

2015 No. 129

INFRASTRUCTURE PLANNING

**The A160/A180 (Port of Immingham Improvement)
Development Consent Order 2015**

Made - - - - *4th February 2015*

Coming into force - - *25th February 2015*

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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) under Chapter 3 of part 6 of the 2008 Act and carried out 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The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83(1) of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application with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.

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, 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 A160/A180 (Port of Immingham Improvement) Development Consent Order 2015 and comes into force on 25th February 2015.

Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

(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 and S.I. 2013/755.

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

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1980 c. 66.

(g) 1981 c. 66.

(h) 1984 c. 27.

(i) 1990 c. 8.

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

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

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

“Air Products (BR) Limited” means the company of that name, company number 02532156, whose registered office is at Hersham Place Technology Park, Molesey Road, Walton on Thames, Surrey, KT12 4RZ;

“Anglian Water” means Anglian Water Services Limited, company number 02366656, whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire PE29 6YJ;

“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 them 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;

“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;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(c);

“E.ON UK Gas Limited” means the company of that name, company number 02436332, whose registered office is at Westwood Way, Westwood Business Park, Coventry, CV4 8LG;

“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;

“environmental statement” means the document submitted alongside the application for this Order, together with any addendums submitted, and certified as the environmental statement by the Secretary of State for the purposes of this Order;

“escorted vehicles” means Part 2 vehicles and Part 2 vehicle-combinations as defined in article 3 of the Road Vehicles (Authorisation of Special Types) (General) Order 2003(d), and any attendants employed in accordance with Schedule 6 to that Order;

“footway” and “footpath” have the same meaning as in the 1980 Act;

“Heron Wind Limited” means the company of that name, company number 07640868, whose registered office is at 11th Floor, 140 London Wall, London, EC2Y 5DN;

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

“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 5 (limits of deviation);

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

(a) 1991 c. 22.

(b) 2008 c. 29.

(c) 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).

(d) S.I. 2003/1998.

“National Grid Gas plc” means the company of that name, company number 02006000, whose registered office is at 1-3 Strand, London, WC2N 5EH;

“Northern Powergrid” means Northern Powergrid Limited, company number 03271033, whose registered office is at Lloyds Court, 78 Grey Street, Newcastle upon Tyne, NE1 6AF;

“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;

“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;

“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;

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

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

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

- (a) section 10(b) or 19(1) 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
- (d) any other enactment;

“Vitol Power Immingham” means VPI Immingham LLP, company number OC300980, whose registered office is at Belgrave House, 76 Buckingham Palace Road, London SW1W 9TQ;

“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 air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised 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 rights of way and access plans.

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

(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.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3. Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the Secretary of State is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

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

Limits of deviation

5.—(1) Subject to paragraph (2), in carrying out the authorised development the Secretary of State may—

- (a) in relation to all authorised development, deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in relation to Work No.28, deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 0.15 metres upwards or downwards; and
- (c) in relation to all authorised development other than Work No.28, deviate vertically from the levels of the authorised development shown on the engineering drawings and sections, to a maximum of 0.5 metres upwards or downwards.

(2) Any deviation under paragraph (1) is only permitted if it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the Secretary of State have effect solely for the benefit of the Secretary of State.

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

- (a) Northern Powergrid in relation to Work Nos. 9 and 11;
- (b) Anglian Water in relation to Work Nos. 10 and 12;
- (c) Vitol Power Immingham in relation to Work No. 14;
- (d) National Grid Gas plc in relation to Work Nos. 15 and 16;
- (e) E.ON UK Gas Limited in relation to Work No. 17;
- (f) Heron Wind Limited in relation to Work No. 18; and
- (g) Air Products (BR) Limited in relation to Work No. 30.

Consent to transfer benefit of Order

7.—(1) The Secretary of State 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 Secretary of State and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the Secretary of State 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 Secretary of State, except in paragraph (3) or where the reference is to a consenting function of the Secretary of State, includes 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 Secretary of State.

(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) Northern Powergrid for the purposes of undertaking Work Nos. 9 and 11;
- (b) Anglian Water for the purposes of undertaking Work Nos. 10 and 12;
- (c) Vitol Power Immingham for the purposes of undertaking Work No. 14;
- (d) National Grid Gas plc for the purposes of undertaking Work Nos. 15 and 16;
- (e) E.ON UK Gas Limited for the purposes of undertaking Work No. 17;
- (f) Heron Wind Limited for the purposes of undertaking Work No. 18; or
- (g) Air Products (BR) Limited for the purposes of undertaking Work No. 30.

Application and modification of legislative provisions

8. Nothing in the following legislative provisions, including any requirements for consent, applies to the authorised development—

- (a) Humber Commercial Railway and Dock Act 1904(a); and
- (b) Barton and Immingham Light Railway Order 1908.

PART 3 STREETS

Application of the 1991 Act

9.—(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 highway authority, might have been carried out in exercise of the powers conferred by section 64(b) (dual carriageways and roundabouts) of the 1980 Act or section 184 (vehicle crossings over footways and verges) of that Act.

(a) 1904 c. lxxxv.

(b) 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).

(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 Secretary of State.

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

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial street works);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (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 promoter under the powers conferred by article 13 (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 (a) referred to in paragraph (4) are—

- section 54(b) (advance notice of certain works), subject to paragraph (6);
- section 55(c) (notice of starting date of works), subject to paragraph (6);
- section 57(d) (notice of emergency works);
- section 59(e) (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);
- 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 10 (construction and maintenance of new, altered or diverted streets) —

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the Secretary of State 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

(a) 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).

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

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

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

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

- (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

10.—(1) Any street (other than 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 street lies and, unless otherwise agreed with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.

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

(3) Where a highway is de-trunked under this Order—

- (a) section 265 (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that road; and
- (b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that de-trunking must, unless otherwise agreed with the local highway authority, be maintained by and at the expense of the local highway authority from the date of de-trunking.

(4) In the case of a bridge constructed under this Order to carry a public right of way, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the Secretary of State.

(5) In any action against the Secretary of State in respect of loss or damage resulting from any failure by the Secretary of State 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 Secretary of State 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.

(6) For the purposes of a defence under paragraph (5), 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 Secretary of State knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the Secretary of State 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 Secretary of State 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 Secretary of State 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.

11.—(1) On the date on which the roads described in Parts 1 and 2 of Schedule 3 (classification of roads, etc.) are completed and open for traffic—

- (a) the roads described in Part 1 (trunk roads) of Schedule 3 are to become trunk roads as if they had become so by virtue of an order under section 10(2) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads;
 - (b) the roads described in columns (1) and (2) of Part 2 (other road classifications) of Schedule 3 cease to have the classification specified in column (3) of that Part and take the classification specified in column (4) of that Part; and
 - (c) the roads given a classification in column (4) of Part 2 of Schedule 3 are to be 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.
- (2) On such day as the Secretary of State may determine, the roads described in Part 3 (roads to be de-trunked) of Schedule 3 are to—
- (a) cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads; and
 - (b) be classified as specified in column (4) of that Part as if such classification had been made under section 12(3) of the Highways Act 1980.
- (3) From the date on which the roads specified in Part 4 of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding 30 miles per hour in the lengths of road identified in that Part of that Schedule.
- (4) From the date on which the roads specified in Part 5 of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of road identified in that Part of that Schedule.
- (5) From the date on which the roads specified in Part 6 of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding 50 miles per hour in the lengths of road identified in that Part of that Schedule.
- (6) From the date on which the roads specified in columns (1) and (2) of Part 7 of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a weight exceeding the weight limit specified in column (3) of that Part of that Schedule in the length of road identified, except where required for access to a property located along such lengths of road.
- (7) From such a day as the Secretary of State may determine, the roads specified in columns (1) and (2) of Part 8 of Schedule 3 will be subject to the restrictions specified in column (3) of that Part of that Schedule.
- (8) From the date on which the roads specified in Part 9 of Schedule 3 are open for traffic they will be subject to one way restrictions to the extent specified in column (2) of that Part of that Schedule.
- (9) From the date on which the road specified in Part 10 of Schedule 3 is open for traffic it will be restricted to escorted vehicles to the extent specified in column (2) of that Part of that Schedule.
- (10) Unless otherwise agreed with the relevant planning authority the cycle tracks and footways set out in Part 11 of Schedule 3 and identified on the rights of way and access plans are to be constructed by the Secretary of State in the specified locations and open for use from the date on which the authorised development is open for traffic.
- (11) Unless otherwise agreed with the relevant land owner the private accesses set out in Part 12 of Schedule 3 and identified on the rights of way and access plans are to be constructed by the Secretary of State in the specified locations and open for use from the date on which the authorised development is open for traffic.
- (12) Unless otherwise agreed with the relevant landowner the public right of way set out in Part 13 of Schedule 3 and identified on the rights of way and access plans is to be constructed by the Secretary of State.

(13) Unless otherwise agreed with the relevant landowner the permissive right of way set out in Part 14 of Schedule 3 and identified on the rights of way and access plans is to be diverted by the Secretary of State as shown on those plans during the construction of the authorised development.

(14) The application of paragraphs (1) to (13) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Permanent stopping up and restriction of use of streets

12.—(1) Subject to the provisions of this article, the Secretary of State may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 (permanent stopping up of streets) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

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

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 4 (streets 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 to be stopped up.

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

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

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

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

(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 31 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary stopping up and restriction of use of streets

13.—(1) The Secretary of State, 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 Secretary of State may use any street temporarily stopped up or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The Secretary of State 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 Secretary of State must not temporarily stop up, alter, divert or restrict the use of any street for which it is not 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.

(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 Secretary of State of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Access to works

14. The Secretary of State 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 Secretary of State reasonably requires for the purposes of the authorised development.

Clearways

15.—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except as provided for in paragraph (2) or upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(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 or operation of the road;
 - (iii) the laying, erection, maintenance or renewal 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
 - (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 the 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(b); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;

(a) 1984 c. 12.

(b) 1991 c. 56.

(c) 2000 c. 26.

- (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 Part 1 of Schedule 3 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(a).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) Subject to paragraphs (3) and (4), the Secretary of State may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised 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 Secretary of State 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(b).

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

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

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

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

(8) In this article—

(a) 2004 c. 18.
(b) 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).
(c) S.I. 2010/675, as amended by S.I. 2011/2043 and S.I. 2013/390; there are other amending instruments but none are relevant.

- (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, used both in this article and in the Water Resources Act 1991^(a) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the Secretary of State 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

17.—(1) Subject to the following provisions of this article, the Secretary of State may, at the Secretary of State’s own expense, carry out such protective works to any building which may be affected by the authorised development as the Secretary of State 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 Secretary of State may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the Secretary of State 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 Secretary of State 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 intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 40 (arbitration).

(7) The Secretary of State 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

(a) 1991 c. 57.

- (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 Secretary of State must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the Secretary of State from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance)(a) 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 land

18.—(1) The Secretary of State 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 on the scope of sub-paragraph (a), make trial holes in such positions on the land as the Secretary of State thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on 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 Secretary of State—

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

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

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

but such consent must not be unreasonably withheld.

(5) The Secretary of State 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.

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

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

- (a) under paragraph (4)(a) in the case of a 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

19.—(1) The Secretary of State may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental to, it.

(2) This article is subject to paragraph (2) of article 22 (compulsory acquisition of rights) and paragraph (8) of article 28 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

20. Part 2 of Schedule 2 (minerals) to the Acquisition of Land Act 1981^(a) is incorporated in this Order subject to the modification that for “the acquiring authority” substitute “the Secretary of State”.

Time limit for exercise of authority to acquire land compulsorily

21.—(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 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 28 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the Secretary of State 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

22.—(1) Subject to paragraph (2), the Secretary of State may acquire such rights over the Order land as may be required for any purpose for which that land may be acquired under article 19 (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 Secretary of State’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) 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 Secretary of State acquires a right over land under paragraph (1) or (2), the Secretary of State is not required to acquire a greater interest in that land.

(a) 1981 c. 67.

(4) 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.

Private rights over land

23.—(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 Secretary of State, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Secretary of State under section 11(1) (powers 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 under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the Secretary of State 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 Secretary of State takes temporary possession under this Order are suspended and unenforceable for as long as the Secretary of State 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 30 (statutory undertakers) applies.

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

- (a) any notice given by the Secretary of State before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights over or affecting the land;
 - (ii) the Secretary of State's appropriation of it;
 - (iii) the Secretary of State's entry onto it; or
 - (iv) the Secretary of State'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 Secretary of State 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 Compulsory Purchase (Vesting Declarations) Act 1981

24.—(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 3 (preliminary notices) for subsection (1) substitute—

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

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(5) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(6) In that section, for subsections (5) and (6) substitute—

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

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

- (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

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

(9) 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 air-space only

25.—(1) The Secretary of State may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in paragraph (1) of article 19 (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 Secretary of State acquires any part of, or rights in, the subsoil of or the air-space over land referred to in paragraph (1), the Secretary of State is not required to acquire an interest in any other part of the land.

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

Acquisition of part of certain properties

26.—(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 Secretary of State 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 Secretary of State agrees to take the land subject to the counter-notice, to be referred to the tribunal.

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

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

the owner must sell the land subject to the notice to treat.

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

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

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

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

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

the notice to treat 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 Secretary of State is authorised to acquire compulsorily under this Order.

(8) If the Secretary of State 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 Secretary of State 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 Secretary of State 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 Secretary of State 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

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

(2) Subject to paragraph (3), the Secretary of State 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 Secretary of State 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 an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

28.—(1) The Secretary of State 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 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, or any other mitigation works.

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) but excluding plots with reference numbers 1/1t, 1/1w, 1/1y, 1/1ag, 1/1ah, 1/1ak, 2/2b, 2/2c, 2/2e, 2/2f, 2/5a, 2/5c, 2/5d, 2/5e, 2/5i, 2/5j, 2/6a, 2/6c, 2/7b, 2/7d, 2/7f, 2/7g, 2/8a, 4/1d, 4/1g and 4/1j, 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;
- (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 Secretary of State 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; or
- (c) in the case of the plots with reference numbers 1/1t, 1/1w, 1/1y, 1/1ag, 1/1ah, 1/1ak, 2/2b, 2/2c, 2/2e, 2/2f, 2/5a, 2/5c, 2/5d, 2/5e, 2/5i, 2/5j, 2/6a, 2/6c, 2/7b, 2/7d, 2/7f, 2/7g, 2/8a, 4/1d, 4/1g and 4/1j, after the new rights have been created under article 22 (compulsory acquisition of rights).

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Secretary of State must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Secretary of State 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 Secretary of State 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 Secretary of State may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the Secretary of State is not precluded from—

- (a) acquiring new rights over any part of that land under article 22; or
- (b) acquiring any part of the subsoil of or air-space over (or rights in the subsoil of or air-space over) that land under article 25 (acquisition of subsoil or air-space only).

(9) Where the Secretary of State takes possession of land under this article, the Secretary of State 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 Secretary of State to take temporary possession of any land which the Secretary of State is not authorised to acquire under article 19 (compulsory acquisition of land) or article 22.

Temporary use of land for maintaining the authorised development

29.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the Secretary of State 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; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

(6) The Secretary of State 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 Secretary of State takes possession of land under this article, the Secretary of State 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 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) 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

30.—(1) Subject to the provisions of Schedule 8 (protective provisions) and paragraph (2), the Secretary of State may—

- (a) acquire compulsorily, or acquire new rights over, the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired or used permanently or temporarily and described in the book of reference;

- (b) extinguish the rights of, 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 31 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

31.—(1) Where a street is stopped up under article 12 (permanent stopping up and restriction of use of streets), 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 12 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 Secretary of State 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 Secretary of State 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 Secretary of State, 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 Secretary of State and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

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

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

Recovery of costs of new connections

32.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 30 (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 Secretary of State compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 30, 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 Secretary of State 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 31 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

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

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

PART 6 OPERATIONS

Felling or lopping of trees

33.—(1) The Secretary of State may fell or lop any tree or shrub, or cut back any roots, within or overhanging land within the Order limits, if the Secretary of State 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

(a) 2003 c. 21.

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the Secretary of State must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

34.—(1) This article applies to—

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

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

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

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

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

Operational land for purposes of the 1990 Act

35. 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

36.—(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—

(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.

- (i) relates to premises used by the Secretary of State for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974(a); or
- (ii) is a consequence of the construction or maintenance of the authorised 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) of the Control of Pollution Act 1974 and section 65(8) of that Act, do not apply where the consent relates to the use of premises by the Secretary of State for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

37. Schedule 8 (protective provisions) to the Order has effect.

Certification of plans, etc.

- 38.—(1) As soon as practicable after the making of this Order, copies of—
- (a) the book of reference (Parts 1 to 5) (TR010007/APP/13c), Revision 1;
 - (b) the land plans (TR010007/APP/11)—
 - TR010007/APP/11/(A), Revision 0;
 - TR010007/APP/11/(B), Revision 0;
 - TR010007/APP/11/(C), Revision 0;
 - TR010007/APP/11/(D), Revision 0;
 - TR010007/APP/11/(E), Revision 0;
 - (c) the street, rights of way and access plans (TR010007/APP/21.1)—
 - TR010007/APP/21.1 (A), Revision 0;
 - TR010007/APP/21.1 (B), Revision 0;
 - TR010007/APP/21.1 (C), Revision 1;
 - TR010007/APP/21.1 (D), Revision 1;
 - TR010007/APP/21.1 (E), Revision 1;
 - (d) the works plans (TR010007/APP/12)—
 - TR010007/APP/12 (A), Revision 0;
 - TR010007/APP/12 (B), Revision 0;
 - TR010007/APP/12 (C), Revision 1;
 - TR010007/APP/12 (D), Revision 0;
 - TR010007/APP/12 (E), Revision 0;
 - (e) the engineering drawings and sections—
 - (i) General Arrangements (TR010007/APP/23.1)—
 - TR010007/APP/23.1(A), Revision 0;

(a) 1974 c. 40. Section 61 and 65 were amended by section 162 of, and paragraph 15(1), (3) and (4) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43); there are other amendments to sections 61 and 65 but none are relevant to this Order.

- TR010007/APP/23.1(B), Revision 0;
- TR010007/APP/23.1(C), Revision 0;
- TR010007/APP/23.1(D), Revision 0;
- TR010007/APP/23.1(E), Revision 0;
- TR010007/APP/23.1(F), Revision 0;
- TR010007/APP/23.1(G), Revision 0;
- TR010007/APP/23.1(H), Revision 0;
- TR010007/APP/23.1(I), Revision 0;
- TR010007/APP/23.1(J), Revision 0;
- TR010007/APP/23.1(K), Revision 1;
- (ii) Longitudinal Sections (TR010007/APP/23.2)—
 - TR010007/APP/23.2 (A), Revision 0;
 - TR010007/APP/23.2 (B), Revision 0;
 - TR010007/APP/23.2 (C), Revision 0;
 - TR010007/APP/23.2 (D), Revision 0;
 - TR010007/APP/23.2 (E), Revision 0;
 - TR010007/APP/23.2 (F), Revision 0;
 - TR010007/APP/23.2 (G), Revision 0;
 - TR010007/APP/23.2 (H), Revision 0;
 - TR010007/APP/23.2 (I), Revision 1;
- (iii) Structure Details (TR010007/APP/23.3)—
 - TR010007/APP/23.3 (A), Revision 0;
 - TR010007/APP/23.3 (B), Revision 0;
 - TR010007/APP/23.3 (C), Revision 0;
 - TR010007/APP/23.3 (D), Revision 0;
 - TR010007/APP/23.3 (E), Revision 0;
- (iv) Drainage Details (TR010007/APP/23.4)—
 - TR010007/APP/23.4 (A), Revision 0;
 - TR010007/APP/23.4 (B), Revision 0;
 - TR010007/APP/23.4 (C), Revision 0;
 - TR010007/APP/23.4 (D), Revision 0;
 - TR010007/APP/23.4 (E), Revision 0; and
- (v) Non-Motorised User Provisions (TR010007/APP/23.5)—
 - TR010007/APP/23.5 (A), Revision 0;
 - TR010007/APP/23.5 (B), Revision 0;
 - TR010007/APP/23.5 (C), Revision 1;
 - TR010007/APP/23.5 (D), Revision 1;
 - TR010007/APP/23.5 (E), Revision 1; and
- (f) the traffic regulation plans (TR010007/APP/21.2)—
 - TR010007/APP/21.2 (A), Revision 0;
 - TR010007/APP/21.2 (B), Revision 0;
 - TR010007/APP/21.2 (C), Revision 0;
 - TR010007/APP/21.2 (D), Revision 0;

must be certified by the Secretary of State as true copies of the documents referred to in 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

39.—(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 shall 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).

(a) 1978 c. 30.

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

- (a) that person 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

40. 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

41.—(1) This article applies to roads in respect of which the Secretary of State 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 Secretary of State 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 Secretary of State.

(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 Secretary of State 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 Secretary of State must not exercise the powers conferred by paragraph (2) unless the Secretary of State has—

- (a) given not less than—
 - (i) 12 weeks’ notice in writing of the Secretary of State’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 Secretary of State’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 Secretary of State's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the Secretary of State's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the Secretary of State's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the Secretary of State 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 places) 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 Secretary of State 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 Secretary of State must consult such persons as the Secretary of State considers necessary and appropriate and must take into consideration any representations made to the Secretary of State 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 Secretary of State by this article with respect to any road have effect subject to any agreement entered into by the Secretary of State 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 Secretary of State 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

4th February 2015

Stephen Cave
Head of Rail Projects
Department for Transport

(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 2(1)

AUTHORISED DEVELOPMENT

In the administrative areas of North East Lincolnshire and North Lincolnshire

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act^(a), comprising:

Work No. 1 — the construction of a new A160 dual carriageway, north east from Brocklesby Interchange to the new Habrough Roundabout.

Work No. 2 (Parts a, b, c, d, e, f) — the construction of up to 6 highway drainage attenuation ponds and pollution control facilities.

Work No. 3 — the construction of a new westbound A180 on-slip to the west of the Brocklesby Interchange.

Work No. 4 — the construction of a new eastbound A180 off-slip to the west of the Brocklesby Interchange.

In the administrative area of North East Lincolnshire

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, comprising:

Work No. 5 — the construction of a new roundabout junction (referred to in this Schedule as “the Brocklesby Interchange”) to connect the A180 eastbound and westbound with the new A160 dual carriageway.

Work No. 6 — the construction of a new A180 bridge to form the east side of the Brocklesby Interchange.

Work No. 7 — the construction of a new westbound A180 off-slip to the east of the Brocklesby Interchange.

Work No. 8 — the construction of a new eastbound A180 on-slip to the east of the Brocklesby Interchange.

In the administrative area of North Lincolnshire

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, comprising:

Work No. 9 — the diversion of electric cables and associated apparatus at the existing access across the A160, approximately 340 metres north of the Brocklesby Interchange.

Work No. 10 — the diversion or protection of a water pipeline under the new A160 just to the west of Ulceby Road Truck Stop.

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

Work No. 11 — the diversion of electric cables and associated apparatus just to the west of Ulceby Road Truck Stop.

Work No. 12 — the diversion or protection of up to 2 water pipelines just to the east of Ulceby Road Truck Stop under the new A160 and Ulceby Road Link.

Work No. 13 — the construction of a new single carriageway section of A1077 Ulceby Road to connect the existing A1077 Ulceby Road with the new Habrough Road Roundabout.

Work No. 14 — the diversion or protection of a high pressure gas pipeline under the new A160 and Ulceby Road Link, 300 metres west of the new Habrough Road Roundabout.

Work No. 15 — the diversion of up to 2 high pressure gas pipelines 200 metres west of the new Habrough Road Roundabout under the new A160 and Ulceby Road Link.

Work No. 16 — the protection of an intermediate gas pipeline 200 metres west of the new Habrough Road Roundabout under the new A160 and Ulceby Road Link.

Work No. 17 — the diversion or protection of high pressure gas pipeline 160 metres from the new Habrough Road Roundabout under the new A160 and Ulceby Road Link.

Work No. 18 — the installation of ducts in the proximity of the proposed Habrough Road Roundabout to house cables for the project named “Hornsea Offshore Wind Farm Project One”.

Work No. 19 — the construction of a new roundabout to connect the A160 with A1077 Ulceby Road, Habrough Road and East Halton Road.

Work No. 20 — the construction of a new single carriageway road between the new Habrough Road Roundabout and East Halton Road, northwards for a distance of 635 metres.

Work No. 21 — the construction of a new single carriageway section of Greengate Lane to link Top Road and the existing Greengate Lane to the new East Halton Road link.

Work No. 22 — the construction of a new southerly direction single carriageway link road from the new Habrough Road Roundabout to link to the existing Habrough Road and a new link to connect this to the stopped up section of the existing Habrough Road.

Work No. 23 — the construction of a new aligned dual carriageway section of the A160 to link the new Habrough Road Roundabout to the existing alignment of the A160.

Work No. 24 — the construction of a new eastbound deceleration area, the closure of existing central reserve and construction of physical islands on the A160 at the Town Street junction.

Work No. 25 — the construction of a new link road between Town Street North and South, including a new bridge across the A160.

Work No. 26 — the realignment of Town Street South between the junction with the A160 and the new Town Street link road.

Work No. 27 — the alteration of existing central reserve on the A160 at the entrance to the Humber Oil Refinery to allow right turns in a westbound direction on the A160 only and restrict all other movements that would cross the A160 central reserve.

Work No. 28 — the construction of a new dual lane northbound link road between Manby Roundabout and Rosper Road.

Work No. 29 — the construction of a new bridge under the existing railway on the new Rosper Road link.

Work No. 30 — the diversion of oxygen pipeline under the new Rosper Road Link just north of the existing railway.

Work No. 31 — construction of a new northbound single lane road between Humber Road and the new Rosper Road link to allow access for abnormal loads.

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

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (c) refurbishment works to any existing bridge;
- (d) ramps, means of access, non-motorised links, footpaths, footways, cycle tracks and crossing facilities;
- (e) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (f) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;
- (g) works to alter the course of, or otherwise interfere with a watercourse;
- (h) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (i) works for the benefit or protection of land affected by the authorised development;
- (j) works required for the strengthening, improvement, maintenance or reconstruction of any streets;
- (k) works to alter or remove road furniture;
- (l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths) and earthworks (including soil stripping and storage, site levelling);
- (m) establishment of site construction compounds, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting and haulage roads;
- (n) pumping stations to manage surface water run off;
- (o) borrow pits to provide a source of construction material; and
- (p) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

REQUIREMENTS

Interpretation**1. In this Schedule—**

“CEMP” means construction environmental management plan;

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

“the undertaker” means the person who has the benefit of the Order in accordance with article 6 (benefit of Order).

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, and submitted to and approved in writing by the Secretary of State.

(2) The construction of the authorised development must be carried out in accordance with the approved CEMP.

(3) The CEMP must reflect the mitigation measures included in chapters 6 to 15 of the environmental statement.

(4) The CEMP must incorporate the following plans and programmes—

(a) Site Environmental Control Plans as detailed below—

- (i) air pollution prevention;
- (ii) water pollution prevention;
- (iii) light pollution prevention;
- (iv) noise, vibration and other nuisances;
- (v) natural environment;
- (vi) archaeological management; and
- (vii) use of local road network;

(b) Soil Management Plan, including—

- (i) soil resource plan, including protection of in situ soils, handling and storage codes of practice;
- (ii) on site re-use criteria and measures; and
- (iii) borrow pit plan;

(c) Site Waste Management Plan, including—

- (i) management of excavated material and other waste arising;
- (ii) waste minimisation;

(a) S.I. 2010/490.

- (iii) hazardous waste management; and
- (iv) material re-use, or disposal;
- (d) Materials Management Plan, including—
 - (i) material classification;
 - (ii) on site re-use criteria and measures; and
 - (iii) disposal measures; and
- (e) Change Control Process.

(5) Each Site Environmental Control Plan detailed in sub-paragraph (4)(a) must incorporate the following—

- (a) responsibilities;
- (b) consent requirements;
- (c) client requirements;
- (d) general control measures;
- (e) specific control measures;
- (f) monitoring and measurement; and
- (g) in the event of an emergency.

(6) The CEMP must require—

- (a) adherence to the relevant Environment Agency Pollution Prevention Guidelines PPG1, PPG5, PPG6, PPG21 and PPG22; and
- (b) adherence to working hours of 7:30 am to 6:00 pm on Mondays to Fridays and 7:30 am to 1:00 pm on Saturdays, except for—
 - (i) work associated with the installation of the new rail bridge;
 - (ii) work associated with the bridge decks for the Town Street and Brocklesby bridges;
 - (iii) works in the carriageway that due to network constraints cannot be completed during normal working hours; and
 - (iv) extended working hours in the summer months for the earthworks to take advantage of the weather and daylight.

(7) The CEMP must include measures to ensure that the part of Work No. 28 that is on or to the east of Rosper Road can only be undertaken during the months of April to October inclusive.

(8) The plans and programmes listed in sub-paragraph (4) must include measures to address the event that the authorised development coincides with any other major projects in the area which may impact those matters, following consultation with the relevant planning authority.

Landscaping

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

(2) The landscaping scheme prepared under requirement 4(1) must reflect the measures shown in appendix 2.1 of the environmental statement.

(3) The landscaping scheme prepared under requirement 4(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

5.—(1) The landscaping scheme prepared under requirement 4 must be implemented as part of the authorised development in accordance with a timetable prepared in consultation with the relevant planning authority and submitted to and approved in writing by the Secretary of State.

(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, unless the Secretary of State in consultation with the relevant planning authority gives written consent to any variation.

Fencing

6. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the Highways Agency's Manual of Contract Documents for Highway Works Volume 1 – Specification for Highway Works (consolidated edition, November 2005, as amended as at May 2014), except where any departures from that manual are agreed in writing by the Secretary of State.

Contaminated land and groundwater

7.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental statement, the undertaker must cease construction of the authorised development in the vicinity of that 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.

(2) 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 submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(3) No remedial work constituting a material operation (as defined in section 155 (when development begins) of the 2008 Act) in respect of contamination of any land, including groundwater, within the Order limits is to be carried out until the scheme for remediation has been approved under sub-paragraph (2).

(4) Remediation must be carried out in accordance with the approved scheme.

Archaeology

8.—(1) No part of the authorised development is to commence until, for that part, a written scheme for the investigation of areas of archaeological interest, reflecting the mitigation measures included in chapter 7 of the environmental statement, has been prepared in consultation with the relevant planning authority, and submitted to and approved in writing by the Secretary of State.

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

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in sub-paragraph (1) must be deposited with the Historic Environment Record

of the relevant planning authority within one year 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 retained in situ and reported to the relevant planning authority and Secretary of State within 10 working days.

(5) No construction operations are to take place within 10 metres of such remains for a period of 14 days from the date of such notification unless otherwise agreed in writing by the Secretary of State.

(6) If the Secretary of State is of the view that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made, in consultation with the relevant planning authority, for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the Secretary of State.

Ecological management plan

9.—(1) No part of the authorised development is to commence until a written ecological management plan applicable to that part has been prepared, submitted to and approved in writing by the Secretary of State in consultation with the relevant planning authority and with Natural England in so far as relevant to protected species or protected sites.

(2) The ecological management plan prepared under sub-paragraph (1) must reflect—

- (a) the survey results and ecological mitigation measures included in chapter 9 of the environmental statement;
- (b) the monitoring proposals set out in table 9.15 of the environmental statement; and
- (c) the measures shown in appendix 2.1 of the environmental statement,

and must include a timetable for its implementation.

(3) The construction of the authorised development must be carried out in accordance with the ecological management plan.

(4) In the event that any European protected species 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 works within 10 metres of the location of that European protected species and report it immediately to Natural England and the relevant planning authority.

(5) The undertaker must prepare a written scheme for the protection and mitigation measures for any European protected species found when carrying out the authorised development, which was not previously identified in the environmental statement.

(6) The undertaker must implement the written scheme prepared under sub-paragraph (4) immediately and construction within 10 metres of the European protected species must not recommence until any necessary licences are obtained.

Water vole, badgers and bat roosts

10.—(1) No part of the authorised development is to commence until additional surveys have been undertaken to establish the position of water vole, badgers and bat roosts.

(2) Where the presence of water vole, badgers or bat roosts is found to pose a constraint to development, the undertaker must prepare a scheme of mitigation measures to be submitted to and approved in writing by the Secretary of State in consultation with the relevant planning authority and Natural England.

(3) The mitigation measures must be carried out in accordance with the approved scheme.

11.—(1) No part of the authorised development may be brought into operation until a method statement detailing the sensitive management of highway ditches for water voles reflecting paragraph 9.7.21 of the environmental statement has been prepared, submitted to and approved in writing by the Secretary of State in consultation with the relevant planning authority.

(2) The authorised development must be operated in accordance with the approved method statement.

Traffic management

12.—(1) No authorised development is to commence until a traffic management plan for the construction of the authorised development has been submitted 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

13. New or altered sections of carriageway must be constructed using low noise surfacing as defined in annex 4 of part 7 of volume 11, section 3 of the Design Manual for Roads and Bridges (HD213/11).

14. The authorised development must not be brought into use until the detailed design of any noise barriers to be erected as part of the scheme has been submitted and approved by the Secretary of State in consultation with the relevant planning authority, and those barriers have been constructed in accordance with the approved design.

15. The authorised development must be carried out in accordance with the scheme design shown on the engineering drawings and sections.

Surface and foul water drainage

16.—(1) No authorised development is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in chapters 2, 9 and 15 of the environmental statement and including means of pollution control and design details of the pumping stations to be constructed as part of the associated development to manage surface run off, have been prepared, submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(2) The drainage system must be constructed in accordance with the approved details referred to in paragraph (1).

Approvals and amendments to approved details

17. With respect to any requirement which requires the authorised development, or any part of the authorised development, to be carried out in accordance with the details, plan or scheme approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the Secretary of State, in consultation with any other consultee specified in the requirement in question.

SCHEDULE 3

Article 11

CLASSIFICATION OF ROADS, ETC.

PART 1

TRUNK ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road to become a trunk road</i>
North East Lincolnshire and North Lincolnshire	A160 between point 1/9 and 2/33 on the Streets, Rights of Way and Access Plans Sheets 1 and 2.
North East Lincolnshire and North Lincolnshire	A180 – A160 Eastbound off-slip between point 1/1 and 1/2 on the Streets, Rights of Way and Access Plans Sheet 1.
North East Lincolnshire and North Lincolnshire	A160 – A180 Westbound on-slip between point 1/4 and 1/3 on the Streets, Rights of Way and Access Plans Sheet 1.
North East Lincolnshire	A160 – A180 Eastbound on-slip between point 1/5 and 1/6 on the Streets, Rights of Way and Access Plans Sheet 1.
North East Lincolnshire	A180 – A160 Westbound off-slip between point 1/8 and 1/7 on the Streets, Rights of Way and Access Plans Sheet 1.
North East Lincolnshire	A160 circulatory carriageway at Brocklesby Interchange indicated by point 1/10 on the Streets, Rights of Way and Access Plans Sheet 1.

PART 2

OTHER ROAD CLASSIFICATIONS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>	<i>(3)</i> <i>Old Classification</i>	<i>(4)</i> <i>New Classification</i>
North Lincolnshire	From point 2/21 to point 2/22 on the Streets, Rights of Way and Access Plans Sheet 2.	Not applicable	A1077
North Lincolnshire	From point 2/23 to point 2/24 on the Streets, Rights of Way and Access Plans Sheet 2.	Not applicable	C131
North Lincolnshire	From point 2/25 to point 2/26 on the Streets, Rights of Way and Access Plans Sheet 2.	Not applicable	Unclassified
North Lincolnshire	From point 2/27 to point 2/28 on the Streets, Rights of Way and Access Plans Sheet 2.	C131	Unclassified
North Lincolnshire	From point 2/29 to point 2/30 on the Streets, Rights of Way and Access Plans Sheet 2.	Not applicable	C131
North Lincolnshire	From point 2/32 to point 2/31 on the Streets, Rights of Way and Access Plans Sheet 2.	Not applicable	Unclassified

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>	<i>(3)</i> <i>Old</i> <i>Classification</i>	<i>(4)</i> <i>New</i> <i>Classification</i>
North Lincolnshire	From point 3/3 to point 3/4 on the Streets, Rights of Way and Access Plans Sheet 3.	Not applicable	Unclassified
North Lincolnshire	From point 4/2 to point 4/3 on the Streets, Rights of Way and Access Plans Sheet 4.	Not applicable	A160
North Lincolnshire	From point 4/4 to point 4/5 on the Streets, Rights of Way and Access Plans Sheet 4.	C133	A160
North Lincolnshire	From point 4/9 to point 4/10 on the Streets, Rights of Way and Access Plans Sheet 4.	Not applicable	Unclassified

PART 3

ROADS TO BE DE-TRUNKED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road to be de-trunked</i>	<i>(3)</i> <i>Old</i> <i>classification</i>	<i>(4)</i> <i>New</i> <i>classification</i>
North Lincolnshire	From point 2/C to point 2/D on the Streets, Rights of Way and Access Plans Sheet 2.	A160	A1077

PART 4

ROADS SUBJECT TO 30 MILES PER HOUR LIMIT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
North Lincolnshire	Greengate Lane from point 2/4 to point 2/5 on the Traffic Regulation Plans Sheet 2.
North Lincolnshire	Town Street Link from point 3/2 to point 3/3 on the Traffic Regulation Plans Sheet 3.

PART 5

ROADS SUBJECT TO 40 MILES PER HOUR LIMIT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
North Lincolnshire	C131 from point 2/1 to point 2/2 on the Traffic Regulation Plans Sheet 2.
North Lincolnshire	Greengate Lane from point 2/3 to point 2/4 on the Traffic Regulation Plans Sheet 2.
North Lincolnshire	Habrough Link Road from point 2/9 to point 2/10 on the Traffic Regulation Plans Sheet 2.
North Lincolnshire	C131 from point 2/11 to point 2/12 on the Traffic Regulation Plans Sheet 2.
North Lincolnshire	A160 from point 4/2 to points 4/9 and 4/10 on the Traffic Regulation Plans Sheet 4.
North Lincolnshire	A160 from point 4/6 to point 4/8 on the Traffic Regulation Plans Sheet 4.

PART 6

ROADS SUBJECT TO 50 MILES PER HOUR LIMIT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
North Lincolnshire	A160 from point 2/6 to point 2/7 on the Traffic Regulation Plans Sheet 2.

PART 7

ROADS SUBJECT TO WEIGHT RESTRICTIONS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road subject to weight restriction</i>	<i>(3)</i> <i>Weight restriction</i>
North Lincolnshire	C131 from point 2/1 to point 2/2 on the Traffic Regulation Plans Sheet 2.	7.5 tonne limit
North Lincolnshire	Greengate Lane from point 2/3 to point 2/5 on the Traffic Regulation Plans Sheet 2.	7.5 tonne limit
North Lincolnshire	Town Street Link from point 3/2 to point 3/3 on the Traffic Regulation Plans Sheet 3.	7.5 tonne limit

PART 8

ROADS SUBJECT TO CENTRAL RESERVE ALTERATIONS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road subject to central reserve alterations</i>	<i>(3)</i> <i>Traffic movement restriction</i>
North Lincolnshire	A160 from point 3/1 to point 3/4 on the Traffic Regulation Plans Sheet 3.	No right turn.
North Lincolnshire	A160 from point 3/5 on the Traffic Regulation Plans Sheet 3 to point 4/1 on the Traffic Regulation Plans Sheet 4.	No right turn from the Humber Oil Refinery (north of the A160) to the A160 westbound direction. No right turn from the Humber Oil Refinery (south of the A160) to the A160 eastbound direction. No right turn from A160 eastbound direction to the Humber Oil Refinery (south of the A160). No movement between the Humber Oil Refinery (north of the A160) and the Humber Oil Refinery (south of the A160) across the central reservation of the A160 in either direction. No U turn from the A160 eastbound direction. No U turn from the A160 westbound direction.

PART 9

ROADS SUBJECT TO ONE WAY RESTRICTIONS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road subject to one way restriction</i>
North Lincolnshire	A160 from point 4/2 to point 4/4 on the Traffic Regulation Plans Sheet 4.
North Lincolnshire	A160 from point 4/5 to point 4/8 on the Traffic Regulation Plans Sheet 4.

PART 10

ROADS RESTRICTED TO ESCORTED VEHICLES

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road restricted to escorted vehicles</i>
North Lincolnshire	From point 4/7 to point 4/3 on the Traffic Regulation Plans Sheet 4.

PART 11

CYCLE TRACKS AND FOOTWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of cycle track/footway</i>
North Lincolnshire	From point 2/34 to point 2/35 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	From point 2/36 to point 2/37 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	From point 2/38 to point 2/39 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	From point 2/40 to point 2/41 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	From point 2/42 to point 2/43 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	From point 2/44 to point 2/45 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	From point 2/46 to point 2/47 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	From point 3/12 on the Streets, Rights of Way and Access Plans Sheet 3 to point 4/12 on the Streets, Rights of Way and Access Plans Sheet 4.

PART 12

PRIVATE MEANS OF ACCESS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of access</i>
North East Lincolnshire	Private Means of Access point 1/11 on the Streets, Rights of Way and Access Plans Sheet 1.
North Lincolnshire	Private Means of Access point 1/15 on the Streets, Rights of Way and Access Plans Sheet 1.
North Lincolnshire	Private Means of Access point 2/4 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/6 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/7 on the Streets, Rights of Way and Access Plans Sheet 2.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of access</i>
North Lincolnshire	Private Means of Access point 2/8 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/9 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/12 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/13 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/14 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/15 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/16 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/18 on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 3/1 on the Streets, Rights of Way and Access Plans Sheet 3.
North Lincolnshire	Private Means of Access point 3/10 on the Streets, Rights of Way and Access Plans Sheet 3.
North Lincolnshire	Private Means of Access point 3/11 on the Streets, Rights of Way and Access Plans Sheet 3.
North Lincolnshire	Private Means of Access point 4/8 to point 4/9 on the Streets, Rights of Way and Access Plans Sheet 4.
North Lincolnshire	Private Means of Access point 4/10 on the Streets, Rights of Way and Access Plans Sheet 4.
North Lincolnshire	Private Means of Access point 4/11 on the Streets, Rights of Way and Access Plans Sheet 4.

PART 13

PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of public right of way</i>
North Lincolnshire	Footpath from point 3/7 to point 3/8 on the Streets, Rights of Way and Access Plans Sheet 3.

PART 14

PERMISSIVE RIGHT OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of permissive right of way</i>
North East Lincolnshire	Permissive right of way from point 1/13 to point 1/14 on the Streets, Rights of Way and Access Plans Sheet 1.

SCHEDULE 4

Article 12

PERMANENT STOPPING UP OF STREETS

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
North Lincolnshire	Private Means of Access point 1/A, on the Streets, Rights of Way and Access Plans Sheet 1.	The whole access.	Private Means of Access point 1/12, on the Streets, Rights of Way and Access Plans Sheet 1.
North Lincolnshire	Private Means of Access point 1/B, on the Streets, Rights of Way and Access Plans Sheet 1.	The whole access.	Private Means of Access point 2/2 to point 2/1, on the Streets, Rights of Way and Access Plans Sheet 2.
North East Lincolnshire	A180 westbound on-slip.	From point 1/D to point 1/C, on the Streets, Rights of Way and Access Plans Sheet 1.	From point 1/4 to point 1/3, on the Streets, Rights of Way and Access Plans Sheet 1.
North East Lincolnshire	A180 westbound off-slip.	From point 1/F to point 1/E, on the Streets, Rights of Way and Access Plans Sheet 1.	From point 1/8 to point 1/7, on the Streets, Rights of Way and Access Plans Sheet 1.
North East Lincolnshire	A180 eastbound on-slip.	From point 1/G to point 1/H, on the Streets, Rights of Way and Access Plans Sheet 1.	From point 1/5 to point 1/6, on the Streets, Rights of Way and Access Plans Sheet 1.
North East Lincolnshire	Permissive right of way, North of A180.	From point 1/I to point 1/J, on the Streets, Rights of Way and Access Plans Sheet 1.	From point 1/13 to point 1/14, on the Streets, Rights of Way and Access Plans Sheet 1.
North Lincolnshire	A160	From point 2/E to point 2/F, on the Streets, Rights of Way and Access Plans Sheet 2.	From point 2/21 to point 2/22, on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	C131	From point 2/I to point 2/H, on the Streets, Rights of Way and Access Plans Sheet 2.	From point 2/32 to point 2/29, on the Streets, Rights of Way and Access Plans Sheet 2.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
North Lincolnshire	Private Means of Access point 2/L, on the Streets, Rights of Way and Access Plans Sheet 2.	The whole access.	Private Means of Access from point 2/2 to point 2/3, on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/M, on the Streets, Rights of Way and Access Plans Sheet 2.	The whole access.	Private Means of Access from point 2/2 to point 2/4, on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/N, on the Streets, Rights of Way and Access Plans Sheet 2.	The whole access.	Private Means of Access from point 2/10 to point 2/11, on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/O, on the Streets, Rights of Way and Access Plans Sheet 2.	The whole access.	Private Means of Access from point 2/10 to point 2/11, on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/P, on the Streets, Rights of Way and Access Plans Sheet 2.	The whole access.	Private Means of Access from point 2/2 to point 2/4, on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/Q, on the Streets, Rights of Way and Access Plans Sheet 2.	The whole access.	Private Means of Access from point 2/2 to point 2/5, on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Private Means of Access point 2/R on the Streets, Rights of Way and Access Plans Sheet 2.	The whole access.	Private Means of Access point 2/17, on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Public Right of Way FP91.	From point 3/C to point 3/D, on the Streets, Rights of Way and Access Plans Sheet 3.	Private Right of Way from point 3/7 to point 3/8, on the Streets, Rights of Way and Access Plans Sheet 3.
North Lincolnshire	Private Means of Access point 3/E, on the Streets, Rights of Way and Access Plans Sheet 3.	The whole access.	Private Means of Access point 3/2, on the Streets, Rights of Way and Access Plans Sheet 3.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
North Lincolnshire	Private Means of Access point 3/F, on the Streets, Rights of Way and Access Plans Sheet 3.	The whole access.	Private Means of Access point 3/9, on the Streets, Rights of Way and Access Plans Sheet 3.
North Lincolnshire	Private Means of Access point 4/A, on the Streets, Rights of Way and Access Plans Sheet 4.	The whole access.	Private Means of Access point 4/1, on the Streets, Rights of Way and Access Plans Sheet 4.

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
North Lincolnshire	A1077, on the Streets, Rights of Way and Access Plans Sheet 2.	From point 2/A to point 2/B, on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	A160, on the Streets, Rights of Way and Access Plans Sheet 2.	From point 2/F to point 2/G, on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	C131, on the Streets, Rights of Way and Access Plans Sheet 2.	From point 2/J to point 2/K, on the Streets, Rights of Way and Access Plans Sheet 2.
North Lincolnshire	Public Right of Way FP85, on the Streets, Rights of Way and Access Plans Sheet 3.	From point 3/B to point 3/G, on the Streets, Rights of Way and Access Plans Sheet 3.
North Lincolnshire	Public Right of Way FP87, on the Streets, Rights of Way and Access Plans Sheet 3.	From point 3/A to point 3/G, on the Streets, Rights of Way and Access Plans Sheet 3.

SCHEDULE 5

Article 22

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot reference number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>
Land Plans – Sheet 1	
1/1a, 1/1u, 1/1x	To construct, operate, access and maintain existing telecommunications mast.
1/1d, 1/1f, 1/1k, 1/1p, 1/1am, 1/3c, 1/3f, 1/4b	To construct, access and maintain boundary fencing.
1/1t, 1/1y, 1/1ah, 1/1ak	To construct, operate, access and maintain the diverted electric cables.
1/1w	To construct, operate, access and maintain the diverted electric cables. To construct, operate, access and maintain existing telecommunications mast. To construct, access and maintain boundary fencing.
1/1af	To access and maintain the field ditch south and east of the A160. To construct, access and maintain boundary fencing.
1/1ag	To construct, operate, access and maintain the diverted electric cables. To construct, access and maintain boundary fencing.
Land Plans – Sheet 2	
2/2b, 2/2f	To construct, operate, access and maintain the diverted water pipeline. To construct, operate, access and maintain the diverted electric cable.
2/2c	To construct, operate, access and maintain the diverted water pipeline. To construct, operate, access and maintain the diverted electric cable. To construct, access and maintain boundary fencing.
2/2e	To construct, operate, access and maintain the diverted water pipeline. To construct, operate, access and maintain the diverted electric cable. To access and maintain the field ditch east of the A160. To construct, access and maintain boundary fencing.
2/5a, 2/6a	To construct, operate, access and maintain the two diverted water pipelines.
2/5c	To construct, operate, access, maintain, use and protect the two diverted high and one intermediate pressure gas pipelines. To construct, operate, access, maintain, use and protect the diverted high pressure gas pipeline. To access and maintain the field ditch south of the A160. To construct, access and maintain boundary fencing.
2/5d	To construct, operate, access, maintain, use and protect the two diverted high and one intermediate pressure gas pipelines. To construct, operate, access, maintain, use and protect the diverted high pressure gas pipeline.
2/5i, 2/5m, 2/7b	To access and maintain the field ditch south of the A160.
2/6c	To construct, operate, access, maintain, use and protect the diverted high pressure gas pipeline. To construct, operate, access, maintain, use and protect the two diverted high and one intermediate pressure gas pipelines.
2/7d	To construct, operate, access and maintain the diverted electric cable.
2/7f	To access and maintain the field ditch south of the A160.

<i>(1)</i> <i>Plot reference number</i> <i>shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>
	To construct, access and maintain boundary fencing. To construct, operate, access and maintain the diverted high pressure gas pipeline.
2/7g	To construct, operate, access and maintain the diverted high pressure gas pipeline.
2/7h	To construct, access and maintain boundary fencing.
2/8a	To construct, operate, access and maintain the diverted high pressure gas pipeline.
Land Plans – Sheet 3	
3/5b, 3/5d	To construct, access and maintain the adjacent highway and drainage culvert. To lay out new Public Right of Way diversion of the existing Footpath 91.
Land Plans – Sheet 4	
4/1d	To construct, operate, access and maintain the diverted oxygen pipeline. To access existing telecommunications mast.
4/1g, 4/1j	To construct, operate, access and maintain the diverted oxygen pipeline.
4/5b	To construct, operate, access and maintain the new section of road under the new rail bridge.

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 as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-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 over land is purchased from or imposed on”; and

(b) for “acquired or taken from him” substitute “over which the right is exercisable”.

(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) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

(a) a right over 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 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 but also the use to be made of the right proposed to be acquired, and, in a case where the right is proposed to be acquired 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, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

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

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

(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.

(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 with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) 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 is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (provisions as to divided land) 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 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 without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015(a) (“the Order”), in relation to that person, ceases to authorise the purchase of the right 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.”

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),

(a) S.I. 2015/129.

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 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 (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) 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 in question.

9. Section 22 of the 1965 Act (interests omitted from purchase) 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) 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 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Plan reference number(s) shown on Land Plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 1			
In the administrative area of North East Lincolnshire Council	1/1n, 1/1p, 1/1q, 1/5b	Required to provide construction working area and access for site traffic.	All works
	1/1s, 1/4b, 1/4c	Required for borrow pits to source material to construct raised sections of the new road construction.	All works
	1/1ae, 1/1al, 1/1am	Required to provide an area for topsoil and other construction material storage.	All works
In the administrative area of North Lincolnshire Council	1/1a	Required to enable the use of the existing access track between the A160, Ryehill Farm and A1077 Ulceby Road.	Work No. 1
	1/1b, 1/1c, 1/1d, 1/1e, 1/1f, 1/1h, 1/1i, 1/1j, 1/1k, 1/1m, 1/1u, 1/1v, 1/1w, 1/1x, 1/1z, 1/1af, 1/1ag, 1/1ai, 1/1aj, 1/2a, 1/3a, 1/3c, 1/3d, 1/3e, 1/3f	Required to provide construction working area and access for site traffic.	All works
	1/1t, 1/1ak	Required for the diversion of an electric cable and associated apparatus.	Work No. 9
	1/1y, 1/1ah	Required for the diversion of electric cables and associated apparatus and to provide construction working area and access for site traffic.	All works
Land Plans – Sheet 2			
In the administrative area of North Lincolnshire Council	2/1a, 2/2a, 2/5f, 2/5h, 2/5k, 2/8b, 2/10b	Required for the construction of accesses.	All works
	2/2b, 2/2c	Required for the diversion of a water pipeline and electric cable and associated apparatus, and required to provide construction working area and access for site traffic.	All works

<i>(1) Location</i>	<i>(2) Plan reference number(s) shown on Land Plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
	2/2e	Required to provide construction working area and access for site traffic and also the diversion of water pipeline and overhead electric cable.	All works
	2/2f	Required for the diversion of a water pipeline and electric cable and associated apparatus.	Work Nos. 10 & 11
	2/5a, 2/6a	Required for the diversion of up to 2 water pipelines.	Work No. 12
	2/5c	Required to provide construction working area and access for site traffic and also the diversion of up to 3 high pressure gas pipelines and the protection of an intermediate pressure gas pipeline.	All works
	2/5d	Required for the diversion of up to 3 high pressure gas pipelines and the protection of an intermediate pressure gas pipeline.	Work No. 15, 16 & 17
	2/5e, 2/5i, 2/5l, 2/5m, 2/7b, 2/7h, 2/7j, 2/9a	Required to provide construction working area and access for site traffic.	All works
	2/5j, 2/10c	Required to provide topsoil and other construction material storage areas.	All works
	2/6c	Required for the diversion of up to 3 high pressure gas pipelines and the protection of an intermediate pressure gas pipeline.	Work Nos. 14, 15 & 16
	2/7c	Required to provide topsoil and other construction material storage areas, and required to provide construction working area and access for site traffic.	All works
	2/7d	Required for the diversion of an electric cable and associated apparatus.	Work No. 11
	2/7e	Required for the provision of the main site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials and the treatment of site generated waste and also to provide construction working area and access for site traffic.	All works

<i>(1) Location</i>	<i>(2) Plan reference number(s) shown on Land Plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
	2/7f	Required to provide construction working area and access for site traffic and also the diversion of a high pressure gas pipeline.	Work No. 14
	2/7g	Required for the diversion of a high pressure gas pipeline.	Work No. 14
	2/8a	Required for the diversion of a high pressure gas pipeline.	Work No. 17
Land Plans – Sheet 3			
In the administrative area of North Lincolnshire Council	3/1, 3/2a	Required for the construction of a new access and the stopping up of an existing access.	All works
	3/5b, 3/5d	Required for the construction of the diversion to the existing Public Right of Way and the construction of up to 3 new drainage culverts and head walls.	All works
	3/9c	Required for the construction of a new access.	All works
	3/9d	Required to provide an area for topsoil and other construction material storage.	All works
Land Plans – Sheet 4			
In the administrative area of North Lincolnshire Council	4/1d, 4/1g, 4/1j	Required for the diversion of an oxygen pipeline.	Work No. 30
	4/1h, 4/3d, 4/6d	Required for the construction of accesses.	All works
	4/1i, 4/1k	Required to provide an area for topsoil and other construction material storage.	All works
	4/4a, 4/8	Required to provide construction working area and access for site traffic.	All works
	4/5a, 4/5b, 4/5c	Required for the construction of a new bridge under the existing railway and for construction working area.	Work No. 29
	4/7	Required for the provision of a secondary site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials and the treatment of site generated waste.	All works

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY AND GAS UNDERTAKERS

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

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory or other functions, or Air Products (BR) Limited to fulfil its contractual obligations, in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of Air Products (BR) Limited any mains, pipes or other apparatus belonging to or maintained by Air Products (BR) Limited for the purpose of the supply of oxygen gas (and “gas apparatus” includes apparatus in relation to oxygen gas);
- (d) in the case of Phillips 66 Limited all pipelines, apparatus, ancillary apparatus and other infrastructure belonging to or maintained by Phillips 66 Limited including such works and apparatus property associated with the pipelines as specified by section 65(2) of the Pipe-lines Act 1962(c) and comprising, but not limited to, concrete sleepers and slabs, marker posts including marker posts for any cathodic protection system, steps, stiles, gates and crossings;
- (e) in the case of Vitol Power Immingham any mains, pipes, isolation valves, emergency shut-down valves and other apparatus belonging to and maintained by Vitol Power Immingham Combined Heat & Power Plant, for the purposes of transporting Natural Gas as the fuel along the pipe-line owned by Vitol Power Immingham, to fire the power plant for the generation of steam and electricity to supply Phillips 66 and Total refineries and supply the National Power Distribution Grid;
- (f) in the case of E.ON UK Gas Limited any mains, pipes, valves, other apparatus and ancillary equipment belonging to or maintained by E.ON UK Gas Limited for the purpose of transporting any gaseous fuels along the pipeline owned by E.ON UK Gas Limited; and
- (g) in the case of Centrica Storage Limited any mains, pipes or other apparatus belonging to or maintained by Centrica Storage Limited for the purposes of transporting condensate gas from its gas storage terminal at Easington to the Port of Immingham to be stored and then sold to third parties,

(a) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of Schedule 6, and Schedule 8, to, the Utilities Act 2000 (c. 27), sections 149(1) and (5) and 197(9) of, and part 1 of Schedule 23 to, the Energy Act 2004 (c. 20) and S.I. 2011/2704.

(c) 1962 c. 58. Section 65(2) was amended by paragraphs 1 and 6 of Schedule 2 to the Energy Act 2011 (c. 16), S.I. 2000/1937 and S.I. 2011/2305.

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

“Centrica Storage Limited” means the company of that name, company number 03294124, whose registered office is at Venture House, 42-54 London Road, Staines, Middlesex, TW18 4HF;

“functions” includes powers and duties and in the case of Phillips 66 Limited and Centrica Storage Limited means the requirements of its business from time to time;

“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;

“Phillips 66 Limited” means the company of that name, company number 00529086, whose registered office is at 7th Floor, 200-202 Aldersgate Street, London EC1A 4HD;

“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; and

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) Air Products (BR) Limited and its successor in title and function;
- (d) Phillips 66 Limited and its successor in title and function;
- (e) Vitol Power Immingham and its successor in title and function;
- (f) E.ON UK Gas Limited and its successor in title and function; and
- (g) Centrica Storage Limited and its successors in title and function,

for the area of the authorised development, and in relation to any apparatus, means the 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 Secretary of State and the 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 12 (permanent stopping up of streets), any 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 Secretary of State must grant to the undertaker legal easements reasonably satisfactory to the undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the Secretary of State or of the specified undertaker to require the removal of that apparatus under paragraph 7 or the power of the Secretary of State 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 13 (temporary stopping up of streets), an 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 Secretary of State, in the case of the powers conferred by article 17 (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 Secretary of State 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 Secretary of State acquires any interest in any land in which any apparatus is placed or requires that the undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of an 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 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 Secretary of State requires the removal of any apparatus placed in that land, the Secretary of State must give to the 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 an undertaker reasonably needs to remove any of its apparatus) the Secretary of State must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Secretary of State 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 Secretary of State, or the Secretary of State 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 undertaker in question must, on receipt of a written notice to that effect from the Secretary of State, 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 Secretary of State under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Secretary of State or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 40, and after the grant to the 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 Secretary of State to be removed under the provisions of this Part of this Schedule.

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

(7) Nothing in sub-paragraph (6) authorises the Secretary of State 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 Secretary of State affords to an undertaker facilities and rights for the construction and maintenance in land of

the Secretary of State 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 Secretary of State and the undertaker in question or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(2) If the facilities and rights to be afforded by the Secretary of State 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 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 Secretary of State to that 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 Secretary of State under paragraph 7(2), the Secretary of State must submit to the 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 undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) shall 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 an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the Secretary of State, reasonably requires the removal of any apparatus and gives written notice to the Secretary of State of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the Secretary of State under paragraph 7(2).

(5) Nothing in this paragraph precludes the Secretary of State 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 Secretary of State is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the 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 15 metres measured in any direction of any gas apparatus, or (wherever situated) impose any load directly upon any gas apparatus or involve embankment works within 15 metres of any gas apparatus, the plan to be submitted to the 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 these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all gas apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

(8) 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 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 these 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 Secretary of State must repay to an undertaker all expenses reasonably incurred by that 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 Secretary of State or, in default of agreement, is not determined by arbitration in accordance with article 36 (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 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 an 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 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 an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the Secretary of State must—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and

- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the 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 an undertaker on behalf of the Secretary of State or in accordance with a plan approved by an undertaker or in accordance with any requirement of an undertaker or under its supervision must not, subject to sub-paragraph (3), excuse the Secretary of State from liability under the provisions of sub-paragraph (1).

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

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

Cooperation

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

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

PART 2

FOR THE PROTECTION OF ANGLIAN WATER

14. For the protection of Anglian Water, the following provisions have effect, unless otherwise agreed in writing between the Secretary of State and Anglian Water.

15. In this Part of this Schedule—

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and—

- (a) any drain or works vested in Anglian Water under the Water Industry Act 1991; or
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(a) of the Water Industry Act 1991 or an agreement to adopt made under section 104(b) of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is, or is to be, lodged or which gives, or will give, access to apparatus;

(a) As amended by section 96(1) of the Water Act 2003 (c. 37).

(b) As amended by section 96(4) of the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29).

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“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” includes sections, drawings, specifications and method statements.

16. The Secretary of State must not interfere with, build over or near to any apparatus within the Order land or 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 the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the Secretary of State.

17. The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010^(a) or other legislations and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the Secretary of State has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

18. In the situation, where in exercise of the powers conferred by the Order, the Secretary of State acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension is to take place until Anglian Water has established, to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

19. Regardless of any provision in this Order or anything shown on any plan, the Secretary of State must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the Secretary of State must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water, such agreement not to be unreasonably withheld or delayed and to be subject to arbitration under article 40.

20. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the Secretary of State must provide such alternative means of

(a) S.I. 2010/675.

access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

21. If in consequence of the exercise of the powers conferred by this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the Secretary of State, notification of the location of such assets must immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

22. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 17 to 19 and 21 any damage is caused to any 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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the Secretary of State must—

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

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

PART 3

FOR THE PROTECTION OF RAILWAY INTERESTS

23. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Secretary of State and Network Rail and, in the case of paragraph 37, any other person on whom rights or obligations are conferred by that paragraph.

24. In this Part of this Schedule—

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

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

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

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes within the Order limits, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

“railway property” means any railway belonging to Network Rail Infrastructure Limited within the Order limits and—

(a) 1993 c. 43.
(b) 2006 c. 46.
(c) 1993 c. 43.

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

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

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

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

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

26.—(1) The Secretary of State must not exercise the powers conferred by articles 18 (authority to survey and investigate land), 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights), 23 (private rights over land), 25 (acquisition of subsoil or air-space only), 27 (rights under or over streets), 28 (temporary use of land for carrying out the authorised development), 29 (temporary use of land for maintaining the authorised development), 30 (statutory undertakers) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The Secretary of State must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act, or article 30, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The Secretary of State must not under the powers of this Order acquire or use, or acquire new rights over, any railway property except with the consent of Network Rail.

(5) Prior to commencement of construction of the authorised development the Secretary of State and Network Rail must, having regard to the Secretary of State’s timetable for development, agree in writing a programme for the implementation of Work No. 29 and the Secretary of State must then comply with the provisions of the programme.

(6) Where Network Rail is asked to give its consent or agreement under this paragraph, such consent or agreement must not be unreasonably withheld but may be given subject to reasonable conditions.

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

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the Secretary of State may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with

the date upon which the engineer receives written notice from the Secretary of State. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the Secretary of State that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Secretary of State desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Secretary of State in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the Secretary of State.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the Secretary of State, if Network Rail so desires, and such protective works must be carried out at the expense of the Secretary of State in either case with all reasonable dispatch and the Secretary of State must not commence the construction of the specified works until the engineer has notified the Secretary of State that the protective works have been completed to the Secretary of State's reasonable satisfaction.

28.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 27(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 27;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

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

(3) Nothing in this Part of this Schedule imposes any liability on the Secretary of State with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents, or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the Secretary of State or the Secretary of State's employees, contractors or agents.

29. The Secretary of State must—

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

30. Network Rail must at all reasonable times afford reasonable facilities to the Secretary of State and the Secretary of State's agents for access to any works carried out by Network Rail

under this Part of this Schedule during their construction and must supply the Secretary of State with such information as the Secretary of State may reasonably require with regard to such works or the method of constructing them.

31.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Secretary of State reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Secretary of State must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the Secretary of State, Network Rail gives notice to the Secretary of State that Network Rail desires itself to construct that part of the specified work or protective work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Secretary of State decides that part of the specified work or protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the Secretary of State must, regardless of any such approval of a specified work or protective work under paragraph 27(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 32(a) provide such details of the formula by which those sums have been calculated as the Secretary of State may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the Secretary of State to Network Rail under this paragraph.

32. The Secretary of State must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the Secretary of State as provided by paragraph 27(3) or in constructing any protective works under the provisions of paragraph 27(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the Secretary of State and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

33.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 27(1) for the relevant part of the authorised development giving rise to EMI (unless the Secretary of State has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the Secretary of State must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Secretary of State’s compliance with sub-paragraph (3)—

- (a) the Secretary of State must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 27(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the Secretary of State all information in the possession of Network Rail reasonably requested by the Secretary of State in respect of Network Rail’s apparatus identified under sub-paragraph (a); and
- (c) Network Rail must allow the Secretary of State reasonable facilities for the inspection of Network Rail’s apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution may be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 27(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the Secretary of State must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the Secretary of State’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the Secretary of State must afford reasonable facilities to Network Rail for access to the Secretary of State’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the Secretary of State for access to Network Rail’s apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the Secretary of State any additional material information in its possession reasonably requested by the Secretary of State in respect of Network Rail’s apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail’s apparatus under sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the Secretary of State reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the Secretary of State in accordance with paragraph 28.

(9) To the extent that it would not otherwise do so, paragraph 37(1) is to apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 32(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 40 (arbitration) to a single arbitrator to be agreed between the parties is to be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers to be agreed.

34. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the Secretary of State informing it that the state of maintenance of any part of the specified work or protective work appears to be such as adversely affects the operation of railway property, the Secretary of State must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as to not adversely affect railway property.

35. The Secretary of State must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless the Secretary of State has first consulted Network Rail and the Secretary of State must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

36. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Secretary of State, be repaid by the Secretary of State to Network Rail.

37.—(1) The Secretary of State must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or a protective work or the failure thereof; or
- (b) by reason of any act or omission of the Secretary of State or of any person in the Secretary of State's employ or of the Secretary of State's contractors or others whilst engaged upon a specified work or a protective work,

and the fact that any act or thing may have been done by Network Rail on behalf of the Secretary of State or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the Secretary of State from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the Secretary of State reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the Secretary of State.

(3) The sums payable by the Secretary of State under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

38. Network Rail must, on receipt of a request from the Secretary of State, at a frequency to be agreed between the Secretary of State and Network Rail, provide the Secretary of State free of charge with written estimates of the costs, charges, expenses, future cost forecasts and other liabilities for which the Secretary of State is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 37) and with such information as may reasonably enable the Secretary of State to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

39. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Secretary of State under this Part of this Schedule or increasing the sums so payable.

40. The Secretary of State and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the Secretary of State of—

- (a) any railway property shown on the works and/or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

41. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

42. The Secretary of State must give written notice to Network Rail where any application is required and is proposed to be made for the Secretary of State’s consent under article 7 (consent to transfer benefit of Order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the decision-maker to whom the application is to be made.

43. The Secretary of State must no later than 28 days from the date that the documents referred to in article 38(1) (certification of plans, etc.) are submitted to and certified by the Secretary of State in accordance with article 38, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

PART 4
FOR THE PROTECTION OF OPERATORS OF ELECTRONIC
COMMUNICATIONS CODE NETWORKS

44. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the Secretary of State and the operator.

45. 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 Secretary of State 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.

46. The exercise of the powers conferred by article 37 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984(d) (undertaker’s works).

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

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

the Secretary of State 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 Secretary of State 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.

(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.

(3) The operator must give the Secretary of State 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 Secretary of State who, if such consent is withheld, 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 Secretary of State and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 40 (arbitration).

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

- (a) any apparatus in respect of which the relations between the Secretary of State and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Secretary of State to provide better access to the Port of Immingham and the surrounding area by improving the A160 between the junction with the A180 at Brocklesby interchange and the Port, and carry out all associated works.

The Order would permit the Secretary of State 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 and the book of reference mentioned in this Order and certified in accordance with article 38 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Lateral, 8 City Walk, Leeds, West Yorkshire, LS11 9AT.

The Highways Agency's Manual of Contract Documents and Design Manual for Roads and Bridges are available at www.dft.gov.uk/ha/standards.

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