the Ministry of Defence, written details for the operation of the authorised project [and its effect on radar] have been submitted to and agreed by the Commission.

[Note: This requirement is only relevant in the context of authorised development that involves a wind farm.]

EXPLANATORY NOTE

(This note is not part of the Order)

The Planning Act 2008 (“the 2008 Act”) established the Infrastructure Planning Commission (“the Commission”) and provides for the granting of development consent for certain types of nationally significant infrastructure project. Development consent is granted in the form of an Order made by the Commission or the Secretary of State.

This Order prescribes model provisions for inclusion in the draft Order, which the Infrastructure Planning (Applications and Procedure) Regulations 2009 (S.I. 2009/2264) require to accompany an application for an order granting development consent. These model provisions may also be included in orders made by the Commission under section 114 of the 2008 Act, which grant development consent for nationally significant infrastructure projects. The Commission must have regard to the prescribed model provisions when making an order granting development consent but is not compelled to use them: the Commission may omit them entirely from orders if the model provisions are not appropriate or may adapt them to meet specific requirements.

Schedule 1 sets out general model provisions, which may be included in orders relating to all nationally significant infrastructure projects. These model provisions include an interpretation provision, which sets out general definitions, provisions in respect of street works, stopping up of streets, agreements with street authorities, access to works, the compulsory purchase of land and rights over the land or lesser interests in land and the extinguishment or suspension of rights over land.

Schedule 2 sets out model provisions relevant to orders granting development consent for railways. These include provisions in respect of the incorporation of the Railways Clauses Consolidation Act 1845 (c.20), level crossings and the operation and use of railways.

Schedule 3 sets out model provisions relevant to orders granting development consent for harbours. These include an interpretation provision, which sets out definitions relevant to harbours, provisions in respect of the incorporation of the Harbours, Docks and Piers Clauses Act 1847 (c.27), the limits of the harbour, tidal works and the right to dredge.

Schedule 4 sets out model provisions in respect of the requirements which can be included in orders granting development consent under section 120 of the 2008 Act.

An Impact Assessment has not been prepared for this Order as there is no additional impact on business, charities or the public sector beyond that examined in the Impact Assessment that accompanied the Planning Bill when it was introduced in Parliament on 27th November 2007. That Impact Assessment can be found on the Communities and Local Government website (<http://www.communities.gov.uk>).

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