

8. DRAFT DEVELOPMENT CONSENT ORDER

DCO8.1 Can the applicant please apply the following?

- i) **All references to the Highways Agency should be amended to Highways England.**
 - ii) **Provide contact details for Highways England (registered office address) in the Explanatory Note on the final page of the draft Development Consent Order (dDCO) APP-026.**
 - iii) **Please correct typographical drafting errors and ensure all formatting is consistent with the statutory instrument template.**
 - iv) **Correct use of future tense "shall" or "will" to present tense or "must" where appropriate.**
 - v) **Correct use of capitals in heading above A44.**
 - vi) **Each requirement must be checked to ensure that an implementation clause has been added e.g. R19 requires such a clause in order to ensure that lighting is installed in accordance with approved details.**
1. Highways England has reviewed the draft DCO ("dDCO") against the points above and has provided a revised draft of the dDCO, which is appended at Appendix A to this response. The revised dDCO has been provided as a clean version (Appendix A) and a comparite between the revised version and the version submitted with the Application has also been provided (Appendix B). Please note that the cross-referencing goes awry in the comparite, but is correct in the OPSI template at Appendix A.
 2. Please could Examining Authority clarify the amendment requested under v) as Highways England is unclear as to the correct use of capitals that is being referred to.

DCO8.2 Preamble, "The application is for development which constitutes a nationally significant infrastructure project within sections 14(1)(h) and 22 of the Planning Act 2008, being the alteration and improvement of a highway which is wholly within England, in relation to which the Secretary of State is the highway authority, and the area of development of which is greater than 15 hectares."

In setting out the definition of highway related development which is within s14(1)(h) of the Planning Act 2008 (PA2008), s22 separately lists the alteration of a highway and the improvement of a highway. This application is described as the alteration and improvement of a highway. In the Statement of Reasons (SoR) APP-030, para 5.1.8 states that the proposed development is an alteration, and para 5.1.9 states that the development is also an improvement. Whilst the application would fall within the definition of a nationally significant infrastructure project, whichever it is considered to be, and has been accepted by the Secretary of State (SoS) as such, can the applicant clarify what is meant by paras 5.1.8 and 5.1.9? Furthermore, can the applicant clearly state which definition is being applied to which work?

1. As explained in the preamble to the dDCO, and paragraph 5.1.8 of the Statement of Reasons (Application Document Reference 4.1), the Scheme falls within both s.22(1)(b) and s.22(1)(c) of the Planning Act 2008 ("PA 2008"), as it constitutes both the alteration of a highway (s.22(1)(b)) and the improvement of a highway (s.22(1)(c)).
2. The table below highlights those works that constitute "improvements" and those that constitute "alterations".

Work Number	Description
Improvement Works under s.22(1)(c) Planning Act 2008	
1a	The improvement of the eastbound carriageway of the M4 Motorway
1b	The improvement of the westbound carriageway of the M4 Motorway
5b	The improvement of the M4 Junction 10 (Winnersh) eastbound on-slip (1)
5e	The improvement of the M4 Junction 10 (Winnersh) westbound on-slip (1)
Alteration Works under s.22(1)(b) Planning Act 2008	
2a	The realignment of the M4 Junction 12 (Theale) eastbound on-slip
2b	The realignment of the M4 Junction 12 (Theale) westbound off-slip
3a	The realignment of the Reading Motorway Service Area eastbound off-slip
3b	The realignment of the Reading Motorway Service Area eastbound on-slip
3c	The realignment of the Reading Motorway Service Area westbound off-slip

3d	The realignment of the Reading Motorway Service Area westbound on-slip
4a	The realignment of the M4 Junction 11 (Three Mile Cross) eastbound off-slip
4b	The realignment of the M4 Junction 11 (Three Mile Cross) eastbound on-slip
4c	The realignment of the M4 Junction 11 (Three Mile Cross) westbound off-slip
4d	The realignment of the M4 Junction 11 (Three Mile Cross) westbound on-slip
5a	The realignment of the M4 Junction 10 (Winnersh) eastbound off-slip
5c	The realignment of the M4 Junction 10 (Winnersh) eastbound on-slip (2)
5d	The realignment of the M4 Junction 10 (Winnersh) westbound off-slip
5f	The realignment of the M4 Junction 10 (Winnersh) westbound on-slip (2)
6a	The realignment of the M4 Junction 8/9 (Holyport) eastbound off-slip
6b	The realignment of the M4 Junction 8/9 (Holyport) eastbound on-slip and widening of the eastbound carriageway of the M4 Motorway at the location of Ascot Road overbridge
6c	The realignment of the M4 Junction 8/9 (Holyport) westbound off-slip and widening of the westbound carriageway of the M4 Motorway at the location of the existing Ascot Road overbridge
6d	The realignment of the M4 Junction 8/9 (Holyport) westbound on-slip
7a	Construction of a new bridge over the M4 to the east of the existing Ascot Road overbridge, demolition of the existing bridge and the realignment of Ascot Road
7b	The construction of a new retaining wall below grade at the eastern side of Ascot Road in the realigned section north of the M4 motorway
8a	The widening of the eastbound carriageway of the M4 motorway on the north side at the location of the existing Monkey Island Lane overbridge
8b	The widening of the westbound carriageway of the M4 motorway on the south side at the location of the existing Monkey Island Lane overbridge
8c	The construction of a new bridge over the M4 to the west of the existing Monkey Island Lane overbridge, demolition of the existing Monkey Island Lane overbridge, the realignment of Monkey Island Lane and the extension of 2 no. flood channel culverts under Monkey Island Lane

9a	The widening of the M4 motorway at the location of the existing Thames Bray underbridge, including realignment of the M4 central reserve and realignment of the footway and cycle way along the motorway
9b	The widening of Thames Bray underbridge over the River Thames to the north of the existing bridge, including widening of foundations, substructure and bridge deck to accommodate Work 9a
10a	The widening of the eastbound carriageway of the M4 motorway on the north side at the location of the existing Marsh Lane overbridge
10b	The widening of the westbound carriageway of the M4 motorway on the south side at the location of the existing Marsh Lane overbridge
10c	The realignment of Marsh Lane, including construction of retaining walls, raising of earthworks, demolition of the existing Marsh Lane overbridge over the M4 and construction of a new bridge over the M4
11a	The widening of the eastbound carriageway of the M4 motorway on the north side at the location of the existing Lake End Road overbridge
11b	The widening of the westbound carriageway of the M4 motorway on the south side at the location of the existing Lake End Road overbridge
11c	The construction of a new bridge over the M4 to the west of the existing Lake End Road overbridge, the demolition of the existing Lake End Road overbridge, the realignment of Lake End Road and the provision of a new junction between Lake End Road and Huntercombe Lane.
12a	The realignment of the M4 Junction 7 (Huntercombe) eastbound off-slip
12b	The realignment of the M4 Junction 7 (Huntercombe) eastbound on-slip
12c	The realignment of the M4 Junction 7 (Huntercombe) westbound off-slip
12d	The realignment of the M4 Junction 7 (Huntercombe) westbound on-slip
12e	The construction of a new bridge for the south bound carriageway of the Junction 7 Link Road (Huntercombe Spur) over the M4 to the west of the existing Huntercombe Spur overbridge, demolition of the existing Huntercombe Spur overbridge, construction of a new bridge for the north bound carriageway of the Junction 7 Link Road (Huntercombe Spur) over the M4 and the realignment of the Junction 7 Link Road (Huntercombe Spur), together with the construction of a new super-span cantilever gantry above the south bound carriageway of the Junction 7 Link Road (Huntercombe Spur) within the gantry siting location shown as "Gantry Type 3" on the works plans, including gantry foundations, gantry structure, signs, signals, sign illumination, control cabinets, and power cable connections.
12f	The construction of a new retaining wall between the Junction 7 Link Road (Huntercombe Spur) and the Junction 7 eastbound on-slip

13a	The realignment of the M4 Junction 7 (Huntercombe) eastbound off-slip
13b	The widening of the westbound carriageway of the M4 motorway on the south side at the location of the existing Oldway Lane overbridge
13c	The realignment of Oldway Lane, including construction of retaining walls, raising of earthworks, demolition of the existing Oldway Lane overbridge over the M4 and construction of a new bridge over the M4
14a	The widening of the eastbound carriageway of the M4 motorway on the north side at the location of the existing Wood Lane overbridge
14b	The widening of the westbound carriageway of the M4 motorway on the south side at the location of the existing Wood Lane overbridge
14c	The construction of a new bridge over the M4 to the east of the existing Wood Lane overbridge, the demolition of the existing Wood Lane overbridge and the realignment of Wood Lane
15	The extension of Chalvey Culvert to both north and south to accommodate Works 16a and 16d
16a	The realignment of the M4 Junction 6 (Chalvey) eastbound off-slip
16b	The realignment of the M4 Junction 6 (Chalvey) eastbound on-slip
16c	The realignment of the M4 Junction 6 (Chalvey) westbound off-slip, including widening of the M4 motorway to the south side at the location of the existing Windsor Branch Railway overbridge, realignment of the M4 central reserve to the south and widening the M4 earthworks embankment to the south using strengthened or retained earthworks
16d	The realignment of the M4 Junction 6 (Chalvey) westbound on-slip
17	The widening of Windsor Branch Railway underbridge to the south side of the existing bridge, including widening of foundations, substructure and bridge deck to accommodate Works 16b and 16c
18	The extension of the water and gas main subway under the M4 carriageway west of Datchet Road to both north and south, including diversion of the utilities passing through the subway and closure of the existing access manholes in the hard shoulders of the M4 motorway
19a	The widening of the eastbound carriageway of the M4 motorway on the north side at the location of the existing Datchet Road overbridge
19b	The widening of the westbound carriageway of the M4 motorway on the south side at the location of the existing Datchet Road overbridge
19c	The construction of a new bridge over the M4 to the east of the existing Datchet Road overbridge, utility diversion works, the demolition of the existing Datchet Road overbridge and the realignment of Datchet Road

20a	The widening of the eastbound carriageway of the M4 motorway on the north side at the location of the existing Recreation Ground overbridge
20b	The widening of the westbound carriageway of the M4 motorway on the south side at the location of the existing Recreation Ground overbridge
20c	The demolition of the existing Recreation Ground overbridge over the M4 and construction of a new bridge over the M4, and the realignment of Recreation Ground Road
21	The extension of the water main subway under the M4 carriageway east of Recreation Ground Road to both north and south, including diversion of the utilities passing through the subway and closure of the existing access manholes in the hard shoulders of the M4 motorway
22a	The widening of the eastbound carriageway of the M4 motorway on the north side at the location of the existing Riding Court Road overbridge
22b	The widening of the westbound carriageway of the M4 motorway on the south side at the location of the existing Riding Court Road overbridge
22c	The construction of a new bridge over the M4 to the west of the existing Riding Court Road overbridge, demolition of the existing Riding Court Road overbridge, the realignment of Riding Court Road, modification of a private means of access to Riding Court at its junction with Riding Court Road
23a	The widening of the eastbound carriageway of the M4 motorway on the north side at the location of the existing Ashley's Arch Culvert
23b	The extension of Ashley's Arch culvert to the north to accommodate Work No. 23a
24a	The realignment of the M4 Junction 5 (Langley) eastbound off-slip
24b	The realignment of the M4 Junction 5 (Langley) eastbound on-slip
24c	The realignment of the M4 Junction 5 (Langley) westbound off-slip
24d	The realignment of the M4 Junction 5 (Langley) westbound on-slip
24e	The widening of the eastbound carriageway of the M4 motorway on the north side at the location of the existing M4 Junction 5 (Langley)
24f	The widening of the westbound carriageway of the M4 motorway on the south side at the location of the existing M4 Junction 5 (Langley)
24g	The widening of Langley underbridge (West) to the north and south side of the existing Langley underbridge (West), including widening of foundations, substructure and bridge deck to accommodate Work Nos. 24e and 24f

24h	The extension of Langley subway to both north and south to accommodate Work Nos. 24e and 24f
24i	The widening of Langley underbridge (East) to the north and south side of the existing Langley underbridge (East), including widening of foundations, substructure and bridge deck to accommodate Work Nos. 24e and 24f
25	The demolition of the existing Old Slade Lane overbridge over the M4 and construction of a new bridge over the M4 and the realignment of Old Slade Lane, including construction of retaining walls
26a	The realignment of the M4 Junction 4b (M25) eastbound off-slip and widening of the eastbound carriageway of the M4 motorway on the north side at the location of the existing Old Slade Lane overbridge
26b	The realignment of the M4 Junction 4b (M25) westbound on-slip and widening of the westbound carriageway of the M4 motorway on the south side at the location of the existing Old Slade Lane overbridge
27a	The realignment of the M4 Junction 4b (M25) eastbound on-slip and the construction of a sign-only cantilever gantry above the on-slip within the gantry siting locations shown as "Gantry Type 4" on the works plans, including gantry foundations gantry structure, signs, sign illumination, control cabinets and power cable connections
27b	The realignment of the M4 Junction 4b (M25) westbound off-slip
28	The widening of Sipson Road Subway to the south to accommodate Work No. 29d
29a	The realignment of the M4 Junction 4 (Heathrow) eastbound off-slip
29b	The realignment of the M4 Junction 4 (Heathrow) eastbound on-slip
29c	The realignment of the M4 Junction 4 (Heathrow) westbound off-slip
29d	The realignment of the M4 Junction 4 (Heathrow) westbound on-slip and such works including (a) the construction of one no. MS3 signal cantilever gantry above the M4 over the M4 Heathrow spur northbound carriageway within the gantry siting location shown as "Gantry Type 6" on the works plans including gantry foundations, gantry structure, signals, control cabinets, power and communication cable connections, and (b) the construction of new signs and signals on 2 no. re-used portal gantries over the M4 Heathrow spur northbound carriageway within the gantry siting locations shown as "Re-used Gantry Type 7" on the works plans, including removal of existing signs and signals, refurbishment of gantry structure, signs, signals and sign illumination, control cabinets and power and communication cable connections
30a	The realignment of the M4 Junction 3 (Hayes) eastbound off-slip

30b	The realignment of the M4 Junction 3 (Hayes) westbound on-slip
-----	--

DCO8.3 Article 2, " "commence" means ...development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, habitat creation and species translocation, establishment of site offices and the laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements".

The SoS was reluctant "to permit significant elements of the development to commence before relevant approvals have been obtained from the planning authority under the requirements as appears to be intended by the definition of "commence" in the decision letter for the Daventry International Rail Freight Interchange Alteration Order (see para 44 of the decision letter), and deleted the corresponding definition from the final Order. With this in mind, can each of these exclusions be fully justified?

1. Many of the requirements in Schedule 2 to the dDCO prohibit the authorised development being "commenced" before they are fulfilled. However, there are certain actions that have been excluded from the definition of "commence" in Article 2(1). This means that certain more minor operations, such as archaeological investigations and species translocation, can be carried prior to the discharge of the 'pre-commencement' requirements. It is important to realise that this does not alter the statutory scheme, but merely exempts certain parts of the Scheme from the whole range of pre-commencement measures, particularly where they are themselves pre-commencement measures.
2. The definition of "commence" in Article 2 of the dDCO has been drafted widely to authorise the carrying out of preparatory works swiftly after development consent is granted. In particular this authorises important steps to protect the natural and archaeological environment (such as species translocation and archaeological investigations) to be carried out prior to the numerous pre-commencement conditions being discharged. If Highways England had to await the discharge of numerous requirements before commencing even initial preparatory work, this would cause unnecessary delay to the delivery of an important and strategic infrastructure project.
3. None of the pre-commencement requirements provided in Schedule 2 to the dDCO would be impacted on, or the matters which they address adversely affected by, the carrying out of the various operations listed in the definition of 'commence' before the requirements are discharged, as detailed in the table below.

Requirement	Justification for Exclusion
Requirement 3 - Detailed Design	This requirement provides for the approval of detailed design for the works, which constitute the construction of new bridges as part of the authorised development, so far as they do not accord with the details shown on the plans listed in the requirement. It is not necessary for the approval of layout, scale, siting etc for the new bridges at specific points along the Scheme to occur before preliminary site works and environmental investigations are carried out.
Requirement 13 - Protected Species	The preparation works and minor operations covered by the exclusion in the definition of 'commence' could have an impact on ecological receptors, and therefore it is recognised that it may not be acceptable for the exclusions to apply to the requirement to carry out

		pre-construction survey work. Highways England therefore proposes that this requirement is re-worded so that no authorised development is to be "carried out" until final pre-construction survey work has been undertaken, so as to remove it from the exclusions provided under the definition of 'commence'.
Requirement 14 - Surface Water Drainage		This requires the approval of the system that will mitigate and control surface and foul water drainage during the operation of the Scheme. Operational surface and foul water drainage need only be in place once the development is in operation, and therefore there is no need for these matters to be submitted and approved in advance of the preparatory works provided for under the definition of 'commence'.
Requirement 17 - Buildings at Risk		The minor operations that are excluded from the definition of commence would not be such as to effect any buildings identified to be 'at risk' by the relevant planning authority. Consequently, there is no need for this requirement to be removed from the application of the definition of 'commence' at Article 2(1).
Requirement 18 - Traffic Management		The operations that are excluded from the definition of commence are not such that they would require the Scheme's construction traffic management arrangements to be in place. The operations permitted are minor in nature and do not require the Construction Traffic Management Plan to have been approved before they can occur.

4. Critically, as further explained below in answer to first written question DCO 8.24, this does not apply to the approval of the Environmental Management Plan and the Construction Environmental Management Plan under requirements 7 and 8. These plans must be approved before any part of the authorised development has been carried out and therefore are not caught by the exclusions listed in the definition of commence in Article 2.

DCO8.4 Article 2, " "environmental statement" means the environmental statement submitted with the application for the Order, and certified as the environmental statement by the Secretary of State for the purposes of this Order".

The environmental statement (ES) may be updated or amended before any decision is taken on the dDCO. To accommodate any such changes, can the applicant re-word as follows:

"the environmental statement" means the document certified as the environmental statement by the decision-maker for the purposes of this Order.?

1. It is not the case that the Environmental Statement ("ES") may be amended during the course of the Examination. The ES documents the Environmental Impact Assessment ("EIA") for the Scheme at the point of the application. Whilst it is the case that supplemental environmental information may be submitted during the course of the Examination, which will augment the ES in relation to particular issues, the ES itself will not be amended.
2. This is consistent with the Secretary of State's duty under regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("EIA Regulations"), which prohibits the Secretary of State from granting development consent without first taking the 'environmental information' into consideration. 'Environmental Information' is defined in Regulation 2(1) of the EIA Regulations as "the environmental statement...including any further information and any other information...about the environmental effects of the development..." Consequently, what the Secretary of State must have regard to is the environmental information¹ - being the ES and any supplemental information submitted - rather than the ES itself, which remains a 'static' document from the point of the application.
3. If such supplemental environmental information is submitted during the course of the Examination, it can be referred to on the face of the dDCO and, if required, be certified by the Secretary of State.

¹ *R v. Rochdale Metropolitan Borough Council ex p. Milne* [2001] Env. L.R. 22

DCO8.5 Article 2, " "maintain" in relation to the authorised development includes to inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, replace and improve and any derivative of "maintain" is to be construed accordingly".

This is a broad definition of maintain. Can it be justified and what guarantee can be given that, for example, "reconstruct" would not fall outside the parameters of the description of the authorised project in Schedule 1, and would not be such as to give rise to any significant environmental effects which have not been assessed in the ES? Please see the definition of maintain adopted by the SoS in the Whitemoss Landfill Western Extension DCO.

1. The definition of 'maintain' in Article 2 of the dDCO is the same as the definition in Article 2 of the Rookery South (Resource Recovery Facility) Order 2011. Further, the definition of 'maintain' in the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015 is *"maintain" includes inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct and improve, and any derivative of "maintain" is to be construed accordingly.*" This is very similar to the definition adopted in Article 2(1) of the DCO for this Scheme.
2. Specifically, it includes 'reconstruct', as do the definitions of 'maintain' in the A556 (Knuttsford to Bowden Improvement) Development Consent Order 2014 and the A160/180 (Port of Immingham Improvement) Development Consent Order 2015.
3. In relation to 'reconstruct', the powers granted to maintain the authorised development only go so far as to allow development that has been authorised by the DCO. It is unlawful to authorise works going beyond the scope of the DCO and, accordingly, it would not be possible to authorise works that fell outside the scope of what had been assessed in the ES, and consequently approved under the DCO. Further, s. 160 of the PA 2008 provides that it is an offence to carry out, or cause to be carried out, development for which development consent is required when no development consent is in force in respect of the development. Consequently, if development were to occur which was outside of the terms of the DCO, its construction would be an offence pursuant to s.160 PA 2008, for which no defence is provided under the PA 2008.
4. As such, it is considered that the words *"but not so as to vary from the description of the authorised project in Schedule 1, and not such as to give rise to any significant adverse environmental effects that have not been assessed in the environmental statement or any supplementary information supplied pursuant to The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009"* used in the definition of 'maintain' in the Whitemoss Landfill Western Extension DCO are not required to ensure that the works undertaken under the power to maintain fall within the assessment in the ES.
5. The approach adopted in Article 2(1) is precedented and has been deemed appropriate by the Secretary of State on other schemes.

DCO8.6 Article 2, " "relevant planning authority" means the local planning authority for the land in question".

Can this definition be amended to reflect that there is more than one relevant planning authority?

1. Section 1(1) of Part 1 to the Town and Country Planning Act 1990 ("TCPA 1990") provides that, in relation to a non-metropolitan county:
 - (a) the council of a county is the county planning authority for the county, and
 - (b) the council of a district is the district planning authority for the district.
2. Further, s.1(2) of the TCPA 1990 provides that "the council of a metropolitan district is the local planning authority for the district and the council of a London borough is the local planning authority for the borough."
3. The definition in Article 2 of the dDCO provides that "relevant planning authority" means *the* local planning authority for the land in question. As such, it is consistent with the terms of Section 1 of the TCPA 1990 such that there is only ever one authority which is responsible for matters within its purview.

DCO8.7 Article 2, " "Secretary of State" means the Secretary of State for Transport".

In the Norwich Northern Distributor Road DCO, the SoS for Transport deleted the definition of SoS to allow for any future changes in the machinery of government. A generic SoS should be assumed. Can the applicant delete this definition?

1. Whilst it is correct that, as a matter of law, the Secretaries of State are one and indivisible², the Secretary of State with jurisdiction for matters connected with highway related developments is the Secretary of State for Transport, and in certain circumstances the decision under the DCO is for that specific Secretary of State. As such, it is appropriate that the dDCO should refer to the Secretary of State with jurisdiction for the NSIP authorised by the dDCO - in this case, the Secretary of State for Transport.
2. This approach would not prevent any future changes in the machinery of government, as any legislation that effected those changes would provide for the transfer of functions and consequential transitional provisions to ensure that such matters were addressed.
3. It is noted that the same approach to the definition of 'Secretary of State' as has been used in drafting the dDCO for this Scheme, was adopted, and thereby deemed appropriate, in relation to the A556 (Knutsford to Bowden Improvement) Development Consent Order 2014 and the A160/180 (Port of Immingham Improvement) Development Consent Order 2015.

² *Harrison v Bush* (1855) 5 E & B 344; *Hinchy v. Secretary of State for Work and Pensions* [2005] UKHL 16

DCO8.8 Article 3(2), "*For the purposes of the authorised development, development consent granted by this Order is to include and permit the alteration, removal, clearance, refurbishment, reconstruction, decommissioning and demolition of any buildings or other structures within the Order limits to the extent that they relate to, are required by or are incidental to the carrying out of the authorised development*".

This is a very general power, with little limitation on its scope. What is the purpose of this power and how can it be justified?

1. Highways England has reviewed the need for the inclusion of this wording in the dDCO and has concluded that it is not required, as the authorised development is fully described in Schedule 1 to the dDCO. Consequently, this sub-paragraph has been removed in the version of the dDCO submitted at Appendix A to this response.

DCO8.9 Article 3(4), "*The numbered works comprised in the authorised development are to be constructed within the limits specified in article 6 (power to deviate)*".

Does this clause duplicate the provision made in A3(3)?

1. It is correct that Article 3(4) duplicates the provision at Article 3(3). As such, Article 3(4) has been deleted in the revised draft of the dDCO provided at Appendix A to this response.

DCO8.10 Article 6, "...these maximum limits do not apply where it is demonstrated to the Secretary of State's satisfaction that a deviation in excess of these limits would not give rise to any materially new or materially worse adverse environmental effects from those assessed in the environmental statement".

This wording is not present in the equivalent article included in the A556 (Knutsford to Bowden Improvement) DCO, referred to in the Explanatory Memorandum (EM) APP-027.

1. Highways England apologises for the error identified in the Explanatory Memorandum. The Examining Authority is correct, the words referred were not included in the A556 (Knutsford to Bowden Improvement) Development Consent Order 2014. However, they were included in the draft DCO submitted with the application for the A14 Cambridge to Huntingdon Improvement Scheme.

This would seem to provide little clarity as to the extent of the development. If it is anticipated that the Order limits (together with the deviation limits in this article) will be the maximum extent, why is this wording required? Alternatively, should the order limits be amended to reflect the proposed limits?

2. The wording has been included to allow a necessary, but proportionate degree of flexibility in the final design and construction of the Scheme to enable the Scheme to be optimised in the public interest, provided that it is within the scope of environmental effects assessed. The reference to not giving rise to new or materially more adverse effects ensures that adverse environmental effects that have not been assessed as part of the EIA for the Scheme will result from the flexibility provided.
3. The ability to deviate in this way is in the control of the Secretary of State as approving authority, such that the Examining Authority (and the Secretary of State as decision-maker) can be confident that the development, and any adverse effects resulting from it, will not exceed the parameters assessed in the Environmental Statement. This is lawful since the effects of the Scheme would be within the assessed parameters, even if the specified parameters would have been altered.
4. In addition, this wording only applies to the limits of deviation of the physical works, such as the heights of gantries. It does not operate to allow an extension to the Order Limits for the Scheme, which are fixed pursuant to Article 3(1) and the definition in Article 2(1) of the Order, by reference to the land and works plans for the Scheme (Application Document References 2.2 and 2.3). Therefore, there is no additional effect upon persons interested in land as a result of the use of such a power.

DCO8.11 Article 14(6), *"If a street authority which receives an application for consent under paragraph 14(5) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent"*.

This is an addition to the model provision. Is it appropriate for the consent of the street authority to be deemed to have been given after 28 days in this way?

1. Under certain provisions of the dDCO various consents are required from local authorities and other bodies in order for certain actions to be taken, for example the discharge of water into a watercourse, public sewer or drain under Article 17(3) or land investigations, such as the making of trial holes, under Article 19(4).
2. Without the deemed consent provision provided for at Article 17(9), and in other articles as referred to the written questions which follow, the bodies whose consent is required could cause significant delay to a project of national significance or, ultimately, exercise a veto to the Scheme proceeding by not responding at all. The deemed consent provision is therefore included to ensure that this delay or veto cannot occur by the bodies concerned failing to consider or reach a decision on the consent required.
3. The alternative would be the application of the arbitration provisions contained in Article 47 of the dDCO in the event of a dispute or failure to respond to a request for approval. In such circumstances it is conventional to provide a deemed approval mechanism.
4. This does not adversely affect the position of the approving person or authority because it would be able to protect itself by refusing the submitted application within the time allowed, thereby preventing the deeming provision from coming into effect.

DCO8.12 Article 15, "*The undertaker may for the purposes of the authorised development form and lay out means of access, or improve existing means of access at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development*".

Would this provision grant adequate protection for adverse impacts as a result of the formation of a means of access? Would there be circumstances where the prior approval of the local planning authority should be sought?

1. Highways England notes that this Article is based on the model provisions and is a common provision to be included in DCOs. In particular, it is preceded in other recent highways DCOs, including at Article 13 in the A556 (Knutsford to Bowden Improvement) Development Consent Order 2014 and Article 14 of the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015.
2. There is no reason to suppose that adverse impacts would result from the power provided for in Article 15, such that prior approval of the relevant planning authority should be required.
3. It is also important to note that in respect of the M4 itself, Highways England is the highway authority. As such, this is not a matter of concern in respect of that road.
4. In relation to the effect of the opening of accesses onto the local highway network, the local highway authority and local planning authority are protected by the provisions as to the formation of means of access in the Outline Construction Environmental Management Plan at Appendix 4.2A to the Environmental Statement (Application Document Reference 6.3), see in particular Section 13.6 and paragraphs 2.11.3, 5.5.3 and 13.2.5-6.

DCO8.13 Article 16, "*Powers in relation to relevant navigations or watercourses*".

The powers provided by this article could have significant impacts on the navigation or watercourse and on its users. With that in mind, can each of the powers be justified? Have the Environment Agency or any other relevant bodies commented on this approach?

1. The use of the powers provided for under Article 16 is restricted to the works proposed as part of the authorised development. The works which rely on the powers proposed under Article 16 are limited and relate, for example, to the construction of Work Nos. 9a and 9b at the River Thames at Bray. The powers are required so that, for example, foundations can be laid for the extended bridge works and so that the decks required for the widened carriageway can be constructed.
2. In addition, it is important to make provision so that navigation can be interfered with during the construction period for these works. This enables closure or partial closure of navigations so as to ensure the safety of users of the watercourses, so that they do not come within the vicinity of the works whilst they are being carried out.
3. The impact of the Scheme on navigation was considered as part of the EIA (see paragraph 14.8.7 of the ES (Application Document Reference 6.1) and paragraphs 4.2.18, 4.5.19 and 6.6.21 of the Socio-Economic Report (Application Document Reference 7.2)). The impact of the works on the River Thames at Bray, which is where the works are concentrated, is assessed within Chapter 15 of the ES at paragraphs 15.4.71 and 15.4.87. Measures to prevent or manage the impacts resulting from the in-channel works at Bray are described in Table 15.15 of the ES and provided for in the Outline Construction and Environmental Management Plan at Appendix 4.2A to the Environmental Statement (Application Document Reference 6.3) at paragraphs 9.4.14-15 and 14.2.2-4.
4. The drafting provided at Article 16 of the dDCO was included in the version of the DCO submitted with the application, on which interested parties have had an opportunity to comment in their relevant representations. The bodies to whom this provision is most relevant, who were informed of the acceptance of the application and the ability to make relevant representations concerning the Scheme include, the Environment Agency, Natural England, the local planning authorities and parish councils within whose area the watercourses are located, the Canal and River Trust and the Inland Waterways Association. None of those bodies listed has raised a concern in relation to the powers provided in this Article.

DCO8.14 Article 17(9), "*If a person under paragraph (3) receives an application for consent and fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, the person is deemed to have granted*".

This is an addition to the model provision, which is not explained or justified in the EM APP-027. Is it appropriate for the consent of the relevant person to be deemed to have been given after 28 days in this way?

1. Please see the response to question DCO 8.11 above.

DCO8.15 *Article 19(6), "If a highway authority under paragraph (4)(a) or a street authority under (4)(b) receives an application for consent and fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, the highway authority or street authority, as relevant, is deemed to have granted consent".*

This is an addition to the model provision, which is not explained or justified in the EM APP-027. Is it appropriate for the consent of the relevant authority to be deemed to have been given after 28 days in this way?

1. Please see the response to question DCO 8.11 above.

DCO8.16 Article 41, "*Operational land for purposes of the 1990 Act*".

Why is it necessary for the Order land to be treated as operational land? Which powers or rights does the undertaker seek to rely on based on this definition?

1. Article 41 ensures that the Order land will be treated as operational land of a statutory undertaker. As such it will benefit from planning permission granted by article 3(1) of and Part 9 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.
2. Article 41 is a model provision and Article 35 of the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015 is an example of a recent precedent of this Article being used in a development consent order for a highway scheme.

DCO8.17 Article 42, "...in relation to a nuisance falling within paragraphs (c), (d), (e), (fb), (g), (ga) and (h) of section 79(1) (statutory nuisances and inspections therefor)".

The list of nuisances has been extended from that provided for in the model provision. How will these nuisances be controlled in relation to the development?

1. Section 79 of the Environmental Protection Act 1990 sets out those matters which are capable of constituting a statutory nuisance, which include matters such as air quality, artificial lighting and noise. The Statement of Statutory Nuisances (Application Document Reference 5.4) explains that, as a result of the Scheme's construction and operational practices, the proposed mitigation measures and regulatory controls, it is considered unlikely that the Scheme will give rise to statutory nuisance.
2. With the proper implementation of mitigation measures and, in particular, compliance with the Construction Environmental Management Plan (Appendix 4.2A to the ES, Document reference 6.3), it is not expected that the construction and operation of the Scheme would create a statutory nuisance. However, there remains a residual possibility that a statutory nuisance may be created and therefore Highways England requires the protection afforded by Article 42.
3. The Statement of Statutory Nuisances refers to the potential for a statutory nuisance to be created in respect of the matters falling within s.79(1) of the EPA 1990 quoted within Article 42. However, s.79(1)(c) of the EPA 1990 should not have been included in Article 42, as it only applies to the emissions of fumes and gases from private dwellings and is therefore not engaged by the Scheme. This amendment is reflected in the revised draft of the dDCO provided at Appendix A to this response.
4. The nuisances identified within Article 42 will be controlled, and mitigated, in the manner explained in the Statement of Statutory Nuisances, which explains that the mitigation put in place to prevent a statutory nuisance arising is provided by the Construction Environmental Management Plan and Schedule 2 to the dDCO:
 - 4.1 The mitigation measures for emissions (sections 79(1)(d) and (e)) are well known and will be applied in all areas of the Scheme where dust producing activities take place. The approach to mitigation considers the effect of emissions produced by the Scheme as a whole, as well as from specific sites, and is secured by the Construction Environmental Management Plan.
 - 4.2 In relation to artificial light (s.79(1)(fb)), no nuisance is expected as lighting will be retained in current locations. The implications of the Scheme (including proposed road lighting, and illuminated signs and gantries) for night-time characteristics has been assessed. A neutral significance of effect is anticipated as a result of the Scheme (see paragraph 8.2.11 of the ES). In addition, the Construction Environmental Management Plan secures that the majority of construction work will be undertaken in daylight hours with no need for artificial lighting (with some exceptional construction activities, such as bridge demolition).
 - 4.3 Mitigation for the effects of noise (s.79(1)(g) and (ga)) is detailed in Chapter 12 of the ES. The mitigation measures have been secured by the Construction Environmental Management Plan and, when in place, are sufficient to expect noise impacts not to generate a nuisance, or be prejudicial to health under section 79(1)(g) and (ga).

- 4.4 Mitigation measures are secured in the Construction Environmental Management Plan (and detailed in Chapter 15 of the ES) to prevent a statutory nuisance under section 79(1)(h) (in respect of section 259 of the Public Health Act 1936) potentially caused by temporary impacts on road drainage and the water environment.
5. In addition, reference is made to the Table of Mitigation, provided at Appendix A to the Explanatory Memorandum (Application Document Reference 3.2), which describes the mitigation proposed for the Scheme, and where that mitigation is secured within the Construction Environmental Management Plan and the dDCO.

DCO8.18 Article 45, "*Certification of plans etc*".

There are a number of sheets which comprise the Land Plans APP-008 to APP-012 and the Works Plans APP-013 to APP-017. Would it be more precise to provide the referencing/numbering of those sheets to ensure that all are taken into account?

1. The amendment requested above is reflected in the revised draft of the dDCO provided at Appendix A to this response.

DCO8.19 Article 49(2), "*Schedule 11 (procedure for discharge of requirements) shall have effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements*".

Why is it considered necessary to have a bespoke approval procedure for this development? Why should the existing procedure in relation to planning conditions not be used instead, as provided for by A4(1) of the Brechfa Forest West Wind Farm DCO 2013?

1. As noted and explained at page 23 of the Explanatory Memorandum (Application Document Reference 3.2), the approach adopted in relation to the procedure for discharging requirements in Schedule 11 to the dDCO reflects the approach adopted in the Hinkley Point C (Nuclear Generating Station) Order 2013 and the National Grid (North London Reinforcement Project) Order 2014. It is an appropriate and proportionate approach for a project of this nature, which constitutes a linear scheme of 51km (32 miles), passing through 11 different local planning authorities, all of which will need to approve certain requirements before work on the Scheme can commence.
2. Given the number of local planning authorities from whom approval needs to be sought before any works can commence, the existing procedure in relation to planning conditions could result in a considerable delay to the implementation of a project of strategic national importance to the UK transport network and UK economy. It is therefore considered to be necessary and proportionate in order to ensure the delivery of the Scheme.

DCO8.20 Drafting in Schedule 2

In requirements which include provision for details to be submitted to and approved by the relevant planning authority, should it be made explicit that such approvals should be made in writing?

1. Article 49 of the dDCO governs the procedure to be applied where an application is made for any consent, agreement or approval required or contemplated by any provisions of the Order, which includes the requirements under Schedule 2 to the dDCO.
2. Article 49(1) provides that "*such consent, agreement or approval must, if given, be given in writing...*". Consequently, it is not necessary for the dDCO to provide in each individual requirement that approvals for the discharge of requirements should be made in writing. To do so would be otiose.

A number of requirements include tailpieces such as "unless otherwise approved by the relevant planning authority". Such a provision allows scope for the PA2008 procedures to be circumvented and runs the risk of enabling the final scheme to go beyond the envelope of the ES. Is there any reason why such a provision would be justified in any of the requirements to the proposed DCO?

3. The requirements listed in Schedule 2 to the dDCO can only be used to allow development that has been authorised by the DCO. It would not be lawful for an authority to authorise works going beyond the scope of the DCO as governed by the limits of deviation shown on the Works Plans and described in Article 6 of the dDCO. Accordingly, it would be impossible to authorise works that fell outside the scope of what had been assessed in the ES, and consequently approved under the DCO.
4. It is not the case that the provision allows the circumvention of procedures under the Planning Act 2008 or that the final Scheme could go beyond the envelope assessed in the EIA that is reported in the ES. The reasons for this are:
 - 4.1 The DCO would authorise a strictly limited Scheme. It could not exceed the dimensions or effects assessed since to do so would not be in accordance with the plans. Any change within the limits does not circumvent the PA 2008 because it is within the consented Scheme ;
 - 4.2 The plans, and the ability to deviate within the scope provided for in those plans is the foundation upon which the EIA has rested. As such, variants of the Scheme that are possible within the powers of deviation were in the mind of the professional, expert assessors in performing their assessment;
 - 4.3 Thus, there would be a limited, assessed authorised Scheme. The change authorised under such a tailpiece cannot exceed the limits stated and hence would be part of the authorised Scheme, and to exceed the limits would be a criminal offence punishable under s161 PA 2008, the only defence to which is that the breach of the terms of the Order was as a result of an error or omission in the Order itself; and
 - 4.4 Read together, the requirements are subject to the power of deviation. Therefore, even if a change was purported to be within the powers of the DCO, this would be an imperfect defence to a charge, because the powers in the Order would have been exceeded.

5. Further, it should be noted that the schemes/plans to which the requirements that contain the tailpiece relate, concern matters of detail within the scope of the Scheme, and not fundamental aspects of the authorised development. Such amendments within the scope of the consented Scheme would not allow development to take place which had not been permitted by the Order or which went beyond the envelope of the Scheme assessed in the ES.
6. Nevertheless, it is important that an element of flexibility is provided so that any concerns of the approving bodies can be adequately addressed and the Scheme can be implemented in an effective manner.
7. Indeed, such tailpieces are common in other DCOs. For example, the Triton Knoll Offshore Wind Farm Order 2013 and the Galloper Wind Farm Order 2013 both contain many requirements which include such a provision. Similarly, recent highways schemes that have been granted development consent allow for modifications to be approved, for example the A556 (Knutsford to Bowden Improvement) Development Consent Order 2014 and the A160/A180 (Port of Immingham) Development Consent Order 2015. Consequently, for the reasons stated above, it is considered that the provisions in the Order which contain the phrase "unless otherwise approved by the relevant planning authority" are appropriate for inclusion in the Order.

DCO8.21 Requirement 3, "Except where the authorised development is carried out in accordance with the plans listed in requirement 4, no authorised development may commence until details of the layout, scale, siting, design, dimensions and external appearance of Works No. 7a, 8c, 9b, 10c, 11c, 12e, 13c, 14c, 17, 19c, 20c, 22c, 24g, 24j and 25, earthworks and retaining structures comprised in the authorised development so far as they do not accord with the development shown in the plans listed in requirement 6 have been submitted to and approved by the relevant planning authority. The authorised development must be carried out in accordance with the details shown in the plans listed in requirement 6 or approved under this requirement".

This requirement would appear to seek to enable the applicant to amend aspects of the scheme with the approval of the relevant planning authority. Such a provision could circumvent the provisions of PA2008 and enable the construction of a modified scheme which goes beyond the scope of the ES. Can the applicant please review this requirement and provide justification for its inclusion?

1. The development authorised by the DCO, if made, would be constrained by the power of deviation given by Article 6 as set out in the dDCO. As noted above, and as set out in paragraphs 5.10.1 and 5.10.2 of the ES, the scope of the power of deviation was specifically considered by Highways England's expert professional team.
2. Effectively, the assessed, authorised Scheme is that shown on the Works Plans and described in the dDCO at Schedule 1. The design shown on the engineering drawings and sections (Application Document Reference 2.5-2.9) is one set of variations within the proposed Scheme and an alternative must be capable of being built within that assessed envelope, effectively a different design within the limits of the approved Scheme. This application relates to approval of a Scheme and one design, but not a limitation to that design.
3. Requirement 3 can only be used to allow development that has been authorised by the DCO. It would be unlawful to authorise works going beyond the scope of the DCO and, accordingly, it would not be possible to authorise works that fell outside the scope of what had been assessed in the ES, and consequently approved under the DCO.

DCO8.22 Requirements 6(1) & (2), "6(1) The authorised development must be carried out in accordance with the approved plans submitted with the application (unless otherwise approved by the relevant planning authority and provided that the altered development accords with the principles of the engineering and design report and falls within the Order limits) as follows:

6(2)Where any alternative details are approved pursuant to this requirement or requirements 3 or 20, those details are to be deemed to be substituted for the corresponding approved details set out above".

The query raised in question 8.21 also applies to the provision in R6 for alterations to the development to be approved by the relevant planning authority. Can the applicant please review this requirement and provide justification for its inclusion?

1. The development authorised by the DCO, if made, would be constrained by the power of deviation given by Article 6 as set out in the dDCO. As noted above, and as set out in paragraphs 5.10.1 and 5.10.2 of the ES, the scope of the power of deviation was specifically considered by Highways England's expert professional team.
2. Effectively, the assessed, authorised Scheme is that shown on the works plans and described in the dDCO at Schedule 1. The design shown on the engineering drawings and sections (Application Document Reference 2.5-2.9), gantry drawings and the other documents references in requirement 6(1) is one set of variations within the proposed Scheme. As explained above in answer to DCO question 9.21, the development authorised by the dDCO is constrained by the power of deviation under Article 6. That power to deviate was assessed as part of the EIA for the Scheme (see paragraph 5.10.1-2 of the ES) and an alternative must be capable of being built within that assessed envelope, effectively a different design within the limits of the approved Scheme. This application relates to approval of a Scheme and one design, but not a limitation to that design.
3. As with Requirement 3, Requirement 6(1) and (2) can only be used to allow development that has been authorised by the DCO. It would be unlawful to authorise works going beyond the scope of the DCO as explained in answer to DCO question 8.20 and, accordingly, it would not be possible to authorise works that fell outside the scope of what had been assessed in the ES, and consequently approved under the DCO.

DCO8.23 Requirement 5, "Where any carriageway comprised in Work No. 1a and 1b, or any slip road is to be resurfaced as part of the authorised works, thin surface course is to be provided, unless otherwise approved by the relevant planning authority".

Can the applicant confirm that this requirement is intended to secure the low noise surface proposed in the ES? If so, can the applicant reconsider the wording of the requirement to make this explicit, and to specify that any material "otherwise approved by the relevant planning authority" would provide a low noise surface?

1. It is correct that this requirement secures the provision of low noise surfacing for the Scheme. Thin Surface Course System is generically referred to as "low noise surfacing" as the properties inherent in it reduce the noise generated at the road-tyre interface when compared with traditional Hot Rolled Asphalt ("HRA") (Manual of Contract Documents for Highway Works, Volume 1 Specification for Highway Works clause 943).
2. However, it is proposed that the requirement is reworded as follows to make it clear that any other surface approved by the relevant planning authority is to have similar noise reduction properties as TSCS:

"Where any carriageway comprised in Work No. 1a and 1b, or any slip road is to be resurfaced as part of the authorised works, a Thin Surface Course System (Manual of Contract Documents for Highway Works, Volume 1 Specification for Highway Works clause 942) is to be provided, unless otherwise approved by the relevant planning authority. Any material approved by the relevant planning authority as low noise surfacing shall have similar noise reduction properties as TSCS."

DCO8.24 Requirement 7, "(1) No part of the authorised development is to be carried out..."

Would "commenced" be more consistent than "carried out"?

1. Many of the requirements in Schedule 2 to the dDCO prohibit the authorised development being "commenced" before they are fulfilled. However, as has been noted under written question DCO 8.3, there are certain actions that have been excluded from the definition of "commence" in Article 2(1). This means that certain minor operations, such as archaeological investigations and species translocation, can be carried out prior to the discharge of the 'pre-commencement' requirements.
2. However, even these minor operations should not be capable of being carried out before the Environmental Management Plan and the Construction Environmental Management Plan has been approved under requirements 7 and 8 respectively. As such, the words "*no part of the authorised development is to be carried out*" have been used in this specific context so that these requirements must be discharged at the inception of the Scheme and are not subject to the exclusions provided for under the definition of "commence".

DCO8.25 Requirement 8, "8(1) No part of the authorised development is to be carried out...

8.-(3) The undertaker may modify the CEMP at any time--".

Would "commenced" be more consistent than "carried out"?

1. Please see the answer to written question DCO 8.24 above.

Apart from where there is the potential for an impact on protected species or protected sites, this provision appears to give the undertaker unlimited powers to change the CEMP after it has been approved by the relevant planning authority. Is this a requirement which should make provision for any modifications to the CEMP to be agreed in writing with the relevant planning authority? (see Q4.1.5)

2. Whilst noting that the wording in this requirement that allows for modification of the CEMP was included in the drafting of the A556 (Knutsford to Bowden Improvement) Development Consent Order 2014 at requirement 4(7), Highways England agrees to the deletion of subparagraph 3 in requirement 8. This amendment is reflected in the revised draft of the dDCO provided at Appendix A to this response.

DCO8.26 Requirement 13, "(5)(b) no activities requiring a protected species licence are to continue until a scheme of protection and mitigation measures for the protected species has been submitted to, and approved by, Natural England and the relevant planning authority".

Would this provision be more precise if a protective distance from any protected species within which works could not take place was to be included in 5(b) and would such a definition within the requirement be feasible?

1. Requirement (5)(b) applies primarily to bats and badgers as the ES states that licences for these species will be required (bats: Chapter 9, paragraph 9.4.71; and badgers: Appendix 9.2 paragraph 3.1.11). However, it must also apply to other protected species if their status changes prior to construction. For example, the need to obtain a licence in relation to great crested newts may arise if (during (planned) pre-construction surveys) it is found that their distribution has changed from that reported in the ES.
2. Highways England is of the view that imposing a 'protective distance' would weaken the requirement, and would not be feasible. Any requirement which states a distance within which works affecting a protected species must be licensed would need to identify an appropriate distance for each possible species, and consider each potentially licensable activity. The inclusion of protective distances could inadvertently impose a restriction on any works within that distance, even when a licence is not required. For example, although vegetation clearance between 100-250m of a great crested newt breeding pond would normally be a licensable activity (and thus a 250m protective distance may be proposed for this species); when the area of habitat concerned is less than 0.5ha, Natural England advise³ that a licence is not likely to be necessary (notwithstanding the implementation of non-licensed avoidance measures where appropriate).
3. In addition, if prescribing protective distances, great care would be needed to ensure they are large enough to cover all licensable operations. For example, although many works beyond a nominal 30m from a badger sett are not licensable, and this would be a sensible protective distance for most construction operations, disturbance to badgers within their setts caused by piling operations may occur even at distances of 100m or more. It may also be necessary to consider the seasonal behaviour of the species concerned. For example, a protective distance assigned to avoid unlicensed works which have the potential to disturb bats in a maternity roost would be irrelevant in winter when the bats are absent.
4. As a result, Highways England is of the view that the requirement as drafted, without a protective distance specified, is more feasible in terms of construction of the Scheme and also more precautionary in relation to the protection of protected species.

³ *Natural England (2013)*. Template for Method Statement to support application for licence under Regulation 53(2)(e) in respect of great crested newts *Triturus cristatus*. Form WML-A14-2. (Version April 13). (Risk Assessment Tool.) Accessed 23/09/2015 at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349319/gcn-method-statement.xls