

M20 Junction 10a

TR010006

3.1 Draft Development Consent Order

APFP Regulation 5(2)(b)

Revision **ED**

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure)

Regulations 2009



M20 Junction 10a

TR010006

3.1 Draft Development Consent Order

Volume 3

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201[] No.

INFRASTRUCTURE PLANNING

The M20 Junction 10a Development Consent Order 201[]

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - ***

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

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

The [single appointed person], having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the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

The Secretary of State, having considered the representations made and not withdrawn, and the report of the [single appointed person], has decided to make an Order granting development consent for the development described in the application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

In accordance with section 131(4) of the 2008 Act, the Secretary of State is satisfied, having considered the report and recommendation of the [single appointed person], that replacement land has been or will be given in exchange for the open space land comprised within the Order land, and the replacement land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the open space land comprised within the Order land.

In accordance with section 132(3) of the 2008 Act, the Secretary of State is satisfied, having considered the report and recommendation of the [single appointed person], that the open space land comprised within the Order land, when burdened with the order right, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 15, 17, 19, 20, 21, 22, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order –

PART 1 PRELIMINARY

Citation and commencement

1. This Order may be cited as the M20 Junction 10a Development Consent Order 201[] and comes into force on [] 201[].

Interpretation

2.—(1) In this Order except where provided otherwise-

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

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

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

(a) 2008. c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/2381, S.I. 2015/377; modified by S.I. 2012/1659.

(c) S.I. 2010/103, amended by S.I. 2012/635

(d) 1961 c.33.

(e) 1965 c.56.

(f) 1980 c. 66.

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(a);

“the 1984 Act” means the Road Traffic Regulation Act 1984(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);

“A2070 Option A” means Work No. 2A;

“A2070 Option B” means Work No. 2B;

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

“alternative A2070 options” means the A2070 Option A and the A2070 Option B;

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

“authorised development” means the development and associated development described in Schedule 1 (authorised development) or any part of it and any other development authorised by this Order or part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

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

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

“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 and includes part of a carriageway;

“the classification of roads plans” means the plans of that description certified by the Secretary of State as the classification of roads plans for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980(f) Act and includes part of a cycle track;

“electronic transmission” means a communication transmitted-

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

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

“the engineering drawings and sections” means the documents certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

“the environmental masterplan” means the plan of that description certified by the Secretary of State as the environmental masterplan for the purposes of this Order;

“environmental statement” means the environmental statement submitted with the application for this Order and certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act and include part of a footpath or footway;

(a) 1981 c. 66.

(b) 1984 c. 27.

(c) 1990 c. 8.

(d) 1991 c. 22.

(e) 2008 c. 29.

(f) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c.38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c.54).

“the general arrangement drawings” means the drawings of that description certified by the Secretary of State as the general arrangement drawings for the purposes of this Order;

“highway” has the same meaning as in the 1980 Act and includes part of a highway;

“the highway authority” means the undertaker;

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

“limits of deviation” means the limits of deviation referred to in article 8 (limits of deviation);

“the local highway authority” means Kent County Council;

“maintain” includes inspect, repair, adjust, alter, remove or reconstruct in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

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

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

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

“relevant planning authority” means the local planning authority for the land in question;

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

“Secretary of State” means the Secretary of State for Transport;

“the special category land plans” means the plans of that description certified by the Secretary of State as the special category land plans for the purposes of this Order;

“special road” means a highway which is a special road in accordance with section 16 (general provisions as to special roads) of the 1980 Act or by virtue of an order granting development consent;

“the speed limit plans” means the plans of that description certified by the Secretary of State as the speed limit plans for the purposes of this Order;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

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

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

“traffic authority” has the same meaning as in the 1984 Act;

“traffic regulation measure plans” means the plans certified as the traffic regulation measure plans by the Secretary of State for the purposes of this Order;

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

“trunk road” means a highway which is a trunk road by virtue of-

- (a) section 10(b) or 19(1)(c) of the 1980 Act (provisions as to trunk roads);
- (b) an order or direction under section 10 of that Act; or
- (c) an order granting development consent; or

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

(b) As amended by section 22(2) of the 1991 Act and paragraph 22 of Schedule 2 to the 2008 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(c) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(d) any other enactment;

“the undertaker” means Highways England Company Limited, company number 9346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

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

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

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

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

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

Disapplication of legislative provisions

3.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development-

- (a) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016/1154(a) in relation to the carrying on of a flood risk activity or a water discharge activity;
- (b) section 24 (restrictions on abstraction) of the Water Resources Act 1991;
- (c) the provisions of any byelaws made under, or having effect as if made under, paragraph 5 of Schedule 25 to the Water Resources Act 1991;
- (d) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(b);
- (e) section 32 (variation of awards) of the Land Drainage Act 1991; and
- (f) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991.

(2) In paragraph 1(a) “flood risk activity” and “water discharge activity” have the meaning given in the Environmental Permitting (England and Wales) Regulations 2016.

Maintenance of drainage works

4.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any

(a) S.I. 2016/1154
(b) 1991 c. 59.

enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

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

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

(3) Despite anything in this Order or shown on the works plans, the undertaker may construct either Work No. 2A or Work No. 2B but not both.

Maintenance of authorised development

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

Planning permission

7. If planning permission is issued pursuant to the 1990 Act for development any part of which is within the Order limits following the publication of this Order that is-

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the carrying out, use or operation of such development pursuant to the terms of the planning permission is not to constitute a breach of the terms of this Order.

Limits of deviation

8. In carrying out the authorised development the undertaker may-

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering section drawings, to a maximum of 1 metre upwards or 1 metre downwards,

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

Benefit of Order

9. Subject to article 10 (consent to transfer benefit of order) the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

10.—(1) The undertaker may—

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

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

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

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to-

- (a) Southern Gas Networks Public Limited Company for the purposes of undertaking Work No. 22;
- (b) Southern Water Services Limited for the purposes of undertaking Work No. 23;
- (c) BT Group Public Limited Company (or a related and/or subsidiary company) for the purposes of undertaking Work No. 24;
- (d) South East Water Limited for the purposes of undertaking Work No. 25;
- (e) Vodafone Group Public Limited Company (or a related and/or subsidiary company) for the purposes of undertaking Work No. 26;
- (f) Virgin Media Limited (or a related and/or subsidiary company) for the purposes of undertaking Work No. 27;
- (g) South Eastern Power Networks Public Limited Company (or a related and/or subsidiary company) for the purposes of undertaking Work No. 28; or
- (h) Telent Technology Services Limited for the purposes of undertaking Work No. 29.

PART 3

STREETS

Application of the 1991 Act

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

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or

(b) they are works which, had they been executed by the local highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the 1980 Act or section 184 (vehicle crossings over footways and verges) of that Act.

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

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

section 56(b) (directions as to timing);

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

section 58(d) (restrictions following substantial road works);

section 58A(e) (restriction on works following substantial street works); and

~~section 73A(f) (power to require undertaker to re-surface street);~~

~~section 73B(g) (power to specify timing etc. of re-surfacing);~~

~~section 73C(h) (materials, workmanship and standard of re-surfacing);~~

~~section 78A(i) (contributions to costs of re-surfacing by undertaker); and~~

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

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

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

section 54(l) (advance notice of certain works), subject to paragraph (6);

section 55(m) (notice of starting date of works), subject to paragraph (6);

section 57(n) (notice of emergency works);

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

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 75 (inspection fees);

(a) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(b) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c. 18).

(c) Inserted by section 44 of the Traffic Management Act 2004.

(d) As amended by section 51 of the Traffic Management Act 2004.

(e) Inserted by section 52 of the Traffic Management Act 2004.

~~(f) Inserted by section 55 of the Traffic Management Act 2004.~~

~~(g) Inserted by section 55 of the Traffic Management Act 2004.~~

~~(h) Inserted by section 55 of the Traffic Management Act 2004.~~

~~(i) Inserted by section 57 of the Traffic Management Act 2004.~~

(j) Inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004

(k) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(l) As also amended by section 49(1) of the Traffic Management Act 2004

(m) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(n) As also amended by section 52(3) of the Traffic Management Act 2004.

(o) As amended by section 42 of the Traffic Management Act 2004.

section 76 (liability for cost of temporary traffic regulation); and
section 77 (liability for cost of use of alternative route),

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

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

(7) Nothing in article 12 (construction and maintenance of new, altered or diverted streets and other structures)—

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

Construction and maintenance of new, altered or diverted streets and other structures

12.—(1) Any highway (other than a special road or a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing with the local highway authority, the highway must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a highway (other than a special road or a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway must be maintained by and at the expense of the local highway authority from its completion.

(3) Where a footpath, cycle track or bridleway is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway must be maintained by and at the expense of the local highway authority from its completion with the exception of the footpath to be provided on plots 3/1/b and 3/1/d, shown on the land plans and the rights of way and access plans, which must be maintained by the undertaker from its completion.

(4) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over a special road or trunk road, the bridge must be maintained by and at the expense of the undertaker.

(5) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority and unless otherwise agreed in writing 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.

(6) 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 is 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.

(7) For the purposes of a defence under paragraph (6), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;

- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether 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 dangers 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.

Classification of roads, etc.

13.—(1) The roads described in Part 1 (special roads) of Schedule 3 (classification of roads, etc.) are to be—

- (a) classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads; and
- (b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 to the 1980 Act.

(2) From the date on which the undertaker notifies the Secretary of State that the roads described in Part 1 (special roads) of Schedule 3 (classification of roads, etc.) have been completed and are open for traffic—

- (a) the undertaker is the highway authority for those roads; and
- (b) they are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

(3) From the date on which the roads described in Part 2 (trunk roads) of Schedule 3 (classification of roads, etc.) are complete and open for traffic, they are to become trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act^(a) specifying that date as the date on which they were to become trunk roads.

(4) From the date on which the roads described in Part 3 (classified roads) of Schedule 3 (classification of roads, etc.) are complete and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(5) From the date on which the roads described in Part 4 (unclassified roads) of Schedule 3 (classification of roads, etc.) are complete and open for traffic, they are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.

(6) From the date on which the roads specified in Part 5 (speed limits) of Schedule 3 (classification of roads, etc.) are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of Part 5 of Schedule 3 along the lengths of road identified in the corresponding row of column (2) of that Part.

(7) Unless otherwise agreed with the relevant planning authority the footpaths, cycle tracks and footways set out in Part 8 (footpaths, cycle tracks and footways) of Schedule 3 (classification of roads, etc.) and identified on the rights of way and access plans are to be constructed by the

(a) As amended by section 22 of the 1991 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015.

undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.

(8) On such day as the undertaker may determine, the orders specified in column (3) of Part 7 (revocations and variations of existing traffic regulation orders) of Schedule 3 (classification of roads, etc.) are to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

(9) The application of paragraphs (1) to (7) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Temporary stopping up and restriction of use of streets

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

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

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

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

(4) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

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

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

Permanent stopping up and restriction of use of streets and private means of access

15.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) to the extent specified and described in column (3) of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Parts 2 and 3 of Schedule 4 (being a street or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts 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 or private means of access 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 or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Parts 1 and 4 of Schedule 4 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access 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 or private means of access concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access 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 is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

16. The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Clearways

17.—(1) From such day as the undertaker may determine, save as provided in paragraph (2) below, no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 6 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) where it is identified that such lengths of road are to become a clearway in the corresponding row of column (3) of that Part, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) above applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 (the Telecommunications Code) to the Telecommunications Act 1984(a); or

(a) 1984 c. 12.

- (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(a); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(b); or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person’s control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(c).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(d).

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

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

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

(a) 1991 c. 56.

(b) 2000 c. 26.

(c) 2004 c. 18.

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

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

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

(6) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local 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^(a) have the same meaning as in that Act.

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

Protective work to buildings

19.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

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

(a) 1991 c. 57.

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

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

(8) Where—

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

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

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

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

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

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

Authority to survey and investigate the land

20.—(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 development and—

- (a) survey or investigate the land;
- (b) without limitation to the scope 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 limitation to the scope 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) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

(a) As amended by S.I. 2009/1307.

- (a) in land located within the highway boundary without the consent of the highway authority or the local highway authority as the case may be; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must 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 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either the highway authority, the local highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of the highway authority or the local highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority is deemed to have granted consent.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

21.—(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development, or is required as replacement land.

(2) This article is subject to paragraph (2) of article 24 (compulsory acquisition of rights) and paragraph (8) of article 31 (temporary use of land for carrying out the authorised development).

(3) The undertaker must not exercise the powers conferred by paragraph (1) in relation to any land unless it has first given notice in writing to the relevant planning authority and the local highway authority of which of the alternative A2070 options it intends to construct, being either the A2070 Option A or the A2070 Option B.

Compulsory acquisition of land - incorporation of the mineral code

22. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 27 (application of the 1981 Act).

(2) The authority conferred by article 31 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in

(a) 1981 c. 67.

this paragraph prevents the undertaker from 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

24.—(1) The undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.

(4) Subject to section 8 (other provisions as to divided land) of the 1965 Act, as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(6) The undertaker must not exercise the powers conferred by paragraphs (1) to (5) in relation to any land unless it has first given notice in writing to the relevant planning authority and the local highway authority of which of the alternative A2070 options it intends to construct, being either the A2070 Option A or the A2070 Option B.

Public rights of way

25.—(1) The public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and shown on the rights of way and access plans are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 and shown on the rights of way and access plans, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

Private rights over land

26.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished –

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in

so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker which, being within the limits of land which may be acquired or used shown on the land plans, are required for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

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

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

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

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

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

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

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

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

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

~~(4)~~ In section 5 (earliest date for execution of declaration) —

~~(5)~~ in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and

~~(6)~~(4) omit subsection (2).

~~(7)~~(5) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

~~(8)~~(6) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

28.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 21 (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 or the airspace over the land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 29 (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 part of certain properties

29.—(1) This article applies instead of section 8(1) (other provisions as to divided land) of the 1965 Act (as applied by section 125 (application of compulsory acquisition provisions) 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 and stating 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 must 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 must sell only the land subject to the notice to treat is, unless the undertaker agrees to take the land subject to the counter-notice, to 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 forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must 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 forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

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

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

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

the notice to treat is 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 must 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 must 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

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker

acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken), or any other mitigation works in connection with the authorised development.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

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

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 7 (land of which temporary possession may be taken); or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.

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

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

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

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

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

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

- (a) acquiring new rights over any part of that land under article 24 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 28 (acquisition of subsoil or airspace only).

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

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

(11) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under articles 21 (compulsory acquisition of land) or 24 (compulsory acquisition of rights).

Temporary use of land for maintaining the authorised development

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

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

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of –

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

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

(4) The undertaker 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 development 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 must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

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

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

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

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

Statutory undertakers

33.—(1) Subject to the provisions of Schedule 9 (protective provisions) and paragraph (2), the undertaker may—

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

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply-

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 34 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

34.—(1) Where a street is stopped up under article 15 (permanent stopping up and restriction of use of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 15 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must-

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

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

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

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

- (a) apparatus of a better type, 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) is to be reduced by the amount of that excess.

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

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

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

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

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

(8) In this article—

“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

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

(a) 2003 c.21.

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

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

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

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

(4) In this paragraph—

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

“public utility undertaker” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act.

Special category land

36.—(1) The special category land is not to vest in the undertaker until the undertaker has acquired the replacement land and the Secretary of State (in consultation with the relevant planning authority) has certified that a scheme for the provision of the replacement land as open space and a timetable for the implementation of the scheme has been received from the undertaker.

(2) On the requirements of sub-paragraph (1) being satisfied, the special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject.

(3) On the requirements of sub-paragraph (1) being satisfied, the rights to be acquired over the special category (rights) land are to vest in the undertaker and the special category (rights) land is to be discharged from all private rights to which it was previously subject in accordance with article 26(2).

(4) On the date on which the replacement land is laid out and provided in accordance with the scheme requirements at sub-paragraph (1), provided that does not occur any later than the first anniversary of the date that Work No. 3 is first opened to the public for use, the replacement land is to vest in the person(s) in whom the special category land was vested immediately before it was vested in the undertaker and is to be subject to the same rights, trusts and incidents as attached to the special category land.

(5) In this article—

“the special category land” means the land numbered 3/14/b in the book of reference and on the land plans and forming part of open space which may be acquired compulsorily under this Order;

“the special category (rights) land” means the land numbered 3/14/a in the book of reference and on the land plans and forming part of open space over which rights may be acquired compulsorily under this Order;

“the replacement land” means the land identified as such and numbered 3/1/b, 3/1/c and 3/1/d in the book of reference and on the land plans.

PART 6 OPERATIONS

Existing powers and duties of the undertaker

37. Except as expressly provided, nothing in this Order is to prejudice the operation of, and the powers and duties of the undertaker under, the 1980 Act, the 1991 Act and the Town and Country Planning (General Permitted Development) (England) Order 2015(a).

Felling or lopping of trees and removal of hedgerows

38.—(1) The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits 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 development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must-

- (a) do no unnecessary damage to any tree or shrub;
- (b) pay compensation to any person for any loss or damage arising from such activity; and
- (c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2010 or any successor acts.

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

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(b) and includes important hedgerows.

Trees subject to tree preservation orders

39.—(1) The undertaker may fell or lop any tree described in Schedule 8 (trees subject to tree preservation orders), cut back its roots or undertake such other works described in column (2) of that Schedule if the undertaker 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 development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

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

- (a) the undertaker is to do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; ~~and~~
- ~~(b)~~ the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker shall seek to replace any trees which are removed; ~~and~~
- ~~(b)(c)~~ the undertaker shall consult the relevant planning authority prior to that activity taking place.

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

(a) 2015/596
(b) S.I 1997/1160

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

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

40.—(1) This article applies to—

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

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

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

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

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

Operational land for purposes of the 1990 Act

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

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a

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

(b) Subsection 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection but none are relevant to this Order.

notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(a); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

Protective provisions

43. Schedule 9 (protective provisions) has effect.

Certification of plans, etc.

44.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference (document reference HA514442-MMGJV-GEN-SMW-RE-Z-4301);
- (b) the classification of roads plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2700);
- (c) the outline construction environmental management plan (environmental statement appendix 17.1, volume 6.3);
- (d) the engineering section drawings (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2900);
- (e) the environmental masterplan (document reference HA514442-MMGJV-GEN-SMW-DE-Z-60213-60222);
- (f) the environmental statement (document reference HA514442-MMGJV-GEN-SMW-RE-Z-6100);
- (g) the general arrangement drawings (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2600);
- (h) the land plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2200);
- (i) the rights of way and access plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2400);
- (j) the special category land plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-21200);
- (k) the traffic regulation measure plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-21000);
- (l) the speed limit plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2500);
- (m) the works plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2300); and
- (n) any other plans or documents referred to in this Order as requiring certification,

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

(a) 1974 c. 40. Section 61 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43); there are other amendments to section 61 but none are relevant to this Order.

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

Service of notices

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

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

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

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

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

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

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

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

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

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

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

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

(a) 1978 C. 30.

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

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

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

Arbitration

46. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Traffic regulation

47.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

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

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless the undertaker has—

- (a) given not less than-
 - (i) 12 weeks’ notice in writing of the undertaker’s intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks’ notice in writing of the undertaker’s intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised the undertaker's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

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

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

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

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

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

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

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) within a period of 24 months from the opening of the authorised development.

(8) Before exercising the powers conferred by paragraph (2) the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.

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

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

(11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

Signed by authority of the Secretary of State for Transport

Address
Date

Name
Parliamentary Under Secretary of State
Department

(a) Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act
(b) 2004 C.18.

SCHEDULES

SCHEDULE 1

Article 5 and 6

AUTHORISED DEVELOPMENT

In the administrative areas of Kent County Council and Ashford Borough Council

The authorised development is a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act(a), comprising—

Work No. 1 – the replacement of 1460 metres of existing tension corrugated safety barrier double sided central reserve barrier with concrete step barrier, from point A to point B on sheets 2 and 5 of the works plans.

Work No. 2A – the construction of a new A2070 dual carriageway link road approximately 720 metres long from a new junction with the M20 Junction 10a generally westwards to a new roundabout junction with the existing A2070. To include the construction of a new private means of access from this road to drainage attenuation pond no. 1.

Work No. 2B – the construction of a new A2070 dual carriageway link road approximately 720 metres long from a new junction with the M20 Junction 10a generally westwards to a new roundabout junction with the existing A2070. To include:

- (a) the construction of a new private means of access from this road to drainage attenuation pond no. 1;
- (b) the construction of a new roundabout junction including a spur to the south for the Stour Park site.

Work No. 3 – the construction of a new Junction 10a gyratory and two bridges over the existing M20 main carriageway. To include:

- (a) the construction of drainage attenuation pond no. 1 with associated drainage facilities, access and landscaping at the locations shown on sheet 3 of the works plans;
- (b) the construction of drainage attenuation pond no. 3 with associated drainage facilities, access and landscaping at the locations shown on sheet 2 of the works plans;
- (c) the re-alignment of the A20 Hythe Road at the location of this junction to create two new interfaces with the M20 Junction 10a main circulatory carriageway as shown on sheets 2 and 5 of the works plans;
- (d) the demolition of the Highfield Lane Overbridge, Wyevale Garden Centre and Highfield Bungalow.

Work No. 4 – the re-alignment of the A2070 Bad Munstereifel Road at the location of the new A2070 link road roundabout to create two new interfaces with the circulatory carriageway of the new roundabout. To include the construction of drainage attenuation pond no. 2 with associated drainage facilities, access and landscaping and the provision of 5169m² of replacement open space land including removal of redundant carriageway and landscaping.

Work No. 5 – the re-alignment of Kingsford Street onto Highfield Lane.

(a) Section 22 was substituted by article 3 of S.I. 2013/1883

Work No. 6 – the construction of a new cycle/footbridge of approximately 55m in length over the M20 main carriageway to the east of M20 Junction 10a and connecting together Kingsford Street and Hythe Road.

Work No. 7 – associated development comprising alteration works to the existing road markings, traffic signs and traffic signals on the M20 Junction 10 and its approaches.

Work No. 8 – the construction of a new cycle/footbridge over the A2070 main carriageway to the south of the new A2070 link road roundabout and the demolition of the existing Church Road footbridge.

Work No. 9 – alteration works to Barrey Road.

Work No. 10 – the construction of a new roundabout junction to connect the A2070 to the A2070 link road.

Work No. 11 – the strengthening of the existing Swatfield Bridge on the A20 Hythe Road.

Work No. 12 – the closure of the existing M20 Junction 10 eastbound on-slip. To include:

- (a) construction of a barrier at the interfaces with the existing Junction 10 circulatory carriageway;
- (b) construction of a barrier at the interfaces with the existing M20 main carriageway;
- (c) remediation and landscaping works.

Work No. 13 – the closure of the existing M20 Junction 10 westbound off-slip. To include:

- (a) construction of a barrier at the interfaces with the existing Junction 10 circulatory carriageway;
- (b) construction of a barrier at the interfaces with the existing M20 main carriageway;
- (c) remediation and landscaping works.

Work No. 14 – the construction of a new eastbound off-slip from the M20 main carriageway to the circulatory carriageway of Junction 10a, approximately 300 metres in length.

Work No. 15 – the construction of a new westbound on-slip from the circulatory carriageway of Junction 10a to the M20 main carriageway, approximately 463 metres in length.

Work No. 16 – the re-alignment of the A20 Hythe Road west from the new M20 Junction 10a. To include the construction of a new private means of access from this road to drainage attenuation pond no. 3.

Work No. 17 – the re-alignment of the A20 Hythe Road east from the new M20 Junction 10a. To include the construction of a new private means of access.

Work No. 18 – the construction of a new eastbound on-slip from the circulatory carriageway of Junction 10a to the M20 main carriageway, approximately 372 metres in length.

Work No. 19 – the construction of a new westbound off-slip from the M20 main carriageway to the circulatory carriageway of Junction 10a, approximately 329 metres in length.

Work No. 20 – the realignment of the A2070 and amendments to the junction layout between Barrey Road and the A2070.

Work No. 21 – the installation of approximately 1980 metres of motorway communication cables.

Work No. 22 – the diversion of approximately 460 metres of gas pipeline to accommodate the widened footprint of the M20 presented by the Junction 10a slip roads and the new footprint of the A2070 link road.

Work No. 23 – the diversion of approximately 220 metres of sewer to accommodate the construction and operation of the new M20 Junction 10a.

Work No. 24 – the diversion of approximately 950 metres of telecoms equipment to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a.

Work No. 25 – the diversion of approximately 850 metres of water pipeline to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a.

Work No. 26 – the diversion of approximately 500 metres of telecoms equipment to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a. Additionally, the diversion of approximately 400 metres of telecoms equipment to accommodate the realignment of the A2070 and the construction and operation of the new A2070 link road roundabout.

Work No. 27 – the diversion of approximately 500 metres of telecoms equipment to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a. Additionally, the diversion of approximately 400 metres of telecoms equipment to accommodate the realignment of the A2070 and the construction and operation of the new A2070 link road roundabout.

Work No. 28 – the diversion of approximately 500 metres of power cables to accommodate the widening of the A20 Hythe Road and the construction and operation of the new M20 Junction 10a. Additionally, the diversion of approximately 650 metres of power cables to accommodate the realignment of the A2070 and the construction and operation of the new A2070 link road roundabout.

Work No. 29 – the diversion of approximately 50 metres of communication cables to accommodate the installation of the replacement Church Road footbridge.

In connection with the construction of any of those works, further development within the Order limits consisting of—

- (a) alteration to the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; and altering the level of any such kerb, footpath, footway, cycle track or verge;
- (b) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (c) refurbishment works to any existing bridge;
- (d) the strengthening, alteration or demolition of any building;
- (e) ramps, means of access, non-motorised links, footpaths, cycle tracks and crossing facilities;
- (f) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, barriers, pumping stations, parapets, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (g) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (h) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, pipes, cables, ducts and lights;
- (i) works to alter the course of or otherwise interfere with a watercourse;
- (j) landscaping, noise bunds and barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (k) works for the benefit or protection of land affected by the authorised development;

- (l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (m) the felling of trees;
- (n) construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;
- (o) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (p) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 5

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule-

“CEMP” means construction environmental management plan;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990;

“County Archaeologist” means the individual appointed as such by the relevant planning authority;

“Ecological Clerk of Works” means the individual appointed as such by the [undertaker];

“European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010;

“HEMP” means the handover environmental management plan, being the CEMP to be developed towards the end of the construction of the authorised development which is to contain-

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

“LEMP” means landscape and ecological management plan, including a reptile mitigation strategy;

“protected species” means species which are subject to protection under the laws of England or which are European protected species;

“Stour Park site” means the land to the south of the authorised development that is designated by Policy U19 – Sevington, in the Ashford Borough Council Urban Sites and Infrastructure Development Plan Document 2012.

Time limits

2. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

Construction Environmental Management Plan

3.—(1) No part of the authorised development is to commence until a CEMP has been prepared in consultation with the relevant planning authority, the local highway authority and the Environment Agency and submitted to and approved in writing by the Secretary of State.

(2) The CEMP must—

- (a) be substantially in accordance with the outline CEMP certified under article 43 (certification of plans, etc.) save that measures may be added to take account of and accommodate within the CEMP any turning loop constructed or under construction by the local highway authority on plot 4/16/c as identified in the book of reference and on the land plans at the time of commencement of the authorised development;
- (b) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) incorporate the measures as detailed in the environmental statement;
- (d) include information on the control measures required to mitigate and reduce potential impacts which reflect the mitigation measures included in the environmental statement;
- (e) require adherence to working hours of 07:00 to 18:00 on Mondays to Fridays and 07:00 to 13:00 on Saturdays, except for—
 - (i) works requiring the full or partial closure of, or otherwise adversely affecting the operation of, the M20 carriageway;
 - (ii) works associated with the demolition of the Church Road footbridge and the Highfield Lane bridge;
 - (iii) works associated with the construction of the new Church Road Bridge, the new Kingsford Street Bridge, the two new Junction 10a interchange bridges over the M20 carriageway and the A20 Swatfield bridge;
 - (iv) works associated with the diversion of existing utilities;
 - (v) works associated with traffic management and signal changes;
 - (vi) works associated with tie-ins to existing carriageways; and
 - (vii) any emergency works;
- (f) include management plans, working methods and mitigation measures for each of the topics covered in the environmental statement, including -
 - (i) [Landscape and Ecological Management Plan](#)~~LEMP~~;
 - (ii) Arboricultural Method Statement;
 - (iii) Archaeological Written Scheme of Investigation;
 - (iv) Japanese Knotweed Management Plan;
 - (v) Materials Management Plan;
 - (vi) Soil Handling and Management Plan;
 - (vii) Site Waste Management Plan;
 - (viii) Traffic and Transport Plan;
 - (ix) Community Relations Strategy; and
 - (x) Groundwater Monitoring Strategy.

(3) The authorised development must be constructed in accordance with the approved CEMP.

(4) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP [which may include measures to take account of and accommodate within the HEMP any turning loop constructed or to be constructed by the local highway authority on plot 4/16/c as identified in the book of reference and on the land plans](#).

(5) The authorised development must be operated and maintained in accordance with the HEMP.

Details of consultation

4.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule, the details submitted must be accompanied by a

summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.

(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

Landscaping

5.—(1) No part of the authorised development is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority and the local highway authority.

(2) No part of the authorised development, including vegetation clearance, is to commence until an arboricultural walkover survey and tree survey for that part taking due regard to the guidance in British Standard 5837: 2012 have been undertaken to identify any significant constraints posed by trees.

(3) The landscaping scheme prepared under sub-paragraph (1) must be based on the environmental masterplan and the results of the surveys undertaken under sub-paragraph (2) and must take account of and accommodate any turning loop constructed or under construction by the local highway authority on plot 4/16/c as identified in the book of reference and on the land plans at the time of commencement of the authorised development.

(4) The landscaping scheme prepared under sub-paragraph (1) must include details of 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) details of existing trees to be retained, with measures for their protection during the construction period; and
- (f) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under Requirement [45](#).

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

(3) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, 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.

Fencing

7. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the undertaker's Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Contaminated Land and groundwater contamination

8.—(1) No part of the authorised development is to commence until a contamination foundation works risk assessment in respect of controlled waters has been produced which is to include details of-

- (a) any existing sources of contamination within the Order limits that may be affected by the carrying out of the authorised development; ~~and~~
- (b) any reasonably required protective measures to ensure that the carrying out of the authorised development does not make worse any adverse conditions or risks associated with such existing sources of contamination; ~~and~~
- ~~(b)~~(c) appropriate remediation strategies and mitigation measures to address any historic contamination which is shown to be having significant, unacceptable effects on the environment within the context of the proposed works.

and the assessment has been submitted to and approved by the Secretary of State following consultation with the Environment Agency.

(2) The steps and measures that are identified as necessary for the purposes of carrying out the authorised development in the assessment referred to in sub-paragraph (1) must be implemented as part of the authorised development.

(3) In the event that contaminated ~~materials~~land, including impacted groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental statement, the undertaker must cease construction of the authorised development in the vicinity of that ~~contamination~~contaminated land and must report it immediately in writing to the Secretary of State, the Environment Agency and relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination.

(4) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared submitted to and approved in writing by the Secretary of State following consultation with the Environment Agency and the relevant planning authority.

(5) Remedial measures must be carried out in accordance with the approved scheme.

Archaeology

9.—(1) No part of the authorised development is to commence until for that part an archaeological framework strategy for the investigation and mitigation of areas of archaeological interest, reflecting the mitigation measures included in chapter 6 of the environmental statement, with provision for sub-written schemes of investigation for each area and each phase (evaluation and/or detailed excavation and/or watching brief), has been prepared in consultation with the relevant planning authority and the local highway authority, agreed with the ~~e~~County ~~a~~Archaeologist and submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the archaeological framework strategy and sub-written schemes of investigation referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A programme of archaeological reporting, post excavation and publication required as part of the archaeological framework strategy and sub-written schemes of investigation referred to in sub-paragraph (1) must be agreed with the ~~e~~County ~~a~~Archaeologist and implemented within a

timescale agreed with the eCounty aArchaeologist and deposited with the Historic Environment Record of the relevant planning authority within two years of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be subject to appropriate mitigation as set out in the archaeological framework strategy and mitigation agreed with the eCounty aArchaeologist.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date they are identified unless otherwise agreed in writing by the Secretary of State.

(6) On completion of the authorised development, suitable resources and provisions for long term storage of the archaeological archive will be agreed with the eCounty aArchaeologist.

Protected species

10.—(1) In the event that any protected species ~~or nesting birds are found at any time when carrying out the authorised development,~~ which were not previously identified in the environmental statement; or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works ~~within 10 metres of the location of that protected species or those nesting birds~~ and report it immediately to the eEcological eClerk of wWorks.

(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds found when carrying out the authorised development, ~~which were not previously identified in the environmental statement.~~ Where nesting birds are identified works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.

(3) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction within the area specified in the written scheme ~~10 metres of the protected species or nesting birds~~ must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

Traffic management

11.—(1) No authorised development is to commence until a traffic management plan for the construction of the authorised development has been submitted to and approved in writing by the Secretary of State following consultation with the relevant highway authority.

(2) The authorised development must be constructed in accordance with the approved traffic management plan.

Detailed design

12.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the works plans and the engineering section drawings, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans and the engineering section drawings showing departures from the preliminary design would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

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

Surface and foul water drainage

13.—(1) No part of the authorised development is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in chapter 14 of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, the local highway authority and the Environment Agency.

(2) The drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

Approvals and amendments to approved details

14. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.

Alternative A2070 options

15.—(1) Only one of A2070 Option A and A2070 Option B may be constructed.

(2) The undertaker must not give notice in writing to the relevant planning authority and local highway authority of its intention to construct the A2070 Option B for the purposes of articles 21 and 24 unless a planning permission has first been granted for the development of the Stour Park site.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

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

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report that considers it likely that the subject matter of the application is to give rise to any materially new or materially worse environmental effects in comparison with the authorised development as approved,

then the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

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

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

(3) Where further information is requested under this paragraph 2 in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 1 and in this paragraph.

Register of requirements

3.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

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

SCHEDULE 3

Articles 13 and 17

CLASSIFICATIONS OF ROADS, ETC.

PART 1

SPECIAL ROADS

<i>(1) Area</i>	<i>(2) Length of road</i>
Ashford Borough	M20 eastbound off slip onto Junction 10a between point D and point E on the classification of roads plans, comprising 307 metres.
Ashford Borough	M20 eastbound on slip onto the M20 from Junction 10a between point K and point L on the classification of roads plans, comprising 379 metres.
Ashford Borough	M20 westbound off slip onto Junction 10a between point N and point M on the classification of roads plans, comprising 340 metres.
Ashford Borough	M20 westbound on slip onto the M20 from Junction 10a between point G and point F on the classification of roads plans, comprising 463 metres.

PART 2

TRUNK ROADS

<i>(1) Area</i>	<i>(2) Length. of road</i>
Ashford Borough	In the event of construction of the A2070 Option A only, A2070 link road between point Q and point R on the classification of roads plans, comprising 693 metres.
Ashford Borough	In the event of construction of the A2070 Option A only, A2070 link road between point S and point T on the classification of roads plans, comprising 722 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point Q and point CC on the classification of roads plans, comprising 338 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point II and point R on the classification of roads plans, comprising 288 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point S and point DD on the classification of roads plans, comprising 363 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, A2070 link road between point HH and point T on the classification of roads plans, comprising 288 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, Stour Park roundabout circulatory carriageway, comprising 200 metres.
Ashford Borough	A2070 Bad Munstereifel Road between point U and point V on the classification of roads plans, comprising 237 metres.
Ashford Borough	A2070 Bad Munstereifel Road between point W and point X on the classification of roads plans, comprising 225 metres.

Ashford Borough	A2070 link road roundabout circulatory carriageway, comprising 200 metres.
Ashford Borough	A2070 Bad Munstereifel Road, between point Y and point Z on the classification of roads plans, comprising 354 metres.
Ashford Borough	A2070 Bad Munstereifel Road, between point AA and point BB on the classification of roads plans, comprising 348 metres.
Ashford Borough	M20 Junction 10a roundabout circulatory carriageway, comprising 490 metres.

PART 3

CLASSIFIED ROADS

<i>(1)</i> Area	<i>(2)</i> Length. of road
Ashford Borough	A20 Hythe Road between point A and points B and C on the classification of roads plans, comprising 186 metres.
Ashford Borough	A20 Hythe Road between points H and I and point J on the classification of roads plans, comprising 249 metres.

PART 4

UNCLASSIFIED ROADS

<i>(1)</i> Area	<i>(2)</i> Length. of road
Ashford Borough	Kingsford Street between point O and point P on the classification of roads plans, comprising 151 metres.
Ashford Borough	In the event of construction of the A2070 Option B only, spur to Stour Park site between point FF and points EE and GG on the classification of roads plans, comprising 68 metres.

PART 5

SPEED LIMITS

<i>(1)</i> Parish(es)	<i>(2)</i> Road name, number and length	<i>(3)</i> Speed Limit
Ashford, Mersham	A20, Hythe Road From a point 40 metres north west of the M20 Junction 10a circulatory carriageway along its length to where it joins the M20 Junction 10a circulatory carriageway for a total distance of 40 metres. As shown on sheet 2 of the speed limit plans.	40 miles per hour
Mersham	A20, Hythe Road From where the A20 diverges/merges with the M20 Junction 10a circulatory carriageway along its length to a point 45 metres east of this location. As shown on sheet 2 of the speed limit plans.	40 miles per hour

Mersham	A20, Hythe Road From a point 45 metres east of the location where the A20 diverges/merges with the M20 Junction 10a circulatory carriageway to a point approximately 11 metres from the centre line of the junction of the A20 with Bockham Lane, a length of 386 metres. As shown on sheet 2 of the speed limit plans.	50 miles per hour
Mersham	M20 Junction 10a circulatory carriageway For the whole length of the circulatory carriageway around the M20 Junction 10a roundabout, a length of 490 metres. As shown on sheets 2 and 3 of the speed limit plans.	40 miles per hour
Ashford, Mersham	M20 eastbound off slip onto Junction 10a From the start of the diverge with the M20 main carriageway along its length to the point where it merges with the new Junction 10a circulatory carriageway, a length of 307 metres. As shown on sheets 1 and 2 of the speed limit plans.	70 miles per hour
Ashford, Mersham	M20 eastbound on slip onto the M20 from Junction 10a From the start of the diverge from the new Junction 10a circulatory carriageway along its length to its merge with the M20 main carriageway, a length of 379 metres. As shown on sheet 2 of the speed limit plans.	70 miles per hour
Mersham	M20 westbound off slip onto Junction 10a From the start of the diverge with the M20 main carriageway along its length to its merge with the new Junction 10a circulatory carriageway, a length of 340 metres. As shown on sheet 2 of the speed limit plans.	70 miles per hour
Mersham	M20 westbound on slip onto the M20 from Junction 10a From the start of the diverge from the new Junction 10a circulatory carriageway along its length to its merge with the M20 main carriageway, a length of 463 metres. As shown on sheets 1 and 3 of the speed limit plans.	70 miles per hour
Mersham, Sevington	Kingsford Street From a point 46 metres south-west of the current junction between Kingsford Street and Highfield Lane for a length of 137 metres to the point where the newly re-aligned road joins existing Kingsford Street. As shown on sheet 2 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option A only New A2070 link road (westbound) From the diverge of the link road from the	40 miles per hour

	M20 Junction 10a circulatory carriageway heading west along its length to its merge with the new A2070 roundabout circulatory carriageway for a distance of 722 metres. As shown on sheets 2 and 3 of the speed limit plans.	
Mersham, Sevington	In the event of construction of the A2070 Option A only New A2070 link road (eastbound) From the diverge of the link road from the new A2070 roundabout circulatory carriageway heading east along its length to its merge with the M20 Junction 10a circulatory carriageway for a distance of 693 metres. As shown on sheets 2 and 3 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option B only New A2070 link road (westbound) From the diverge of the link road from the M20 Junction 10a circulatory carriageway heading west along its length to its merge with the new Stour Park roundabout circulatory carriageway for a distance of 363 metres. As shown on sheet 4 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option B only New A2070 link road (westbound) From the diverge of the link road from the new Stour Park roundabout circulatory carriageway heading west along its length to its merge with the new A2070 roundabout circulatory carriageway for a distance of 288 metres. As shown on sheet 4 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option B only New A2070 link road (eastbound) From the diverge of the link road from the new A2070 roundabout circulatory carriageway heading east along its length to its merge with the new Stour Park roundabout circulatory carriageway for a distance of 288 metres. As shown on sheet 4 of the speed limit plans.	40 miles per hour
Mersham, Sevington	In the event of construction of the A2070 Option B only New A2070 link road (eastbound) From the diverge of the link road from the new Stour Park roundabout circulatory carriageway heading east along its length to its merge with the M20 Junction 10a	40 miles per hour

	<p>circulatory carriageway for a distance of 338 metres.</p> <p>As shown on sheet 4 of the speed limit plans.</p>	
Mersham, Sevington	<p>In the event of construction of the A2070 Option B only</p> <p>New Stour Park roundabout circulatory carriageway</p> <p>For the whole length of the circulatory carriageway around the new Stour Park roundabout, a length of 200 metres.</p> <p>As shown on sheet 4 of the speed limit plans.</p>	40 miles per hour
Sevington	<p>New A2070 roundabout circulatory carriageway</p> <p>For the whole length of the circulatory carriageway around the new A2070 roundabout, a length of 200 metres.</p> <p>As shown on sheet 3 of the speed limit plans.</p>	40 miles per hour
Ashford, Sevington	<p>A2070 Bad Munstereifel Road (southbound)</p> <p>From a point 74 metres south of the diverge from the M20 Junction 10 circulatory carriageway along its length to where it joins the A2070 roundabout circulatory carriageway for a total distance of 370 metres.</p> <p>As shown on sheets 1 and 3 of the speed limit plans.</p>	40 miles per hour
Ashford, Sevington	<p>A2070 Bad Munstereifel Road (northbound)</p> <p>From where it leaves the A2070 roundabout circulatory carriageway along its length to a point 70 metres south of the merge to the M20 Junction 10 circulatory carriageway for a total distance of 394 metres.</p> <p>As shown on sheets 1 and 3 of the speed limit plans.</p>	40 miles per hour
Sevington	<p>A2070 Bad Munstereifel Road (southbound)</p> <p>From where it leaves the A2070 roundabout circulatory carriageway along its length to a point 27 metres south of the centreline of the junction with Church Road for a total distance of 394 metres.</p> <p>As shown on sheet 3 of the speed limit plans.</p>	40 miles per hour
Sevington	<p>A2070 Bad Munstereifel Road (northbound)</p> <p>From a point 27 metres south of the centreline of the junction with Church Road along its length to where it joins the A2070 roundabout circulatory carriageway for a total distance of 395 metres.</p> <p>As shown on sheet 3 of the speed limit plans.</p>	40 miles per hour
Sevington	<p>Barrey Road</p> <p>From the junction with the A2070 to a point 46 metres to the west.</p> <p>As shown on sheet 3 of the speed limit plans.</p>	40 miles per hour

PART 6

TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

<i>Parish(es)</i> (1)	<i>Road name, number and length</i> (2)	<i>Measures</i> (3)
Ashford, Sevington	A2070 Bad Munstereifel Road (northbound) From point A to point B on sheets 1 and 3 of the traffic regulation measures plans, for a total distance of 369 metres.	Clearway (to include verges, hard shoulders and slip roads)
Ashford, Sevington	A2070 Bad Munstereifel Road (southbound) From point E to point F on sheets 1 and 3 of the traffic regulation measures plans, for a total distance of 369 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington	A2070 Bad Munstereifel Road (northbound) From point K to point L on sheet 3 of the traffic regulation measures plans, for a total distance of 341 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington	A2070 Bad Munstereifel Road (southbound) From point M to point N on sheet 3 of the traffic regulation measures plans, for a total distance of 333 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington	New A2070 roundabout circulatory carriageway For the whole length of the circulatory carriageway around the new A2070 roundabout, a length of 200 metres. As shown on sheet 3 of the traffic regulation measures plans.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option A only New A2070 link road (eastbound) From point H to point G on sheets 2 and 3 of the traffic regulation measures plans, for a total distance of 636 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option A only New A2070 link road (westbound) From point I to point J on sheets 2 and 3 of the traffic regulation measures plans, for a total distance of 657 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option B only New A2070 link road (eastbound) From point H to point R on sheet 4 of the traffic regulation measures plans, for a total distance of 288 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option B only New A2070 link road (eastbound)	Clearway (to include verges, hard shoulders and slip roads)

	From point O to point G on sheet 4 of the traffic regulation measures plans, for a total distance of 282 metres.	
Sevington, Mersham	In the event of construction of the A2070 Option B only New A2070 link road (westbound) From point I to point P on sheet 4 of the traffic regulation measures plans, for a total distance of 302 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option B only New A2070 link road (westbound) From point Q to point J on sheet 4 of the traffic regulation measures plans, for a total distance of 288 metres.	Clearway (to include verges, hard shoulders and slip roads)
Sevington, Mersham	In the event of construction of the A2070 Option B only New Stour Park roundabout circulatory carriageway For the whole length of the circulatory carriageway around the new Stour Park roundabout, a length of 200 metres. As shown on sheet 4 of the traffic regulation measures plans.	Clearway (to include verges, hard shoulders and slip roads)

PART 7

REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>Parish(es)</i> <i>(1)</i>	<i>Road name, number and length</i> <i>(2)</i>	<i>Title of Order</i> <i>(3)</i>	<i>Revocations or Variations</i> <i>(4)</i>
Ashford, Sevington	A2070 Bad Munstereifel Road From point C to point D on sheets 1 and 3 of the traffic regulation measures plans, a total distance of 748 metres.	The Kent County Council (Various Road, Ashford) (Prohibition of Waiting) (Clearway) Order 1995	Order to be varied to remove the existing clearway over this length.

PART 8

FOOTPATHS, CYCLE TRACKS AND FOOTWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Footpath/Cycle track/Footway</i>
Ashford Borough	337 metres combined footway and cycle track from point A to point B on the rights of way and access plans.
Ashford Borough	90 metres combined footway and cycle track from point C to point D on the rights of way and access plans.

Ashford Borough	288 metres cycle track with a right of way on foot from point E to point F on the rights of way and access plans.
Ashford Borough	In the event of construction of the A2070 Option A only, 1298 metres combined footway and cycle track from point F to point G on the rights of way and access plans.
Ashford Borough	In the event of construction of the A2070 Option B only, 874 metres combined footway and cycle track from point F to point N on the rights of way and access plans.
Ashford Borough	In the event of construction of the A2070 Option B only, 537 metres combined footway and cycle track from point O to point G on the rights of way and access plans.
Ashford Borough	425 metres cycle track with a right of way on foot from point G to point H on the rights of way and access plans.
Ashford Borough	50 metres footpath from point I to point K on the rights of way and access plans.
Ashford Borough	291 metres cycle track with a right of way on foot from point J to point K on the rights of way and access plans.
Ashford Borough	210 metres combined footway and cycle track from point K to point L on the rights of way and access plans.
Ashford Borough	81 metres combined footway and cycle track from point M to point N on the rights of way and access plans.

SCHEDULE 4

Article 15 and 25

PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

In relating this Schedule 4 to the rights of way and access plans, the provisions described herein are shown on the rights of way and access plans in the following manner—

- (a) Existing highways to be stopped up, as described in column 2 of Part 1 and Part 2 of this Schedule, are shown by thick black diagonal hatching (as shown in the key on the rights of way and access plans) over the extent of the area to be stopped up, which is described in column 3 of Part 1 and Part 2 of this Schedule.
- (b) New highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are included in column 4 of Part 2 of this Schedule, are shown by red cross-hatching (for motorways and trunk roads), blue cross-hatching (for other classified roads and highways) and solid blue shading (for footpaths, footways and cycle tracks) (as shown in the key on the rights of way and access plans) and are given a reference label (a capital letter in a circle) and will be a road unless the word ‘footpath’, ‘bridleway’, ‘footway’ or ‘cycle track’ appears beneath its reference letter in column 4 of Part 2 of this Schedule.
- (c) Private means of access to be stopped up, as described in column 2 of Parts 3 and 4 of this Schedule, are shown by solid black shading (as shown in the key on the rights of way and access plans) over the extent of stopping up described in column 3 of Parts 3 and 4 of this Schedule, and are given a reference label (a lower case letter in a circle).
- (d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are included in column 4 of Part 3 of this Schedule, are shown by black line hatching (as shown in the key on the rights of way and access plans) and are given a reference label (a number in a circle).

PART 1

HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> Area	<i>(2)</i> Highway to be stopped up	<i>(3)</i> Extent of stopping up
Mersham	Highfield Lane overbridge	From the junction with Kingsford Street to the junction with the A20 Hythe Road, a distance of 170 metres, shown on sheet 2 of the rights of way and access plans.
Ashford	Public right of way AU63C	From its crossing of the Old Mill Stream to where it meets public right of way AU53, a distance of 177 metres, shown on sheets 1 and 3 of the rights of way and access plans.
Sevington	Public right of way AE337A	From where it crosses the new A2070 link road to where it meets the Old Mill Stream, a distance of 260 metres, shown on sheet 3 of the rights of way and access plans.

Ashford	Public right of way AU65	From its crossing of the Old Mill Stream to where it meets public right of way AU53 to the north, a distance of 172 metres, shown on sheets 1 and 3 of the rights of way and access plans.
Ashford	Public right of way AU53	From where it crosses the Old Mill Stream to where it meets the M20 Junction 10 circulatory carriageway, a distance of 647 metres, shown on sheet 1 of the rights of way and access plans.
Mersham	Public right of way AE636	From where it meets the Old Mill Stream to where it meets Highfield Lane, a distance of 288 metres, shown on sheets 1, 2 and 3 of the rights of way and access plans.
Sevington	Public Right of Way AE338	From where it crosses the new A2070 link road to where it meets the Old Mill Stream, a distance of 120 metres, shown on the rights of way and access plans sheet 3.
Sevington	Public Right of Way AE339	From the Barrey Road/Church Road junction <u>west of the A2070 Bad Munstereifel Road</u> to where it meets <u>Church Road again, east of the A2070 Bad Munstereifel Road</u> , a distance of 160 <u>184</u> metres, shown on sheet 3 of the rights of way and access plans.

PART 2

HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1) Area</i>	<i>(2) Highway to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New highway to be substituted/provided</i>
Mersham	A20 Hythe Road	From the junction with Highfield Lane to a point 157 metres west on the existing A20, shown on sheet 2 of the rights of way and access plans.	Reference C Re-aligned A20 Hythe Road west from the M20 Junction 10a circulatory carriageway shown on sheets 1 and 2 of the rights of way and access plans.
Mersham	A20 Hythe Road	From the junction with Highfield Lane to a point 190 metres east on the existing A20, shown on sheet 2 of the rights of way and access plans.	Reference D Re-aligned A20 Hythe Road east from the M20 Junction 10a circulatory carriageway shown on sheets 1 and 2 of the rights of way and access plans.

Ashford	M20 Junction 10 eastbound on slip	From the diverge from the M20 Junction 10 main circulatory carriageway to the merge with the M20 eastbound main carriageway shown on sheet 1 of the rights of way and access plans.	Reference E M20 Junction 10a eastbound on slip shown on sheet 2 of the rights of way and access plans.
Ashford	M20 Junction 10 westbound off slip	From the diverge from the M20 westbound main carriageway to the merge with the M20 Junction 10 circulatory carriageway shown on sheet 1 of the rights of way and access plans.	Reference F M20 Junction 10a westbound off slip shown on sheet 2 of the rights of way and access plans.
Mersham	Kingsford Street and Highfield Lane	From a point on Kingsford Street 100 metres east of the junction with Highfield Lane, west to the junction with Highfield Lane and then south on Highfield Lane for a distance of 46 metres, shown on sheet 2 of the rights of way and access plans.	Reference I Re-aligned Kingsford Street and Highfield Lane shown on sheet 2 of the rights of way and access plans.
Sevington, Mersham	A2070 Bad Munstereifel Road (southbound)	From a point 220 metres south of the M20 Junction 10 circulatory carriageway to a point 68 metres north of the junction with Church Road, a distance of 550 metres, shown on sheet 3 of the rights of way and access plans.	References K, L and M Re-aligned A2070 Bad Munstereifel Road and new A2070 roundabout circulatory carriageway shown on sheet 3 of the rights of way and access plans.
Sevington	A2070 Bad Munstereifel Road (northbound)	From a point 220 metres south of the M20 Junction 10 circulatory carriageway to a point 68 metres north of the junction with Church Road, a distance of 550 metres, shown on sheet 3 of the rights of way and access plans.	References K, L and M Re-aligned A2070 Bad Munstereifel Road and new A2070 roundabout circulatory carriageway shown on sheet 3 of the rights of way and access plans.
Sevington	Church Lane overbridge	From point H to point G on sheet 3 of the rights of way and access plans.	Reference R A length of new cycle track (with a right of way on foot) to be known as the new Church Road footbridge shown on sheet 3 of the rights of way and access plans.
Sevington, Mersham	-	-	Reference A M20 Junction 10a eastbound off slip shown on sheet 1 of the rights of way and access plans.

Sevington, Mersham	-	-	Reference B M20 Junction 10a westbound on slip shown on sheets 1 and 3 of the rights of way and access plans.
Sevington, Mersham	-	-	Reference G New M20 Junction 10a circulatory carriageway shown on sheets 2 and 3 of the rights of way and access plans.
Mersham	-	-	Reference H A length of new cycle track (with a right of way on foot) to be known as the new Kingsford Street footbridge shown on sheet 2 of the rights of way and access plans.
Sevington, Mersham	-	-	Reference J In the event of construction of the A2070 Option A only, a new length of highway from the M20 Junction 10a circulatory carriageway to the new A2070 roundabout shown on the rights of way and access plans sheets 2 and 3.
Sevington	-	-	Reference N In the event of construction of the A2070 Option B only, a new length of highway from the M20 Junction 10a circulatory carriageway to the new Stour Park roundabout circulatory carriageway, shown on sheet 4 of the rights of way and access plans.
Sevington, Mersham	-	-	Reference O In the event of construction of the A2070 Option B only, a new Stour Park roundabout circulatory carriageway, shown on sheet 4 of the rights of way and access plans.
Sevington, Mersham	-	-	Reference P In the event of construction of the A2070 Option B only, a new

			length of highway from the new Stour Park roundabout circulatory carriageway to the new A2070 roundabout circulatory carriageway, shown on sheet 4 of the rights of way and access plans.
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PART 3

**PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A
SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS
WHICH ARE OTHERWISE TO BE PROVIDED**

<i>(1) Area</i>	<i>(2) PMA to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New PMA to be substituted/provided</i>
Mersham	-	-	Reference 1 A new private access to pond 3 from a point on the A20 Hythe Road, 60 metres north-west of the merge with the M20 Junction 10A circulatory carriageway, to where it meets pond 3, a distance of 75 metres, as shown on sheets 1 and 2 of the public rights of way and access plans.
Mersham	Reference c Access to field north of the A20 Hythe Road	At a point 60 metres north west of the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.	Reference 2 A new private access to field north of the A20 Hythe Road 95 metres from the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.
Sevington	Reference f Access to field north of the Old Mill Stream and south of the M20 main carriageway	A length from its junction with the local road that joins Church Road, just north of the Church Road footbridge, to a point 45 metres south of the Old Mill Stream, a distance of 278 metres, as shown on sheet 3 of the rights of way and access plans.	Reference 3 A new private access to pond 2 and field north of the Old Mill Stream, from a point on the southbound carriageway of the A2070, 88 metres north of the A2070 roundabout, to the Old Mill Stream, a distance of 153 metres, as shown on the rights of way and access plans sheet 3.

Sevington			Reference 4 A new private access to pond 1 from a point on the eastbound carriageway of the new A2070 link road, 370 metres west of the new M20 Junction 10a circulatory carriageway, to where it meets pond 1, a distance of 150 metres, as shown on the rights of way and access plans sheet 3.

PART 4

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

<i>(1) Area</i>	<i>(2) PMA to be stopped up</i>	<i>(3) Extent of stopping up</i>
Mersham	Reference a Access to Sweatman Mowers from the A20 Hythe Road	At a point 200 metres north-west of the junction with Highfield Lane as shown on sheet 1 of the rights of way and access plans.
Mersham	Reference b Access to the Wyevale Garden Centre from the A20 Hythe Road	At a point 110 metres north-west of the junction with Highfield Lane as shown on sheets 1 and 2 of the rights of way and access plans.
Mersham	Reference d Access to field north of the A20 Hythe Road	At a point 140 metres south east of the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.
Sevington	Reference e Access to field from Kingsford Street	At a point 310 metres south east of the junction with Highfield Lane as shown on sheet 2 of the rights of way and access plans.

SCHEDULE 5

Article 24

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1) Plot reference number shown on land plans</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
Land Plans – Sheet 2		
2/3/a	New right to install, operate and maintain lighting columns and cables including access with or without vehicles plant and machinery.	Work No. 16
2/4/b	<p>New right to construct, divert, remove, use and maintain utility connections and equipment including a mains gas pipeline including access with or without vehicles plant and machinery. <u>New right to construct and maintain noise bund No.1.</u></p> <p>New right to construct, operate and maintain eastbound off slip from the M20 and related works and mitigation measures including access with or without vehicles plant and machinery.</p>	Work Nos. 14, 21, 22
Land Plans – Sheet 3		
3/14/a	New right to construct, operate and maintain the Church Road overbridge and related works and mitigation measures including access with or without vehicles plant and machinery.	Work No. 8
3/16/d	New right to construct, divert, remove, use and maintain utility connections and equipment including a mains gas pipeline including access with or without vehicles plant and machinery.	Work No. 22
3/16/g	New right to construct, divert, remove, use and maintain utility connections and equipment including a mains gas pipeline including access with or without vehicles plant and machinery.	Work No. 22
Land Plans – Sheet 4		

4/1/d	New right to construct, use and maintain environmental mitigation measures including access with or without vehicles plant and machinery.	Work Nos. 1-29
4/16/a	New right to construct, use and maintain environmental mitigation measures including access with or without vehicles plant and machinery.	Work Nos. 1-29
4/16/b	New right to construct, use and maintain environmental mitigation measures including access with or without vehicles plant and machinery.	Work Nos. 1-29

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

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

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

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

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

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

“(1) In determining under section 8(1) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over or restrictive covenant affecting land consisting of a house, building or manufactory can be taken or imposed without material detriment or damage to the house, building or manufactory; or
- (b) a right over or restrictive covenant affecting land consisting of a park or garden belonging to a house can be taken or imposed without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right or the imposition of the restrictive covenant but also the use to be made of the right or restrictive covenant proposed to be acquired or imposed, and, in a case where the right or restrictive covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read

(a) 1973 c.26.

(b) Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(according to the requirements of the particular context) as referring to, or as including references to-

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

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

4. For section 7 (measure of compensation [in case of severance](#)) of the 1965 Act substitute—

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

5. For section 8 ([other](#) provisions as to divided land) of the 1965 Act substitute -

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

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

the M20 Junction 10a Development Consent Order 201[](a) (“the Order”), in relation to that person, ceases to authorise the purchase of the right or imposition of the restrictive covenant and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

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

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

(a) S.I. [] []

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

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

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

7. Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (~~penalty for unauthorised entry~~) and 13(c) (~~entry on warrant in the event of obstruction~~~~refusal to give possession to acquiring authority~~) of the 1965 Act are modified correspondingly.

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

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

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- (a) a Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.
 - (b) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (c) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (d) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

SCHEDULE 7

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) Location	(2) Plot Reference Number(s) shown on land plans	(3) Purpose for which temporary possession may be taken	(4) Relevant part of the authorised development
Land Plans - Sheet 1			
Ashford	1/1/a	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	1/1/b	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Land Plans - Sheet 2			
Ashford	2/1/c	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	2/1/d	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	2/1/e	Upgrading existing road markings, traffic signals and signs.	Work No. 7
Ashford	2/1/g	<u>The strengthening of the existing Swatfield Bridge on the A20 Hythe Road.</u> Upgrading existing lighting and installing new lighting. <u>Diversion works to telecoms equipment, water pipeline and power cables.</u>	Work Nos. <u>11, 16, 24, 25, 26, 27 and 28</u>
Ashford	2/2/a	Use as a site compound area.	Work Nos. 1-29
Ashford	2/5/a	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.	Work Nos. 16, 24, 25
<u>Ashford</u>	<u>2/5/aa</u>	<u>Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.</u>	<u>Work Nos. 16, 24 and 25</u>
Ashford	2/6/a	Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.	Work Nos. 16, 24, 25
<u>Ashford</u>	<u>2/6/aa</u>	<u>Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment and water pipeline.</u>	<u>Work Nos. 16, 24 and 25</u>

<u>Ashford</u>	<u>2/8/aa</u>	<u>Upgrading existing lighting and installing new lighting. Diversion works to telecoms equipment, water pipeline and power cables.</u>	<u>Work Nos. 16, 24, 25, 26, 27 and 28</u>
Land Plans – Sheet 3			
Ashford	3/14/c	Traffic sign amendments.	Work No. 9
Ashford	3/16/c	Use as a site compound area.	Work Nos. 1-29
Land Plans – Sheet 4			
Mersham	4/1/b	Realignment of the A20 Hythe Road. <u>Diversion works to telecoms equipment, water pipeline and power cables.</u>	<u>Work Nos. 17, 25, 26, 27 and 28</u>
<u>Mersham</u>	<u>4/1/bb</u>	<u>Re-alignment of the A20 Hythe Road.</u>	<u>Work No. 17</u>
Mersham	4/1/g	Alteration work to the existing Kingsford Street. <u>Diversion works to telecoms equipment and power cables.</u>	<u>Work Nos. 5, 24 and 28</u>
Mersham	4/1/h	Alteration work to the existing A20 and installation of new traffic signs.	Work No. 17

SCHEDULE 8

Article 39

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1) <i>Type of tree</i>	(2) <i>Work to be carried out</i>	(3) <i>Relevant part of the authorised development</i>
<p>Group G37 <u>TPO No. 15 1997</u> (Ashford Borough Council) TPO group containing field maple (<i>Acer campestre</i>), hazel (<i>Corylus avellana</i>) and Italian alder (<i>Alnus cordata</i>).</p>	<p>Tree group to be removed to enable works</p>	<p>Work Nos. 9, 20</p>
<p>Woodland W1 <u>TPO No. 22 1998</u> (Ashford Borough Council) Woodland area, alder (<i>Alnus glutinosa</i>), sycamore (<i>Acer pseudoplatanus</i>), ash (<i>Fraxinus excelsior</i>) with occasional mature willow (<i>Salix spp.</i>), poplar (<i>Populus tremula</i>). Elder (<i>Sambuca</i>) understory. Corner bordering Pilgrims' Hospice is subject to a TPO.</p>	<p>Localised disturbance to tree roots or removal of individual trees adjacent to the Swatfield Bridge, to enable strengthening and level adjustment works to be carried out.</p>	<p>Work Nos. 11, 16</p>

PROTECTIVE PROVISIONS

PART 1

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

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

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means-

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986 for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker-
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means-

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

On street apparatus

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

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 15 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 14 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to

obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

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

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

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

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

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, or involve embankment works within 10 metres of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

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

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

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

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)(b) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications code network” means-

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

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

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 33 (statutory undertakers) is subject to paragraph 23 of Schedule 2 (undertaker’s works) to the Telecommunication Act 1984(d).

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from the authorised development-

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

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

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

(5) This Part of this Schedule does not apply to—

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

(a) 2003 c. 21.

(b) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(c) See section 106 of the 2003 Act.

(d) 1984 c. 12. Paragraph 23 was amended by section 190 of, and paragraph 68 of schedule 25 and part 1 of schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and schedule 18 to, the Electricity Act 1989 (c. 29) and section 106(2) of, and paragraphs 1, 5(d) and 8 of schedule 3 to, the Communications Act 2003.

- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

PART 3

FOR THE PROTECTION OF NATIONAL GRID

~~18. The following provisions apply for the protection of National Grid unless otherwise agreed in writing between the undertaker and National Grid.~~

Interpretation

~~19. In this Part of this Schedule:~~

~~“1991 Act” means the New Roads and Street Works Act 1991;~~

~~“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;~~

~~“apparatus” means—~~

~~(a) in the case of National Grid Electricity Transmission Plc, electric lines or electrical plant as defined in the Electricity Act 1989 belonging to or maintained by National Grid Electricity Transmission Plc;~~

~~(b) in the case of National Grid Gas Plc, any mains, pipes or other apparatus belonging to or maintained by National Grid Gas Plc for the purposes of gas supply;~~

~~together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;~~

~~“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;~~

~~“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;~~

~~“functions” includes powers and duties;~~

~~“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;~~

~~“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, is to require the undertaker to submit for National Grid’s approval a ground mitigation scheme;~~

~~“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;~~

~~“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;~~

~~“maintain” includes inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly;~~

~~“National Grid” means National Grid Electricity Transmission Plc, company number 2366977 and National Grid Gas Plc, company number 2006000, both companies registered at 1-3 Strand, London WC2N 5EH;~~

~~“plan” or “plans” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;~~

~~“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:~~

~~(c) will or may be situated over, or within 15 metres measured in any direction, of any apparatus the removal of which has not been required by the undertaker pursuant to paragraph 7(2) or otherwise;~~

~~(d) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker pursuant to paragraph 7(2) or otherwise; or~~

~~(e) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, high pressure gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).~~

~~20. Except for paragraphs 21 (apparatus of National Grid in stopped up streets), 26 (retained apparatus: protection of National Grid as gas undertaker), 27 (retained apparatus: protection of National Grid as electricity undertaker) and 28 (expenses) of this Part of this Schedule, which will apply in respect of the exercise of all of the powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.~~

Apparatus of National Grid in stopped up streets

~~21.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in this Order, where any street is stopped up under article 15 (permanent stopping up and restriction of use of streets and private means of access), if National Grid has any apparatus in the street, or accessed via that street, National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway.~~

~~(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 14 (temporary stopping up and restriction of use of streets), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.~~

Protective works to buildings

~~22.—(1) The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity and/or gas, as the case may be, by National~~

~~Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must pay compensation to National Grid for any loss sustained by it.~~

~~(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof is to be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.~~

Acquisition of land

~~23.— (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not acquire any land interest or apparatus or override any easement and/or other interest of National Grid otherwise than by agreement.~~

~~(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably.~~

~~(3) Unless otherwise agreed by National Grid, the terms and conditions referred to in sub-paragraph (2) must be no less favourable on the whole to National Grid and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.~~

~~(4) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, right, agreement or licence granted, used, enjoyed or exercised by National Grid or other enactment relied upon by National Grid in relation to the apparatus, then the provisions in this Part of this Schedule prevail.~~

~~(5) Any agreement or consent granted by National Grid under paragraph 26 or 27 or any other paragraph of this Part of this Schedule is not to be taken to constitute agreement under sub-paragraph (1).~~

Removal of apparatus

~~24.— (1) If, in the exercise of the agreement reached in accordance with paragraph 23 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).~~

~~(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its~~

~~apparatus) the undertaker must, subject to sub paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 25(1) below) the necessary facilities and rights—~~

~~(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and~~

~~(b) subsequently for the maintenance of that apparatus.~~

~~(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its powers of compulsory acquisition unless it elects to do so.~~

~~(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.~~

~~(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub paragraphs (2) and (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.~~

Facilities and rights for alternative apparatus

~~25.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.~~

~~(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 32 (arbitration) of this Part of this Schedule and the arbitrator is to make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.~~

Retained apparatus: protection of National Grid as gas undertaker

~~26.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.~~

~~(2) The plan to be submitted to National Grid under sub paragraph (1) must include a method statement and describe—~~

~~(a) the exact position of the works;~~

~~(b) the level at which the works are proposed to be constructed or renewed;~~

~~(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;~~

~~(d) the position of all apparatus;~~

~~(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and~~

~~(f) any intended maintenance regimes.~~

~~(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the submitted plan.~~

~~(4) Any approval of National Grid required under sub-paragraph (3) —~~

~~(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) and (7); and~~

~~(b) must not be unreasonably withheld.~~

~~(5) In relation to any work to which sub-paragraph (1) or (2) applies, National Grid may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.~~

~~(6) Works to which this paragraph applies must be executed in accordance with the plan submitted under sub-paragraph (1) as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable conditions as may be made in accordance with sub-paragraph (4) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to inspect the execution of those works.~~

~~(7) Where National Grid reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's reasonable satisfaction prior to the commencement of the authorised works for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).~~

~~(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 24(2).~~

~~(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the relevant authorised works, a new plan instead of the plan previously submitted and having done so the provisions of this paragraph will apply to and in respect of the new plan.~~

~~(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must —~~

~~(a) comply with sub-paragraphs (5) and (7) insofar as is reasonably practicable in the circumstances; and~~

~~(b) comply with sub-paragraph (11) at all times.~~

~~(11) At all times when carrying out any works authorised under this Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus 'Specification for safe working in the vicinity of National Grid, high pressure gas pipelines and associated installation requirements for third parties T/SP/SSW22' and the Health and Safety Executive's 'HS(-G)47 Avoiding danger from underground services'.~~

Retained apparatus: protection of National Grid as electricity undertaker

~~27. (1) Not less than 56 days before the commencement of any specified works that will or may affect any apparatus, the removal of which has not been required by the undertaker under paragraph 24(2) or otherwise, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of its electricity tower foundations.~~

~~(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—~~

- ~~(a) the exact position of the works;~~
- ~~(b) the level at which the works are proposed to be constructed or renewed;~~
- ~~(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;~~
- ~~(d) the position of all apparatus;~~
- ~~(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and~~
- ~~(f) any intended maintenance regimes.~~

~~(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—~~

- ~~(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;~~
- ~~(b) demonstration that pylon foundations will not be affected prior to, during and post construction;~~
- ~~(c) details of load bearing capacities of trenches;~~
- ~~(d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;~~
- ~~(e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;~~
- ~~(f) written details of the operations and maintenance regime for the cable, including frequency and method of access;~~
- ~~(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and~~
- ~~(h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.~~

~~(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) applies until National Grid has given written approval of the plan so submitted.~~

~~(5) Any approval of National Grid required under sub-paragraph (4) —~~

- ~~(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and~~
- ~~(b) must not be unreasonably withheld.~~

~~(6) In relation to any work to which sub-paragraph (2) or (3) applies, National Grid may require such modifications to be made to the plan submitted under sub-paragraph (1) as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.~~

~~(7) Works to which this paragraph applies must only be executed in accordance with the plan submitted under sub-paragraph (1) as approved, or as amended from time to time by agreement between the undertaker and National Grid, and in accordance with such reasonable conditions as may be made in accordance with sub-paragraph (5) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to inspect the execution of those works.~~

~~(8) Where National Grid reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's reasonable satisfaction prior to the commencement of the authorised works for which protective works are required and National Grid must give 56 days' notice of~~

~~such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).~~

~~(9) If National Grid in accordance with sub paragraph (6) or (8) and in consequence of the works proposed by the undertaker reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 18 to 20 and 23 to 25 apply as if the removal of the apparatus had been required by the undertaker under paragraph 24(2).~~

~~(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the relevant authorised works, a new plan instead of the plan previously submitted and having done so the provisions of this paragraph will apply to and in respect of the new plan.~~

~~(11) The undertaker will not be required to comply with sub paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—~~

- ~~(a) comply with sub paragraphs (6) and (8) insofar as is reasonably practicable in the circumstances; and~~
- ~~(b) comply with sub paragraph (12) at all times.~~

~~(12) At all times when carrying out any works authorised under this Order the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 'Avoidance of Danger from Overhead Lines'.~~

Expenses

~~28. (1) Subject to the following provisions of this paragraph the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably incurred by National Grid in, or in connection with, the inspection, removal, relaying, replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—~~

- ~~(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - ~~(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 24(3); and/or~~
 - ~~(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;~~~~
- ~~(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;~~
- ~~(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;~~
- ~~(d) the approval of plans;~~
- ~~(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and~~
- ~~(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.~~

~~(2) There will be deducted from any sum payable under sub paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.~~

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

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

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

~~and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess.~~

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

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

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

~~(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.~~

Enactments and agreements

~~29. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.~~

Co-operation

~~30.— (1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 24(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 26 or 27, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.~~

~~(2) For the avoidance of doubt, whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.~~

Access

~~31. If in consequence of the agreement reached in accordance with paragraph 23(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.~~

Arbitration

~~32. Save for differences or disputes arising under paragraph 24(2), 24(4), 25(1), 26 or 27 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 46 (arbitration).~~

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

~~32.18.~~ The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

~~33.19.~~ In this Part of this Schedule—

“access route” means an access route used by the Agency prior to the commencement of construction of a specified work for accessing a drainage work;

“the Agency” means the Environment Agency;

“construction” includes placing, altering, replacing, relaying and removing and “construct” and “constructed” are to be construed accordingly;

“drainage work” means any watercourse forming part of a main river as defined in the Water Resources Act 1991 and includes any land which provides or is expected to provide flood storage capacity for any such watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“fishery” means any waters containing fish and fish in such waters and the spawn, habitat or food of such fish;

“maintenance” has the same meaning as in article 2(1);

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a drainage work or is otherwise likely to-

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; and

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

~~34.20.~~—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 44.

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

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 8 weeks of the submission of the plans or receipt of further particulars if such particulars have been required by the Agency for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work, fishery or water resources, for the prevention of flooding or pollution or in the discharge of its environmental duties including those under the Environment Act 1995, the Natural Environment and Rural Communities Act 2006 and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003.

(4) Any requirement made by the Agency under sub-paragraph (3)(c) may include—

- (a) a requirement for the undertaker to carry out monitoring during the implementation of any de-watering scheme approved by the Agency under this paragraph and to supply data arising from that monitoring to the Agency; and
- (b) a requirement for the undertaker not to prevent or materially restrict the Agency's use of any access route during construction of the specified work or, where that is not possible owing to the nature of the work, a requirement for the undertaker to provide for use by the Agency during construction of the specified work a reasonably suitable alternative to the access route.

(5) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

35.21. Without limitation on the scope of paragraph 35, but subject always to the provisions of that paragraph as to reasonableness, the requirements which the Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work.

36.22.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 36, must be constructed-

- (a) without unnecessary or unreasonable delay;
- (b) in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (c) to the reasonable satisfaction of the Agency,

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

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

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

(5) Subject to sub-paragraph (6) and paragraph 40 if, within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the

works specified in the notice and any expenditure incurred by it in so doing is recoverable from the undertaker.

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

37-23.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of a specified work until the date falling 12 months from the date of completion of such specified work (“the maintenance period”), maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence. Upon the expiry of the maintenance period, the drainage work must be maintained by the highway authority of the highway to which the specified work relates.

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

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

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of this Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

38-24. Subject to paragraph 40, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

39-25. Except in an emergency nothing in paragraphs 37(5), 38(3) and 39 authorises the Agency to execute works on or affecting an adopted highway without the prior consent in writing of the highway authority for the adopted highway in question, such consent not to be unreasonably withheld or delayed.

40-26. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

41-27. Any dispute arising between the undertaker and the Agency under this Part of this Schedule is to be determined by arbitration.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to construct a new junction 10a on the M20 and carry out all associated works.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, book of reference and environmental statement mentioned in this Order and certified in accordance with article 43 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Highways England, Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.