

2014 No. 2637

INFRASTRUCTURE PLANNING

The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014

Made - - - - *30th September 2014*

Coming into force - - *21st October 2014*

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

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

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application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

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

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.
 (b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
 (c) S.I. 2010/103, amended by S.I. 2012/635.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 and comes into force on 21st October 2014.

Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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

“the access plans” means the plans certified as the Access and Rights of Way Plans by the Secretary of State for the purposes of this Order;

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

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

“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(h);

“electronic transmission” means a communication transmitted—

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

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

“the environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

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

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

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

(a) 1961 c. 33.

(b) 1965 c. 56.

(c) 1980 c. 66.

(d) 1984 c. 27.

(e) 1990 c. 8.

(f) 1991. c. 22.

(g) 2008 c. 29.

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

“the 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) and shown as such on the works plans;

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

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

“the Order limits” means the limits of deviation 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);

“the relevant planning authority” means the Central Bedfordshire Council in relation to land in its area and Luton Borough Council in relation to land in its area, and “the relevant planning authorities” means both of them;

“the replacement land” means the land coloured green on the exchange land plans comprising plots numbered 02/13 (part), 02/14 (part), 02/15 (part), 02/16 (part), 02/17 (part), 02/19 (part), 02/20 (part), 02/28 (part), 02/29, 02/47 and 03/01 (part) in the book of reference and on the land plans;

“the sections” means the cross section drawings and the longitudinal section drawings certified as the sections by the Secretary of State for the purposes of this Order;

“the special category land” means the land coloured blue on the exchange land plans and comprising plots numbered 01/05, 01/06, 01/08, 01/10, 01/12, 01/15, 01/18, 01/20, 01/22, 01/23, 02/01, 02/04, 02/08, 02/09 and 02/42 in the book of reference and on the land plan and forming part of the open space which may be acquired compulsorily under this Order and for which replacement land is to be provided;

“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;

“the undertaker” means the person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act and article 6 (benefit of Order);

“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.

(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.

(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 access plans.

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

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

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

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

Maintenance of authorised development

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

Limits of deviation

5. In carrying out the authorised development the undertaker may—

- (a) deviate vertically from the levels shown on the sections to any extent not exceeding 0.5 metres upwards or downwards; and
- (b) deviate laterally within the limits of deviation from the lines or situations shown on the works plans to any extent not exceeding 2 metres in any direction.

Benefit of Order

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

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

Consent to transfer benefit of Order

7.—(1) Subject to paragraph (4), the undertaker may—

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

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

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

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

- (a) to a highway authority; or
- (b) to the Secretary of State.

PART 3

STREETS

Application of the 1991 Act

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

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

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

- section 56 (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 undertaker under the powers conferred by article 13 (temporary prohibition or 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(b) referred to in paragraph (4) are—

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

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

(b) 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).

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

section 55(a) (notice of starting date of works), subject to paragraph (6);
section 57(b) (notice of emergency works);
section 59(c) (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 9 (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 undertaker is not by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets

9.—(1) Subject to paragraph (2), the streets authorised to be constructed, altered or diverted under this Order are to be public highways, and unless otherwise agreed with the highway authority in whose area those streets lie must be maintained—

- (a) by and at the expense of the undertaker for a period of 12 months from their completion; and
- (b) at the expiry of that period, by and at the expense of the highway authority, provided that the works concerned have been completed to the reasonable satisfaction of the highway authority.

(2) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be), unless otherwise agreed with the street authority, must be maintained—

- (a) by and at the expense of the undertaker for a period of 12 months from its completion; and
- (b) at the expiry of that period by and at the expense of the street authority provided that the street has been completed to the reasonable satisfaction of the street authority.

(3) In any action against the undertaker in respect of damage resulting from its failure to maintain a street to which paragraph (2) applies, section 58 (special defence in action against a highway authority for damages for non-repair of highway)(d) of the 1980 Act applies as if that street were a highway maintainable at the public expense and the undertaker were the highway authority.

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

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

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

(d) As amended by section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

Classification of roads

10. On the date on which the new road referred to in Work No. 1 of Schedule 1 (authorised development) is completed and open for traffic, it is to be classified as the A5505 Woodside Link and is to be—

- (a) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and
- (b) a classified road 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.

Speed limits

11.—(1) From the date on which—

- (a) the length of road identified in Part 1 of Schedule 3 (speed limits) is completed and open for traffic, no person is to drive any motor vehicle at a speed exceeding 20 miles per hour in that length of road;
- (b) each length of road identified in Part 2 of Schedule 3 is completed and open to traffic, no person is to drive any motor vehicle at a speed exceeding 30 miles per hour in that length of road; and
- (c) each length of road identified in Part 3 of Schedule 3 is completed and open to traffic, no person is to drive any motor vehicle at a speed exceeding 40 miles per hour in that length of road.

(2) The speed limits imposed by this Order are deemed to have been imposed by an order under section 84(1) (speed limits on roads other than restricted roads)(a) of the 1984 Act and—

- (a) have the same effect; and
- (b) may be varied by the relevant traffic authority in the same manner,

as any other speed limit imposed by an order under that section.

(3) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(b) when used in accordance with regulation 3(5) of those Regulations.

Stopping up of streets

12.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Parts 1 to 3 of Schedule 4 (streets to be stopped up) 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 Parts 1 and 2 of Schedule 4 (being a street to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and

(a) As substituted by section 45(1) and (2) of the Road Traffic Act 1991 (c. 40).

(b) S.I. 2011/935.

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) The street specified in columns (1) and (2) of Part 3 of Schedule 4 (being a street to be stopped up for which no substitute is to be provided) must not be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

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

- (a) the undertaker is in possession of the land;
- (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 undertaker 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 undertaker.

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

(7) This article is subject to article 31 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary prohibition or restriction of use of streets

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

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

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

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

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily alter, divert, prohibit or restrict the use of the streets specified in columns (1) and (2) of Schedule 5 (temporary prohibition or restriction of use of streets) to the extent specified in column (3) of that Schedule.

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

- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld,

except that this paragraph does not apply where the undertaker is the street authority.

(6) 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.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b) that street authority is deemed to have granted consent.

Access to and from works

14. The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 6 (private accesses to and from works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority (where the highway authority is not the undertaker), form and lay out such other means of access or improve existing means of access at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Traffic regulation

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

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

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

(2) Subject to paragraph (6), the power conferred by paragraph (1) cannot be exercised after the expiry of 12 months from the opening of the authorised development for public use, but any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

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

(4) The undertaker must not exercise the powers conferred by paragraph (1) unless it has—

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

(5) Any prohibition, restriction or other provision made by the undertaker under paragraph (1)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

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

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 .

(6) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) within a period of 24 months from the opening of the authorised development.

(7) Before exercising the powers conferred by paragraph (1) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

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

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

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

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

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

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

(5) The undertaker must not, in carrying out or maintaining works under 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 undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

^(a) As 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) 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).

(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(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

Protective work to buildings

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

(2) Protective works may be carried out—

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

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

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 39 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation 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 of the 1961 Act (determination of questions of disputed compensation).

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised 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 undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes on the land in such positions as the undertaker 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 undertaker—

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

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

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

but such consent must not be unreasonably withheld.

(5) As soon as practicable following the exercise of any powers under paragraph (1), any apparatus or equipment must be removed and the land must be restored to the reasonable satisfaction of the owners of the land.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such

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

compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

PART 5 POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) This article is subject to paragraphs (2) and (3) of article 21 (compulsory acquisition of rights) and paragraph (8) of article 27 (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

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

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

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

21.—(1) Subject to paragraphs (2) and (3) the undertaker may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 7 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, or the imposition of restrictive covenants affecting the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 7.

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

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

(a) 1981 c. 66.

Private rights

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

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

whichever is the earlier.

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

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

whichever is the earlier.

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

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation 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 undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

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

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

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

(9) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

(3) 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.”.

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

(5) 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.”.

(6) 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).

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to that 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

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

(3) Paragraph (2) does not prevent article 25 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or air-space above a house, building, manufactory, park or garden.

(a) 1981 c. 66.

Acquisition of part of certain properties

25.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) (application of compulsory acquisition provisions) where—

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

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

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

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

(5) If on such a reference the tribunal 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 undertaker is authorised to acquire compulsorily under this Order.

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

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

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

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

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

Rights under or over streets

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

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

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

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

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

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

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 9 (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 Compulsory Purchase (Vesting Declarations) Act 1981;
- (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 mitigation works.

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

land which specifies the purpose for the temporary possession and the part of the authorised development to which the temporary possession relates.

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

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

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

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d); or
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.

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

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

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

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

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 21 (compulsory acquisition of rights); 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 24 (acquisition of subsoil or airspace only).

(9) Where the undertaker takes possession of land under this article, it 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.

Temporary use of land for maintaining authorised development

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

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; 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 undertaker to take temporary possession of—

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

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

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

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

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

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

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

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

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

(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.

Special category land

29.—(1) The special category land is not to vest in the undertaker until the undertaker has acquired the replacement land and the relevant planning authority has certified that a scheme for the provision of the replacement land as open space has been implemented to its satisfaction.

(2) On the requirements of paragraph (1) being satisfied, the replacement land is to vest—

- (a) in respect of plots numbered 02/13 (part) and 02/14 (part), in Luton Borough Council of Town Hall, George Street, Luton, Bedfordshire, LU1 2BQ;
- (b) in respect of plots numbered 02/15 (part) in Central Bedfordshire Council of Priory House, Monks Walk, Chicksands, Shefford SG17 5TQ and Aldwyck Housing Group Limited of 6 Houghton Hall Business Park, Porz Avenue, Houghton Regis, Bedfordshire, LU5 5UZ;
- (c) in respect of plots numbered 02/28 (part), 02/16 (part), 02/17 (part) and 02/47 in Central Bedfordshire Council of Priory House, Monks Walk, Chicksands, Shefford, SG17 5TQ; and
- (d) in respect of plots numbered 02/19 (part), 02/20 (part), 02/29 and 03/01 (part) in Friends Life Company Limited of Pixham End, Dorking, Surrey, RH4 1QA,

subject to the rights, trusts and incidents as attached to the special category land that are to be discharged; and the special category land is to be discharged from all such rights, trusts and incidents to which it was previously subject.

Statutory undertakers

30.—(1) Schedule 10 (protective provisions) has effect.

(2) Subject to the provisions of article 21(2) and (3) (compulsory acquisition of rights) and Schedule 10 and in accordance with section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.)**(a)** of the 2008 Act, the undertaker may—

- (a) acquire compulsorily or acquire new rights or impose restrictive covenants over the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

31.—(1) Where a street is stopped up under article 12 (stopping up 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 undertaker must—

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

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

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

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

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

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

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

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

(a) As amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27).

- (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)), 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, is to be reduced by the amount which represents that benefit.

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

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

(8) In this article—

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

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

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

Recovery of costs of new connections

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 undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 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 undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 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.

(a) 2003 c. 21.

PART 6

OPERATIONS

Felling or lopping trees

33.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must 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) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(b) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(c); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) 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 undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Certification of plans, etc.

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

- (a) the access plans;
- (b) the book of reference;
- (c) the environmental statement;
- (d) the exchange land plans;
- (e) the land plans;
- (f) the sections; and
- (g) the works plans,

for certification that they are 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

38.—(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 (6) to (8) by electronic transmission.

(a) 1990 c. 43. There are amendments to subsection 82(1) 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.

(c) 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 Act 1990 (c. 43); there are other amendments to sections 61 and 65 but none are relevant to this Order.

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

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

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

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

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

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

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

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

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

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

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

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

(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

39. 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

(a) 1978 c. 30.

to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

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

40.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement under Schedule 2 (requirements), the following provisions apply in respect of that application as they would apply if that consent, agreement or approval were required by a condition imposed on a grant of planning permission—

- (a) sections 78 (right to appeal against planning decisions and failure to take such decisions)(a) and 79 (determination of appeals)(b) of the 1990 Act; and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Signed by authority of the Secretary of State for Transport

Martin Woods
Head of the Transport and Works Act Orders Unit
Department for Transport

30th September 2014

(a) Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991 (c. 34), section 43(2) of the Planning and Compulsory Purchase Act 2004 (c. 5), paragraphs 1 and 3 of Schedule 10, and paragraphs 1 and 2 of Schedule 11, to the Planning Act 2008 (c. 29), section 123(1) and (3) of, and paragraphs 1 and 11 of Schedule 12 to, the Localism Act 2011 (c. 20) and paragraphs 1 and 8 of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27).

(b) Section 79 was amended by section 18 of, and paragraphs 8 and 19 of Schedule 7 to, the Planning and Compensation Act 1991 and paragraphs 1 and 4 of Schedule 10 to the Planning Act 2008.

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the District of Central Bedfordshire and Borough of Luton —

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

Work No. 1 — The construction of a new road, 2.9 kilometres in length, starting at the junction of Park Road North, Poynters Road and Porz Avenue in Houghton Regis and ending at the proposed M1 junction 11A, to include—

- (i) construction of new single carriageway road between the Porz Avenue roundabout and a proposed northern roundabout, a distance of 2.55 kilometres;
- (ii) construction of an over-bridge and associated wing walls and retaining walls;
- (iii) construction of new dual carriageway road between the proposed northern roundabout and the proposed M1 junction 11A, a distance of 0.35 kilometres;
- (iv) construction of an un-segregated footway and cycle track between the proposed junction with Parkside Link to the proposed northern roundabout, located in the north and west verge;
- (v) construction of an un-segregated footway and cycle track between the proposed junction with Pastures Way Link to the proposed northern roundabout, located in the south and east verge;
- (vi) construction of signal controlled pedestrian cyclist crossings;
- (vii) construction of a private means of access to farmland adjacent to the works;
- (viii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (ix) drainage works, drainage attenuation ponds, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, traffic signals, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Associated development within the meaning of section 115(2) of the 2008 Act comprising:

Work No. 2 — The improvement of the existing C205 Park Road North, Houghton Regis, at its approach to the junction with Work No. 1, to include—

- (i) construction of an un-segregated footway and cycle track between the junction with Sandringham Drive and the junction with Work No. 1, located in the east verge;
- (ii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iii) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works,

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

landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No. 3 — The improvement of the existing Porz Avenue, Houghton Regis at its approach to the junction with Work No. 1, to include—

- (i) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (ii) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No. 4 — The improvement of the existing C205 Poynters Road, Dunstable and Luton at its approach to the junction with Work No.1, to include—

- (i) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (ii) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No. 5 —The improvement of the existing Wheatfield Road, Luton, to include—

- (i) reconfiguration of the existing Wheatfield Road (to be stopped up) and construction of a turning head;
- (ii) construction of a new single carriageway road to link the existing Wheatfield Road with Work No. 1;
- (iii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iv) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No. 6 — The construction of a footway and cycle track alongside Sandringham Drive, Houghton Regis, to include—

- (i) construction of an un-segregated footway and cycle track on Sandringham Drive between Park Road North and Frogmore Road, located in the south verge;
- (ii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iii) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No. 7 — The construction of a footway and cycle track between Frogmore Road, Houghton Regis, and Wheatfield Road, Luton, to include—

- (i) construction of an un-segregated footway and cycle track between Frogmore Road and Wheatfield Road;
- (ii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works;
- (iii) construction of a signal controlled pedestrian and cyclist crossing; and
- (iv) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No. 8 — The diversion of part of Houghton Brook, to include—

- (i) construction of a new section of Houghton Brook, 0.34 kilometres in length;
- (ii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iii) drainage works, earthworks, fencing works, landscaping works and other works associated with the construction of the brook.

Work No. 9 — The construction of a new road, 0.32 kilometres in length, starting at the junction of Parkside Drive and Fensome Drive in Houghton Regis and ending at Work No. 1, to include—

- (i) construction of new single carriageway road between Burford Walk and Work No. 1, a distance of 0.08 kilometres;
- (ii) the widening of the existing Parkside Drive south of the junction with Fensome Drive, a distance of 0.24 kilometres;
- (iii) the removal of the existing Parkside Drive carriageway between Work No. 1 and Burford Walk;
- (iv) construction of an over-bridge and associated wing walls and retaining walls;
- (v) construction of an un-segregated footway and cycle track between the junction with Parkside Link and Work No. 1, located in the east verge;
- (vi) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (vii) drainage works, drainage attenuation ponds, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No. 10 — The construction of a new footway and cycle track, 0.12 kilometres in length, starting at the end of Pastures Way, Luton and terminating at Work No. 1 in Houghton Regis, to include—

- (i) construction of an un-segregated footway and cycleway between Work No. 1 and the end of Pastures Way, a distance of 0.12 kilometres;
- (ii) the removal of the existing Parkside Drive carriageway between Work No. 1 and Pastures Way;
- (iii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iv) drainage works, drainage attenuation ponds, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No. 11 — Works to excavate a borrow pit, to include—

- (i) excavation to a depth not exceeding 2.5 metres below existing ground level, with total excavated material not exceeding 100,000 cubic metres; and
- (ii) drainage works, fencing works, landscaping works and other works associated with the creation of the borrow pit.

Work No. 12 — The construction of a new road, 0.45 kilometres in length, starting at the proposed northern roundabout and ending at the proposed junction with Houghton Road, Chalton, to include—

- (i) construction of new dual carriageway road between the proposed northern roundabout and the proposed roundabout junction with Houghton Road, Chalton, a distance of 0.45 kilometres;

- (ii) construction of an un-segregated footway and cycle track between the proposed northern roundabout and the proposed roundabout on Houghton Road, Chalton, located in the south verge;
- (iii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iv) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No. 13 — The improvement of the existing C198 Sundon Road, Houghton Regis and Houghton Road, Chalton, to include—

- (i) improvement of Sundon Road and Houghton Road between the eastern boundary of Osborne House, north-eastwards for 0.4 kilometres;
- (ii) construction of private means of access to farmland adjacent to the works;
- (iii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iv) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No. 14 — The construction of a new footway and cycle track 1.19 kilometres in length, alongside Houghton Brook between the proposed Parkside Link in Houghton Regis to the end of Kestrel Way, Luton, to include—

- (i) construction of an un-segregated footway and cycle track between the proposed Parkside Link and the end of Kestrel Way, a distance of 1.19 kilometres;
- (ii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works;
- (iii) drainage works, drainage attenuation ponds, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works landscaping works and other works associated with the construction of the permanent highway.

Work No. 15 — Construction of a private means of access from Houghton Road, Chalton, to Chalton Cross Farm.

Further, in connection with such works further development within the Order limits as may be necessary or expedient for the purposes of, or in connection with, the construction of the authorised project, and which falls within the scope of the environmental impact assessment, 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, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) 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;
- (c) ramps, means of access, footpaths, bridleways, embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, highway lighting, fencing and culverts;

- (d) works to alter the position of apparatus, including mains, sewers, drains and cables and to carry out undergrounding, ducting and trenching operations and the removal of redundant equipment as a result of, or for the purposes of, such alteration;
- (e) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;
- (g) works for the benefit or protection of land affected by the authorised project;
- (h) works required for the strengthening, improvement, maintenance or reconstruction of any streets; and
- (i) other works, including contractor's compounds, working sites, storage areas and works of demolition.

SCHEDULE 2

Articles 3 and 40

REQUIREMENTS

Interpretation

1. In this Schedule—

“the approved development plans” means the plans certified in accordance with article 37(1) (certification of plans, etc.);

“heavy goods vehicle” means a heavy goods vehicle of more than 7.5 tonnes gross vehicle weight;

“the landscaping plans” means plans setting out landscape proposals included within the environmental statement figures 10.3 to 10.7 inclusive or such replacement plans as are approved in accordance with paragraph 4(3); and

“the link road” means the authorised development.

Time limits

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

Commencement

3. Notice of commencement of the authorised development must be given by the undertaker to the relevant planning authorities not later than 7 days after the date that the authorised development is commenced.

Detailed design and implementation

4.—(1) No part of the authorised development is to commence until detailed design documents have been approved by the relevant planning authority.

(2) Except as provided for by sub-paragraph (3), the authorised development must be carried out in accordance with the approved development plans and the landscaping plans.

(3) Replacement landscaping plans may be approved in writing by the relevant planning authority and substituted for the landscaping plans, provided that such approval is not given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement, and falls within the Order limits.

Landscape and ecology

5.—(1) No part of the authorised development is to commence until a written landscape and ecology management plan has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural England.

(2) The landscape and ecology management plan must include details of—

- (a) landscape and ecological mitigation, enhancement, compensation and nature conservation measures reflecting the proposals of the environmental statement;
- (b) the management and monitoring of landscape and ecological mitigation, compensation and nature conservation measures;
- (c) the management and monitoring of water quality in Houghton Brook, including the build up of sediment;

- (d) the restoration of the borrow pit referred to in Work No. 11;
- (e) proposed species for planting;
- (f) repeat surveys to be undertaken to confirm the presence of any European protected species including the location of any active bat roosts;
- (g) the protection of any European protected species from activities associated with the authorised development, including any European protected species identified in the surveys required by sub-paragraph (f);
- (h) surveys to be undertaken to confirm the presence of invertebrate species;
- (i) details of any mitigation and enhancement measures necessary in relation to species identified in the surveys required by sub-paragraph (h);
- (j) the protection of any nationally protected species from activities associated with the authorised development; and
- (k) a programme for implementation of the proposed measures required by sub-paragraphs (f), (g), (h), (i), and (j).

(3) The approved landscape and ecology management plan or any amended plan approved in writing by the relevant planning authority, after consultation with Natural England, must be implemented in its entirety.

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

(5) “Nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(b).

(6) Any tree or shrub planted as part of the approved landscaping and ecology management plan 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 as that originally planted, unless the relevant planning authority gives consent to any variation.

(7) All hedges and trees forming part of the boundary of the Order limits or situated within them (unless shown to be removed in the approved landscaping and ecology management plan) must be protected from any damage and maintained throughout the construction of the authorised development.

(8) If any hedge or tree protected under sub-paragraph (7) is removed, uprooted, destroyed or dies it must be replaced in the first available planting season and afterwards maintained for a period of 5 years.

(9) All areas of the site left undisturbed, and all soil, soil making material and overburden mounds must be kept free from injurious weeds and invasive plants throughout the construction of the authorised development.

Contaminated land

6.—(1) Construction of the link road must not take place in any area identified by the environmental statement as requiring land contamination investigation until such an investigation has been carried out in accordance with the methodology set out in the environmental statement.

(2) In the event that contaminated materials are identified by an investigation or found at any time when carrying out the authorised development, it must be reported immediately in writing to the relevant planning authority and the undertaker must complete a risk assessment of the contamination.

(a) S.I. 2010/490, to which there are amendments not relevant to this Order.

(b) 1981 c. 69.

(3) Where the relevant planning authority determine 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 relevant planning authority.

(4) The approved scheme must include details of data to be collected in order to demonstrate that the remediation measures have been implemented successfully and details of requirements for longer-term monitoring of pollution linkages, maintenance and arrangements for contingency action.

(5) Remediation must be carried out in accordance with the approved scheme or any amended scheme approved in writing by the relevant planning authority.

(6) If remediation is required at any time during construction of the authorised development, no part of the authorised development is to be opened for public use until a verification report demonstrating completion of remediation in accordance with the approved scheme has been submitted to and approved in writing by the relevant planning authority.

(7) The verification report must include results of sampling and monitoring carried out in accordance with the approved scheme.

(8) The verification report must include any plan for longer-term monitoring of pollution linkages, maintenance and arrangements for contingency action as may be required by the approved scheme, and the plan, or any amended plan approved in writing by the relevant planning authority, must be implemented as approved.

Construction environmental management plan

7.—(1) No part of the authorised development is to commence until a written construction environmental management plan has been submitted to and approved in writing by the relevant planning authority.

(2) The construction environmental management plan must include measures to address—

- (a) generation of dust and mud arising during construction;
- (b) the monitoring of PM10 particulates, including the taking of appropriate mitigation measures if National Air Quality Strategy objectives are exceeded or are predicted to be exceeded;
- (c) the routeing of construction vehicles during construction;
- (d) noise and vibration;
- (e) safeguarding watercourses;
- (f) flooding;
- (g) waste management; and
- (h) the mitigation of environmental impacts of construction reflecting the proposals of the environmental statement.

(3) In relation to safeguarding watercourses, the construction environmental management plan must require—

- (a) the collection, treatment and disposal of all water entering or arising within the Order limits during construction, including the removal of suspended solids from surface water run-off, to ensure that there is no discharge of contaminated or polluted drainage to ground or surface waters;
- (b) all foul drainage arising out of the authorised development to be discharged to a public sewer or else to a sealed tank, the contents of which must be removed from within the Order limits in its entirety;
- (c) any chemical, oil or fuel storage container within the Order limits for the purposes of the authorised development to be sited on an impervious surface with bund walls, and the volume of the banded area to be the equivalent of 110% of the volume of the container and to contain within its curtilage all fill and draw pipes, vents, gauges and sight glasses; and

(d) the drainage system of the bund to be sealed with no discharge to any watercourse, land or underground strata.

(4) In relation to flooding the construction environmental management plan must comply with the requirements detailed in the Luton Borough Council and South Bedfordshire District Council Strategic Flood Risk Assessment.

(5) In relation to the generation of mud and dust during construction, the construction environmental management plan must require—

(a) wheel cleaning facilities to be installed and remain in position and be maintained in full working order, to be used by all heavy goods vehicles throughout the construction of the authorised development to minimise the risk that dust, mud or other deleterious matter is transferred to the public highway by vehicles leaving the authorised development;

(b) measures to be taken during construction to minimise the risk that dust or windblown material is carried on to adjacent property, including the watering of all haul and access roads and the spraying of storage heaps or operational construction areas as necessary during dry weather conditions; and

(c) all heavy goods vehicles carrying materials in to or out of the authorised development during the construction of the development to be securely sheeted unless the load is otherwise enclosed.

(6) The construction of the authorised development must be carried out in accordance with the approved construction environmental management plan.

Noise and vibration

8.—(1) No part of the authorised development is to commence until a plan showing the locations of the acoustic barriers and details of the length, height, design and materials of the acoustic barriers has been submitted to and approved in writing by, the relevant planning authority.

(2) The acoustic barriers must be erected in accordance with the approved details prior to the opening of the link road and must be retained in place throughout the life of the road.

(3) All construction work must be undertaken in accordance with guidance detailed in the BS5228:2009 code of practice for noise and vibration control on construction and open sites, parts 1 and 2.

(4) All plant, equipment and other machinery used in connection with the construction of the link road must be equipped with effective silencing equipment or sound proofing equipment to the standard of design set out in the manufacturer's specification and must be maintained in accordance with that specification at all times throughout the development.

Access by construction traffic

9.—(1) No part of the authorised development is to commence until the locations and details of the access points for construction traffic from the public highway into the authorised development have been submitted to and approved in writing by the relevant planning authority.

(2) All construction traffic must at all times access the authorised development using an access point approved under sub-paragraph (1).

Building and construction materials – highways

10.—(1) No part of the authorised development is to commence until written details of the materials to be used for the surfacing of the new road comprised in Work No. 1 and the adjacent cycle track and footway have been submitted to and approved in writing by the relevant planning authority.

(2) The details submitted under sub-paragraph (1) must include provision for the use of low noise road surfacing materials on the road comprised in Work No. 1.

(3) The authorised development must be carried out using the materials approved under sub-paragraph (1).

Building and construction materials – structures

11.—(1) No part of the authorised development is to commence until written details of the building materials to be used for the external facings of all structures, including bridges, retaining walls and culvert sides and headwalls, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out using the materials approved under sub-paragraph (1).

Street lighting

12.—(1) No part of the authorised development is to commence until a scheme of the lighting to be erected along the link road has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme submitted under sub-paragraph (1) must include details of—

- (a) the areas of the link road to be lit;
- (b) the position of the lighting columns and their heights and designs, including their luminaires and any shielding that is to be incorporated into the lighting columns;
- (c) the extent of the light spread from each column; and
- (d) mitigation measures relating to lighting reflecting the proposals in the environmental statement.

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

Hours of working

13.—(1) No delivery or removal of materials or construction works is to take place on public holidays, Sundays or outside the hours of—

- (a) 0800 to 1800 hours on Mondays to Fridays; and
- (b) 0800 to 1300 hours on Saturdays.

(2) Sub-paragraph (1) does not prevent—

- (a) the use of pumping equipment or the carrying out of essential on-site repairs to plant and machinery; and
- (b) delivery or removal of materials or construction works carried out with the prior approval of the relevant planning authority,

outside such hours.

(3) Approval given under sub-paragraph (2)(b) may be given for specific activities or classes of activities.

Surface water disposal

14.—(1) No part of the authorised development is to commence until a detailed design of the realignment of Houghton Brook including long and cross sections and a written scheme for the disposal of surface water has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must include mitigation measures that reflect those proposed in the environmental statement and are considered sufficient by the relevant planning authority having regard to the flood risk assessment within the environmental statement.

(3) No infiltration system is to form a part of the scheme of surface water disposal unless the relevant planning authority is satisfied that it does not pose a risk to groundwater quality.

(4) The approved scheme for the disposal of surface water or any amended scheme approved in writing by the relevant planning authority must be implemented in its entirety.

Archaeology

15.—(1) No part of the authorised development is to commence until a written scheme of archaeological investigation has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out at all times in accordance with the scheme approved under sub-paragraph (1) unless otherwise agreed in writing by the relevant planning authority.

(3) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must not be moved and must be reported to the relevant planning authority in writing within 3 working days.

(4) No construction operations for the authorised development 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 relevant planning authority.

(5) If the relevant planning authority are 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 for the investigation and recording of the remains in accordance with details first submitted in writing to, and approved in writing by, the relevant planning authority.

Cultural heritage

16.—(1) The authorised development must not commence until a written cultural heritage scheme and programme has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme and programme must include mitigation measures reflecting those proposed in the environmental statement and include—

- (a) records to be taken to show the current appearance and setting of historic buildings impacted by the works; and
- (b) mitigation measures to protect such heritage assets as the scheme and programme identify as requiring protection.

(3) The authorised development must be carried out in accordance with the approved scheme and programme.

Geology

17.—(1) No part of the authorised development is to commence until a written scheme of geological investigation has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must set out criteria for the assessment of geological exposures of scientific interest for the purposes of deciding whether a permanent geological conservation site should be created.

(3) The authorised development must be carried out in accordance with the approved scheme.

Monitoring of the effects of the authorised development

18.—(1) No part of the authorised development is to be opened for public use until a written scheme for monitoring the following effects of the authorised development has been submitted to and approved in writing by the relevant planning authority—

- (a) effects on nature conservation interests;
- (b) effects on access to community and private assets;
- (c) effects on the water environment including water quality, hydrology and flood risk;
- (d) landscape and visual effects;
- (e) effects on air quality; and
- (f) noise and vibration effects.

(2) The monitoring scheme must cover the monitoring of the above effects of the authorised development and their mitigation as set out in the environmental statement.

19.—(1) In this requirement, “the Transport Assessment” means the Woodside Link Transport Assessment forming part of the environmental statement.

(2) No part of the authorised development is to be opened for public use until a written scheme (“the Parkside Drive Scheme”) for monitoring and assessing the volume and effects of traffic using Parkside Drive, Houghton Regis has been submitted to and approved in writing by the relevant planning authority.

(3) The Parkside Drive Scheme must make provision for the monitoring of the volumes of motorised vehicular traffic using Parkside Drive on the basis of the same traffic monitoring methodology used for the Transport Assessment for a period of 2 weeks commencing on the first anniversary of the link road opening date and afterwards on the fourth, seventh, tenth, thirteenth and sixteenth anniversaries of that date.

(4) Any scheme which is approved by the relevant planning authority under sub-paragraph (2) must be implemented as approved.

(5) Should the monitoring show that motorised vehicle movements on Parkside Drive exceed 8300 movements per day averaged over a 2 week period, Central Bedfordshire Council must consult people living within 500 metres of Parkside Drive regarding whether to implement further traffic mitigation measures in order to secure significant amelioration of any adverse traffic, highway safety or traffic-related environmental conditions identified in the assessment.

Weight Limits

20. Not later than 3 months after Work No.1 has been brought into public use, Central Bedfordshire Council must initiate the process for making an order under the 1984 Act to introduce a 7.5 tonne weight limit on Sundon Road towards Houghton Regis Town Centre, and then implement any weight restriction agreed as a result of that process.

SCHEDULE 3

Article 11

SPEED LIMITS

PART 1

ROADS SUBJECT TO 20 MPH SPEED LIMIT

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
1	Parkside Drive, Houghton Regis from a point 50 metres north of its junction with the A5505 Woodside Link (Work No. 1) northwards for a distance of 260 metres.

PART 2

ROADS SUBJECT TO 30 MPH SPEED LIMIT

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
1	The A5505 Woodside Link (Work No. 1) from its junction with Park Road North eastwards for a distance of 370 metres.
2	Sundon Road, Houghton Regis, from its junction with Houghton Road, Chalton southwards for a distance of 520 metres.
3	Houghton Road, Chalton from its junction with Sundon Road Houghton Regis northwards for a distance of 125 metres.
4	The unclassified road known as Sundon Link Road from its junction with Sundon Road, Houghton Regis eastwards for a distance of 65 metres

PART 3

ROADS SUBJECT TO 40 MPH SPEED LIMIT

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
1	The A5505 Woodside Link (Work No. 1) from a point 390 metres east of its junction with Park Road North north-eastwards for a distance of 2250 metres.
2	The unclassified road known as the Sundon Link Road from its junction with the A5505 Woodside Link (Work No. 1) westwards for a distance of 390 metres.
3	Parkside Drive, Houghton Regis from its junction with the A5505 Woodside Link (Work No. 1) northwards for a distance of 50 metres.

SCHEDULE 4

Article 12

STREETS TO BE STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> Area	<i>(2)</i> Street to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> New street to be substituted
Borough of Luton	Wheatfield Road	Between points A and B on access plan 1 (being from the junction of Poynters Road eastwards for a distance of 28 metres).	Between points C and D on access plan 1 (being from the new junction with Work No. 1 south-eastwards for a distance of 19 metres).
District of Central Bedfordshire	Parkside Drive (currently subject to Prohibition of Driving Order)	Between points E and F on access plan 2 (being from a point 142 metres south of the junction of Parkside Drive and Fensome Drive south-eastwards for a distance of 470 metres to the end of Pastures Way, Luton).	Between points E and G on access plan 2 (being from a point 142 metres south of the junction of Parkside Drive and Fensome Drive southwards for a distance of 170 metres to the junction with Work No. 1) – this section to be open to all traffic; and Between points H and F on access plan 2 (being from the junction with Work No. 1 southwards for a distance of 116 metres to the end of Pastures Way, Luton) – this section to be subject to a Prohibition of Driving Order.
	Footpath 39 (Houghton Regis)	Between points U and V on access plan 1 (being from a point 25 metres west of the junction of Sandringham Drive and Windsor Drive eastwards for a distance of 25 metres	Shared use footway and cycle track between points U and W on access plan 1 (being from a point 25 metres west of the junction of Sandringham Drive and Windsor Drive in

<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>
		to the boundary with the Borough of Luton).	an easterly and southerly direction, crossing Work No. 1, to the boundary with the Borough of Luton, a distance of 196 metres).
	Footpath 8 (Chalton)	In its entirety between points MM and NN as shown on access plans 2 and 3, a distance of 755 metres.	Shared use footway and cycle track between points M and N on access plans 2 and 3 (being from chainage 1115 of Woodside Link eastwards following the south side of Houghton Brook to Kestrel Way, Luton, a distance of 1191 metres).
	Footpath 7 (Chalton)	Between points P and Q on access plans 4 and 5 (being from chainage 2310 of Work No. 1 then northwards to just north of Chalton Cross Farm buildings, a distance of 381 metres).	Shared use footway and cycle track between points P and Q (via T) on access plans 5 and 7 (being from chainage 2310 of Work No. 1, northwards on the west side of Work No. 1, to an uncontrolled crossing point at chainage 2510 (point T on access plan 5) of Work No. 1, then on the east side of Work No. 1, utilising the access road to Chalton Cross Farm buildings to rejoin footpath 7 at point Q, a distance of 443 metres).
	Footpath 6 (Chalton)	Between points R and S on access plan 5 (being from Footpath 7 close to chainage 2550 of Work No. 1 then north-westwards to Houghton Road, Chalton, a distance of 467 metres).	Shared use footway and cycle track between points T and S on access plan 5 (being from the substitute Footpath 7 at chainage 2510 on Work No. 1, on the west side of Work No. 1, then on the south side of Sundon Link to chainage SL410, to

<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>
			an uncontrolled crossing point at Sundon Link, then along the south-east side of the old Sundon Road to rejoin Footpath 6 at point S, a distance of 810 metres).

PART 2

PRIVATE ACCESSES FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>Private access to be substituted</i>
District of Central Bedfordshire	Access to Chalton Cross Farm	Between Points AA and BB on access plan 5 (being from the northern-most point of Chalton Cross Farm yard northwards towards Houghton Road, Chalton for a distance of 164 metres).	Between points AA and CC on access plan 5 (being from the northern-most point of Chalton Cross Farm yard westwards towards Houghton Road, Chalton for a distance of 260 metres).

PART 3

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>
District of Central Bedfordshire	Footpath A17 (Houghton Regis)	Entire length as shown on access plans 2, 4 and 6 between points LL and KK, a distance of 864 metres.

SCHEDULE 5

Article 13

TEMPORARY PROHIBITION OR RESTRICTION OF USE OF
STREETS

<i>(1)</i> Area	<i>(2)</i> <i>Temporary prohibition or restriction on the use of streets</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of street</i>
District of Central Bedfordshire	Park Road North	Between Sandringham Drive and Poynters Road, all traffic. Access to frontages to be maintained at all reasonable times.
	Porz Avenue	Between Park Road North and Lovett Way, all traffic. Access to frontages to be maintained at all reasonable times.
	Poynters Road (the boundary between the District of Central Bedfordshire and the Borough of Luton runs along the middle of Poynters Road)	Between Porz Avenue and Brunel Road, Luton, all traffic. Access to frontages to be maintained at all reasonable times.
	Sundon Road, Houghton Regis	Between Hillborough Crescent (east) and Houghton Road, Chalton, all traffic. Access to frontages to be maintained at all reasonable times.
	Houghton Road, Chalton	Between Sundon Road and Luton Road, Chalton, all traffic. Access to frontages to be maintained at all reasonable times.
	Parkside Drive	Between points DD and F on access plan 2, all traffic, including pedestrians and cyclists.
	Sandringham Drive	Between Park Road North and Windsor Drive, all traffic. Access to frontages to be maintained at all reasonable times.
	Un-named cycle track between Sandringham Drive and Wheatfield Road	Between points FF and GG on access plan 2 all traffic.
	Footpath 7 (Chalton)	Between points K and P on access plans 4 and 6 and points Q and L on access plan 5.
Borough of Luton	Wheatfield Road	Between points HH and JJ on access plan 1, all traffic. Access to frontages to be maintained at all reasonable

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Temporary prohibition or restriction on the use of streets</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of street</i>
		times.
	Pastures Way	Between points F and Y on access plan 2, all traffic, including pedestrians and cyclists.
	Poynters Road (the boundary between the District of Central Bedfordshire and the Borough of Luton runs along the middle of Poynters Road)	Between Porz Avenue Houghton Regis and Brunel Road, all traffic. Access to frontages maintained at all reasonable times.

SCHEDULE 6

Article 14

PRIVATE ACCESSES TO AND FROM WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
District of Central Bedfordshire	At point X1 on access plan 5 (being a point on Houghton Road, Chalton 130 metres north-east of the Chalton parish boundary), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant and site workers' personal vehicles to the construction compound to undertake all of the authorised development
	At point X2 on access plan 2 (being a point on Parkside Drive, Houghton Regis 15 metres south of the junction with Fensome Drive), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant to undertake the authorised development within Work Nos. 6 to 10 inclusive
	At point X3 on access plan 1 (being a point on Sandringham Drive, Houghton Regis 80 metres east of the junction with Park Road North), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant and site workers' personal vehicles to undertake the authorised development within Work Nos. 1 to 6 inclusive
	At point X7 on access plan 5 (being a point on the future M1 Junction 11A), a temporary vehicular access to provide safe access and egress for site vehicles and plant and site workers' personal vehicles to undertake all of the authorised development
Borough of Luton	At point X4 on access plan 1 (being a point on Wheatfield Road, Luton 210 metres east of the junction with Poynters Road), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant to undertake the authorised development within Work No. 5
	At point X5 on access plan 2 (being a point on Pastures Way, Luton 2 metres south of the junction with Parkside Drive), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant to undertake the authorised development within Work No. 10
	At point X6 on access plan 3 (being a point at the eastern end of Kestrel Way, Luton), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant to undertake the authorised development within Work No. 14

SCHEDULE 7

Article 21(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on the land plans</i>	<i>(2)</i> <i>Purpose for which rights over the land may be acquired</i>
01/17	Right to construct, access, keep and maintain underground cables.
01/19	Right to construct, access, keep and maintain underground cables.
01/21	Right to construct, access, keep and maintain underground cables.
02/06	Right of access to land adjacent to existing brook to construct, inspect and maintain road embankment to Work No. 1 and the right to construct, access, keep and maintain underground cables.
02/40	Right to construct, access, keep and maintain underground cables.
02/41	Right to construct, access, keep and maintain underground cables.

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

Compensation enactments

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

2.—(1) The Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

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

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

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

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

Application of the 1965 Act

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

(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.

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

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right or the benefit of a restrictive covenant by the creation of a new right or the imposition of a restrictive covenant 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 or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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 or restrictive covenant over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

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

the Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014(a) (“the Order”), in relation to that person, ceases to authorise the purchase of the right or imposition of the restrictive covenant and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

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

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

(a) S.I. 2014/2637.

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

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

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

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

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

9. Section 22 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 and enjoy the benefit of the restrictive covenant imposed, 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 9

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Location	<i>(2)</i> Number of land shown on the land plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Relevant part of the authorised development
District of Central Bedfordshire	01/09	Landscaping, removal of redundant overhead power lines, construction of footway and cycle track alongside Sandringham Drive.	Work No. 1 Work No. 6 Work No. 7
	01/13	Landscaping.	Work No. 1 Work No. 2 Work No. 6
	01/16	Landscaping.	Work No. 1 Work No. 6
	01/17	Landscaping, installation of underground service ducts.	Work No. 1
	01/19	Landscaping, installation of underground service ducts.	Work No. 1
	01/21	Landscaping, installation of underground service ducts.	Work No. 1 Work No. 7
	02/05	Landscaping and works to Houghton Brook.	Work No. 1 Work No. 8
	02/06	Landscaping, installation of underground service ducts, working space.	Work No. 1
	02/10	Improvement of Parkside Drive, access to works.	Work No. 8 Work No. 9
	02/11	Improvement of Parkside Drive, access to works.	Work No. 9
	02/24	Removal of redundant parts of Parkside Drive, landscaping.	Work No. 10
	02/25	Storage of topsoil and excavated material.	Work No. 1
	02/26	Storage of topsoil and	Work No. 1

<i>(1) Location</i>	<i>(2) Number of land shown on the land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
		excavated material, haul road, working space.	
	02/27	Storage of topsoil and excavated material, haul road, working space.	Work No. 1
	02/30	Landscaping, haul road, working space, removal of redundant overhead power lines.	Work No. 1 Work No. 14
	02/31	Working space to construct bridge.	Work No. 1
	02/32	Working space to construct bridge.	Work No. 1
	02/35	Landscaping	Work No. 9
	02/36	Landscaping	Work No. 9
	02/37	Landscaping	Work No. 9
	02/38	Landscaping	Work No. 9
	02/39	Landscaping, removal of redundant overhead power lines, improvement of footway and cycle track between Frogmore Road and Wheatfield Road.	Work No. 7 Work No. 8
	02/40	Landscaping, installation of underground service ducts, improvement of footway and cycle track between Frogmore Road and Wheatfield Road.	Work No. 1
	02/41	Landscaping, installation of underground service ducts, working space for the construction of an attenuation pond.	Work No. 1
	02/46	Landscaping, installation of underground service ducts.	Work No. 1
	02/48	Landscaping, haul road, working space, removal of redundant overhead power line.	Work No. 8 Work No. 14
	04/02	Construction of a private means of	Work No. 1

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on the 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>
		access to proposed development.	
	04/07	Haul road, working space.	Work No. 1
	04/08	Haul road, working space.	Work No. 1
	04/09	Haul road, working space.	Work No. 1
	04/10	Haul road, working space.	Work No. 1
	04/11	Construction of a private means of access to farm buildings.	Work No. 1
	04/12	Working space	Work No. 1
	05/09	Construction of a private means of access to farm buildings.	Work No. 15
	05/10	Site of a construction compound including temporary access for site vehicles.	Work No. 1 Work No. 12 Work No. 13 Work No. 15
	05/11	Construction of a private means of access to farm buildings.	Work No. 1
	05/12	Construction of a private means of access to farm buildings.	Work No. 1
Borough of Luton	01/14	Landscaping.	Work No. 1
	03/05	Access for construction of a footway and cycle track, works to Houghton Brook	Work No. 14
	03/06	Access for construction of a footway and cycle track, works to Houghton Brook	Work No. 14

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF UK POWER NETWORKS LIMITED

1. In this Part of this Schedule—

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by UKPN;

“authorised work” means the construction of any work authorised by this Order;

“the engineer” means an engineer appointed by UKPN for the purposes in question;

“specified work” means so much of any authorised work as relates to the carrying out of any operation to any apparatus; and

“UKPN” means UK Power Networks Limited, company number 07353731, registered at 14-18 City Road, Cardiff, CF24 3DL.

Approval of plans, protective works etc.

2.—(1) The undertaker must, before commencing construction of any specified work, supply to UKPN proper and sufficient plans of that work and such further particulars available to it as UKPN may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work 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 or delayed, and if within 28 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to UKPN the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

(a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

(b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by the undertaker (or by UKPN at the undertaker’s request) without unnecessary delay and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer’s reasonable satisfaction.

(4) In the event that the undertaker fails to complete the construction of, or part of, the specified works UKPN may, if it is reasonably required in order to avoid detriment, construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse UKPN all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

(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).

Construction

3. Any specified or protective works must, when commenced, be constructed—
- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this Part of this Schedule and with any requirements made under paragraph 2(3);
 - (b) under the supervision (if given) and to the reasonable satisfaction of the engineer; and
 - (c) in such manner as to cause as little detriment as is reasonably practicable.

PART 2

FOR THE PROTECTION OF NATIONAL GRID

Application

4. For the protection of National Grid the following provisions, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

5. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of National Grid Electricity Transmission Plc, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by it;
- (b) in the case of National Grid Gas Plc, any mains, pipes or other apparatus belonging to or maintained by it for the purposes of gas supply;

“commence” means the first carrying out of any works relating to the authorised development and commencement is to be construed accordingly;

“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, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus including construct, use, repair, improve, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc, company number 02366977, and National Grid Gas Plc, company number 02006000, both companies registered at 1 - 3 Strand, London, WC2N 5EH; and

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

6. Except for paragraphs 7 (apparatus in stopped up streets), 9 (acquisition of land), 12 and 13 (retained apparatus: protection), 14 (expenses) and 15 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

7.—(1) Where any street is stopped up under article 12 (stopping up of streets) and any National Grid apparatus is in the street or accessed by that street National Grid is entitled to the same rights

in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street. Any apparatus of National Grid required to be moved by the undertaker must be dealt with under paragraphs 10 and 11 of this Part of this Schedule and not under article 31(2) to (8) (apparatus and rights of statutory undertakers in stopped up streets) regardless of its inclusion in the Order.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 13 (temporary prohibition or restriction of use of streets), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary 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

8.—(1) The undertaker, 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 without the written consent of National Grid (such consent not to be unreasonably withheld or delayed) except in the case of emergency works (as defined in the 1991 Act) in which case the undertaker must use all reasonable endeavours not to obstruct or render less convenient the access to any National Grid apparatus (except, where such powers are exercised over National Grid operational land, where access must never be obstructed or rendered less convenient without the written consent of National Grid).

(2) If by reason of the exercise of the powers conferred by article 17 any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity or gas (as the case may be) by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (3), must—

- (a) make compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(3) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workers; and National Grid must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise of it is to be made without first consulting the undertaker and giving them an opportunity to make representations as to the claim or demand.

Acquisition of land

9. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not otherwise than by agreement with National Grid—

- (a) acquire by compulsion from National Grid any right or interest in land (including rights in the subsoil of or the air-space over land) or any of National Grid's apparatus, or impose restrictive covenants affecting land in which National Grid has rights or interests, or enter upon land, or override any wayleave, easement or other rights or interests of National Grid; or
- (b) take temporary possession of any land that is not a highway so as to interfere with any easement, wayleave or other right relating to National Grid's apparatus.

Removal of apparatus

10.—(1) If, in the exercise of the agreement reached in accordance with paragraph 9 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is

placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 11(1)) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) the maintenance of that apparatus afterwards.

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

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

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

Facilities and rights for alternative apparatus

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

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

Retained apparatus: protection for National Grid Gas Plc

12.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect (with reference to the guidance specified at sub-paragraph (11)), any apparatus the removal of which has not been required by the undertaker under paragraph 10(2) or otherwise, the undertaker must submit to National Grid Gas Plc a plan.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid Gas Plc under sub-paragraph (1) must be detailed including a method statement and describing—

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

(3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) or (2) applies until National Grid Gas Plc has given written approval of the plan so submitted.

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (1) or (2) applies, National Grid Gas Plc may as part of the written approval referred to in sub-paragraph (3) require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), as amended from time to time by agreement between the undertaker and National Grid Gas Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Grid Gas Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Gas Plc is entitled to watch and inspect the execution of those works.

(7) Where National Grid Gas Plc requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid Gas Plc's satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part of it) and National Grid Gas Plc must give notice of such works within 56 days from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid Gas Plc in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 4 to 6 and 9 to 11 apply as if the removal of the apparatus had been required by the undertaker under paragraph 10(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of 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.

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

- (a) comply with sub-paragraph (5), (6) and (7) in so far as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

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

Retained apparatus: protection National Grid Electricity Transmission Plc

13.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect (with reference to the guidance specified at sub-paragraph (11)), any apparatus the removal of which has not been required by the undertaker under paragraph 10(2) or otherwise, the undertaker must submit to National Grid Electricity Transmission Plc a plan.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must be detailed including a method statement and describing—

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

(3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) or (2) applies until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

(4) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (1) or (2) applies, National Grid Electricity Transmission Plc may as part of the written approval referred to in sub-paragraph (3) require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc is entitled to watch and inspect the execution of those works.

(7) Where National Grid Electricity Transmission Plc requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part of it) and National Grid Electricity Transmission Plc must give notice of such works within 56 days from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid Electricity Transmission Plc in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 4 to 6 and

9 to 11 apply as if the removal of the apparatus had been required by the undertaker under paragraph 10(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of 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.

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

- (a) comply with sub-paragraph (5), (6) and (7) in so far as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

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

Expenses

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

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 10(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the carrying out of protective works and any necessary works (not otherwise covered by paragraph 16) carried out by National Grid to monitor ground subsidence, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (e) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of

agreement settled by arbitration in accordance with article 39 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type, capacity, or dimensions of apparatus, or to place apparatus at the existing depth in which case full costs must be borne by the undertaker.

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

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

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) 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 National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

15.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker or any person employed or authorised by the undertaker in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as previously mentioned.

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

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

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without first consulting the undertaker and considering their representations.

Ground subsidence monitoring scheme in respect of National Grid's apparatus

16.—(1) No works—

- (a) that are near to, or will or may affect (with reference to the guidance specified at paragraph 12(11)) any National Grid Gas Plc apparatus or alternative apparatus; or

- (b) within 100 metres of any National Grid Electricity Transmission Plc apparatus or alternative apparatus

are to commence until a scheme for monitoring ground subsidence (referred to in this paragraph as “the monitoring scheme”) within the Order limits (and beyond if necessary and where the undertaker has sufficient rights to undertake such monitoring or where such rights can be provided by National Grid) which is capable of interfering with or risking damage to any of National Grid’s apparatus has been submitted to and approved in writing by National Grid, such approval not to be unreasonably withheld or delayed.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) must set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Grid’s approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (4).

(3) The monitoring scheme required by sub-paragraphs (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development. Any requirements of National Grid must be notified within 28 days of receipt of the monitoring scheme. Afterwards the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a “mitigation scheme”) must be submitted to National Grid for written approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid except that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and may recover any such costs in line with paragraph 14.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority under Schedule 2 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to National Grid for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

Enactments and agreements

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

Co-operation

18. Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 10(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 12 or 13, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

Access

19. If in consequence of the agreement reached in accordance with paragraph 9 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

20. Except for differences or disputes arising under paragraph 10(2), 10(4), 11(1), 12(1) to (3) and (5) to (11) and 13(1) to (3) and (5) to (11), any difference or dispute arising between the undertaker and National Grid under this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be referred to and determined by arbitration in accordance with article 39 (arbitration).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Central Bedfordshire Council (referred to in this Order as the undertaker) to construct a new road linking the Woodside Industrial Estate in Houghton Regis to the planned Junction 11A of the M1, and carry out all associated works. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the new section of highway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 37 of this Order (certification of plans, etc.) may be inspected free of charge during normal working hours at Central Bedfordshire Council, Watling House, High Street North, Dunstable, Bedfordshire LU6 1LF.

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