

## **A38 Derby Junctions**

**TR010022**

# **8.34(h) A Comparison of the updated draft Development Consent Order with the Version Submitted for the Application**

Rule 8(1)(c)(ii)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed  
Forms and Procedures) Regulations 2009

June 2020

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Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning  
(Applications: Prescribed Forms  
and Procedure) Regulations 2009**

**A38 Derby Junctions  
Development Consent Order 202[ ]**

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**A Comparison of the updated draft Development Consent Order  
with the Version Submitted for the Application**

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<b>Regulation Number</b>	Rule 8(1)(c)(ii)
<b>Planning Inspectorate Scheme Reference</b>	TR010022
<b>Application Document Reference</b>	TR010022/APP/8.34(h)
<b>Author</b>	A38 Derby Junctions Project Team, Highways England

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
9	25 June 2020	Deadline 15 Submission

STATUTORY INSTRUMENTS

202[ ] No.

INFRASTRUCTURE PLANNING

The A38 Derby Junctions Development Consent Order 202[ ]

Made - - - - - \*\*\*  
~~Laid before Parliament - - - - - \*\*\*~~  
Coming into force - - - - - \*\*\*

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

The application was examined by ~~the single~~two appointed ~~person~~persons (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The ~~single~~two appointed ~~person~~persons, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, ~~has~~have submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the ~~single~~two appointed ~~person~~persons, has decided to make an Order granting development consent for the development described in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

The Secretary of State is satisfied that replacement land has been or will be given in exchange for the special category land (as defined in article 38 of this Order), and the replacement land (as defined in that article) has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the special category land, and that, accordingly, section 131(4) of the 2008 Act applies.

The Secretary of State is satisfied that the special category (rights) land (as defined in article 38 of this Order), when burdened with any new rights authorised to be compulsorily acquired under this Order, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122, 123, ~~125, 126,~~ 135, ~~136~~ and 138 of, and paragraphs 1-3, 10-17, 19-23, 26, 33 and 36 of Part ~~15~~1 of Schedule 5 to, the 2008 Act, makes the following Order—

## PART 1 PRELIMINARY

### Citation and commencement

1.—(1) This Order may be cited as the A38 Derby Junctions Development Consent Order 202[•] and comes into force on [•].

### Interpretation

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

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

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

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

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- (a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).  
(b) S.I. 2009/2264, amended by S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2015/377, S.I. 2017/572; modified by S.I. 2012/1659.  
(c) S.I. 2010/103, amended by S.I. 2012/635.  
(d) 1961 c.33.  
(e) 1965 c.56.  
(f) 1980 c.66.

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

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

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

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

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

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

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

“authorised development” means the ~~development and associated~~ development described in Schedule 1 (authorised development);

“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 section 329(1) of the 1980 Act;

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

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

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

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

“electronic transmission” means a communication transmitted—

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

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

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

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

“the flood compensation areas” means the flood compensation areas shown on the engineering section drawings and the works plans;

“the flood storage areas” means the flood storage areas shown on the engineering section drawings and on the works plans;

“footpath” and “footway” have the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act;

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

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(a) 1981 c.66.

(b) 1984 c.27.

(c) 1990 c.8.

(d) 1991 c.22.

(e) 2008 c.29.

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

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

“highway” has the same meaning as in section 328 (meaning of “highway”) of the 1980 Act;

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

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

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

“maintain” includes inspect, repair, adjust, alter, remove, replace or reconstruct in relation to the authorised development and any derivative of “maintain” is to be construed accordingly to the extent assessed in the environmental statement; and excludes any activities that would give rise to materially new or materially adverse environmental impacts compared to those assessed in the environmental statement;

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

“the Order limits” means the limits of the land to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

“the outline environmental management plan” means the plan certified by the Secretary of State as the outline environmental management plan for the purposes of this Order;

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

“the permanent speed limit plans” means the plans certified by the Secretary of State as part of the traffic regulations measures plans for the purposes of this Order;

“the relevant planning authority” has the same meaning as in section 173 (the relevant local planning authority) of the 2008 Act;

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

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

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

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

“street authority” has the same meaning as in section 49 (the street authority and other relevant authorities) of the 1991 Act;

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

“traffic authority” has the same meaning as in section 121A(b) (traffic authorities) of the 1984 Act;

“the traffic management plan” means the traffic management plan which establishes the outline rules for the traffic management and temporary road layouts needed to construct the authorised development and certified by the Secretary of State as the traffic management plan for the purposes of this Order;

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

(b) This section was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the New Roads and Street Works Act 1991 (c.22); and brought into force by S.I. 1991/2288.



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

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

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

- (a) section 10(a) (general provision as to trunk roads) or section 19(1)(b) (certain special roads and other highways to become trunk roads) of the 1980 Act;
- (b) an order made or direction given under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

“the undertaker” means Highways England Company Limited, company number 09346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

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

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

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

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

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

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

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

### **Disapplication of legislative provisions**

3.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within any maintenance period defined in article 34(12), any maintenance of any part of the authorised development—

- (a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (bye-law making powers of the appropriate agency) to the Water Resources Act 1991;
- (b) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(c);
- (c) section 32 (variation of awards) of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991; and
- (e) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017(d).

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

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

(c) 1991 c.59.

(d) 2017 c.20.

- (f) Regulation 12 (requirements for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 in relation to the carrying on of a flood risk activity as defined within Schedule 25 Part 1 Paragraph 3(1) of the said Regulations.
- (g) the Traffic Management (Derby City Council) Permit Scheme Order 2013;
- (h) the Traffic Management (Derbyshire County Council) Permit Scheme Order 2015.

#### **Maintenance of drainage works**

4.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

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

## PART 2 PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

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

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

#### **Maintenance of authorised development**

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

#### **Planning permission**

7. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

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

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

#### **Limits of deviation**

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

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans ~~to the extent of the limits of deviation shown on those plans; and~~
  - (i) to a maximum of 1 metre in respect of the A38 mainline carriageway and slip road works; and
  - (ii) to the extent of the limits of deviation shown on those plans and as assessed in the environmental statement for all other works;

- (b) deviate vertically from the levels of the authorised development shown on the engineering section drawings—
  - (i) to a maximum of 0.5 metres upwards or downwards;
  - (ii) in respect of the excavation of the flood compensation areas and flood storage areas, to a maximum of 0.5 metres downwards but to any distance upwards to ground level;
  - (iii) in respect of Work No. 7 to a maximum of 1 metre upwards or downwards; and
  - (iv) in respect of Work No. 1(h), 1(k), 10(a), 10(b), 10(d), 10(e) and 11(a) to a maximum of 2 metres downwards measured from the top of the relevant work,

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

#### **Benefit of Order**

9.—(1) Subject to article 10 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(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**

10.—(1) The undertaker may—

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

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

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

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

- (a) Western Power Distribution (company number 03600574, whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB) for the purposes of undertaking Work No. 9, 21, ~~24~~22 and 35;
- (b) ~~National Grid~~Cadent Gas plc Limited (company number ~~0200600010080864~~, whose registered office is at ~~1—3 Strand, London WC2 5EH~~)Ashbrook Court Prologis Park, Central Boulevard, Coventry CV7 8PE for the purposes of undertaking Work No. 9, 21 and 35;
- (c) Openreach Limited (company number 10690039, whose registered office is at Kelvin House, 123 Judd Street, London WC1 H 9NP) for the purposes of undertaking Work No. 9, 21, 22 and 35;
- (d) Severn Trent Water Limited (company number 02366686, whose registered office is at Severn Trent Water Limited, PO Box 5311, Coventry, CV3 9FL) for the purposes of undertaking Work No. 9, 21, 22, 31 and 35;

- (e) Virgin Media Limited (company number 02591237, whose registered office is at Media House, Bartley Wood Business Park, Hook, Hampshire RG27 9UP) for the purposes of undertaking Work No. 9, 21, 22 and 35; or
- (f) Hutchison 3G UK Limited (company number 03918124, whose registered office is at Star House, 20 Grenfell Road, Maidenhead, Berkshire SL6 1EH) for the purposes of undertaking Work No. 16.

## PART 3 STREETS

### Street works

**11.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

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

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

(3) Subject to article 12 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### Application of the 1991 Act

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

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

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

- (a) section 56(d) (power to give directions as to timing of street works);

---

(a) Section 86(3) defines what highway works are major highway works.

(b) As repealed 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).

(c) As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11); and section 18 of and Schedule 8 to, the New Roads and Street Works Act 1991 (c.22).

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

- (b) section 56A(a) (power to give directions as to placing of apparatus);
- (c) section 58(b) (restriction on works following substantial road works);
- (d) section 58A(c) (restriction on works following substantial street works); and
- (e) schedule 3A(d) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act referred to 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 15 (temporary stopping up and restriction of use of streets and highways) 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(e) referred to in paragraph (4) are—
- (a) section 54 (advance notice of certain works), subject to paragraph (6);
  - (b) section 55 (notice of starting date of works), subject to paragraph (6);
  - (c) section 57 (notice of emergency works);
  - (d) section 59 (general duty of street authority to co-ordinate works);
  - (e) section 60 (general duty of undertakers to co-operate);
  - (f) section 68 (facilities to be afforded to street authority);
  - (g) section 69 (works likely to affect other apparatus in the street);
  - (h) section 75 (inspection fees);
  - (i) section 76 (liability for cost of temporary traffic regulation); and
  - (j) 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 13 (construction and maintenance of new, altered or diverted streets and other structures)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
- (b) means that the undertaker is 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
- (c) has effect in relation to street works to which the provisions of Part 3 of the 1991 Act apply.

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

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

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

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(a) Inserted by section 44 of the Traffic Management Act 2004 (c.18).  
 (b) As amended by section 51 of the Traffic Management Act 2004.  
 (c) Inserted by section 52 of the Traffic Management Act 2004.  
 (d) Inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.  
 (e) All as amended by the Traffic Management Act 2004.

highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(3) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority and unless otherwise agreed in writing with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(4) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road) over a trunk road, the highway surface must from its completion be maintained by and at the expense of the local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker unless otherwise agreed in writing with the local highway authority.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

#### **Classification of roads, etc.**

**14.**—(1) On a date to be determined by the undertaker the roads described in Part 1 (trunk roads) of Schedule 3 are to become trunk roads as if they had become so by virtue of an order under section 10(2)(a) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

~~(2)~~ On a date to be determined by the undertaker the roads described in Part 2 (de-trunked roads) of Schedule 3 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an Order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

~~(3)~~ On a date to be determined by the undertaker the roads described in Part 3 (classified roads) of Schedule 3 are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

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

~~(3)~~(4) On a date to be determined by the undertaker the roads described in Part ~~34~~ (unclassified roads) of Schedule 3 are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.

~~(4)~~(5) On a date to be determined by the undertaker the roads described in Part 45 (speed limits) of Schedule 3 no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

~~(5)~~(6) On a date to be determined by the undertaker, the restrictions specified in column (3) of Part ~~56~~ (traffic regulation measures (clearways and prohibitions)) of Schedule 3 are to apply to the lengths of road identified in the corresponding row of column (2) of that Part.

~~(6)~~(7) Unless otherwise agreed with the relevant planning authority, the public rights of way set out in Part 78 (public rights of way) of Schedule 3 and identified on the streets rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use ~~from the date~~ on a date to be determined by the undertaker provided there are no materially new or adverse effects to those assessed in the environmental statement.

~~(7)~~(8) On a date to be determined by the undertaker, the orders specified in column (3) of Part ~~67~~ (revocations & variations of existing traffic regulation orders) of Schedule 3 are to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

~~(8)~~(9) The application of paragraphs (1) to ~~(6)~~(8) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act or with the written consent of the Secretary of State.

#### **Temporary stopping up and restriction of use of streets and highways**

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

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

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

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

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

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

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

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

16.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Parts 1, 2, 3 and 4 of Schedule 4 (permanent stopping up of

highways and private means of access & provision of new highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

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

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

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

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

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

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

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

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

(7) This article is subject to article 36 (apparatus and rights of statutory undertakers in stopped up streets).

#### **Access to works**

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

#### **Clearways**

18.—(1) From such day as the undertaker may determine, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 5 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) where it is identified in the corresponding row of column (3) of that Part that such lengths of road are to become a clearway, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) applies—



- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
  - (i) the removal of any obstruction to traffic;
  - (ii) the maintenance, improvement, reconstruction or operation of the road;
  - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A (the Electronic Communications Code) to the Communications Act 2003(a); or
  - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
  - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
  - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
  - (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person's control.

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

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

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

### **Traffic regulation**

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

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

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

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(a) 1984 c.12.  
(b) 1991 c.56.  
(c) 2000 c.26.  
(d) 2004 c.18.

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

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

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

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

(a) given not less than—

- (i) 12 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
- (ii) 4 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

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

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

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

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

- (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
- (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places) 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(a).

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

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

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

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

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

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(a) 2004 c.18.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**20.**—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

(6) In this article—

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

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

(8) Nothing in this article overrides the requirement for an environmental permit under article 12 of the Environmental Permitting (England and Wales) Regulations 2016.

#### **Protective works to buildings**

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

(2) Protective works may be carried out—

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

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(a) 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) and 99 of the Water Act 2003 (c.37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c.29).

(b) 1991 c.57.

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

(4) 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 and survey any building and any land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and any 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), (5)(c) or (5)(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 49 (arbitration).

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

(8) Where—

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

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

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

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

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

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

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

### Authority to survey and investigate the land

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

- (a) survey or investigate the land (including any watercourses, ground water, static water bodies or vegetation on the land);
- (b) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes or boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water samples onto the land;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; 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 or boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

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

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

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

but such consent must not be unreasonably withheld.

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

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

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

that authority is deemed to have granted consent.

## PART 5

### POWERS OF ACQUISITION

#### Compulsory acquisition of land

23.—(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development, or is required as replacement land ~~and as described in the book of reference.~~

(2) This article is subject to paragraph (2) of article 26 (compulsory acquisition of rights) and paragraph (8) of article 33 (temporary use of land for carrying out the authorised development).

### **Compulsory acquisition of land – incorporation of the mineral code**

**24.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981<sup>(a)</sup> are incorporated into this Order subject to the modifications that—

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

### **Time limit for exercise of authority to acquire land compulsorily**

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the 1981 Act).

(2) The authority conferred by article 33 (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 from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**26.—**(1) The undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule and relating to that part of the authorised development specified in column (3) of that Schedule.

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

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

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

### **Public rights of way**

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

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 and shown on the streets rights of way and access plans, the undertaker

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(a) 1981 c.67.

must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

- (3) The notice to be erected under paragraph (2) must include—
- (a) details of the public rights of way to be extinguished;
  - (b) the date on which the extinguishment will take effect;
  - (c) details of any public rights of way being provided in substitution; and
  - (d) details of the places where a copy of this Order and the documents listed in Schedule 10 (documents to be certified) may be inspected.

#### **Private rights over land**

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

- (a) 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) (powers of entry) of the 1965 Act,

whichever is the earlier.

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

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

whichever is the earlier.

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

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

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

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 35 (statutory undertakers) applies.

- (7) Paragraphs (1) to (4) have effect subject to—
- (a) any notice given by the undertaker before—
    - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
    - (ii) the undertaker's appropriation of it;
    - (iii) the undertaker's entry onto it; or
    - (iv) the undertaker's taking temporary possession of it,

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

- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
  - (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

#### **Modification of Part 1 of the 1965 Act**

**29.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the ~~six~~five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the A38 Derby Junctions Development Consent Order 202[•]”.

- (3) In section 11A(b) (powers of entry: further notice of entry)—
  - (a) in subsection (1)(a), after “land” insert “under that provision”; and
  - (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 25 (time limit for exercise of authority to acquire land compulsorily) of the A38 Derby Junctions Development Consent Order 202[•]”.

- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
  - (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 31(3) (acquisition of subsoil or airspace only) of the A38 Derby Junctions Development Consent Order 202[•], which excludes the acquisition of subsoil or airspace only from this Schedule”; and
  - (b) after paragraph 29, end insert—

## **“PART 4**

### **INTERPRETATION**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 21 (protective works to buildings), 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the A38 Derby Junctions Development Consent Order 202[•].”

#### **Application of the 1981 Act**

- 30.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

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(a) As inserted by section 202(1) of the Housing and Planning Act 2016 (c.22).  
(b) As inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).



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

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

(4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(a) (time limit for general vesting declaration).

(6) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118(c) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the A38 Derby Junctions Development Consent Order 202[•]”.

(7) In section 6(d) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(e) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

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

(9) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

“(2) But see article 31(3) (acquisition of subsoil or airspace only) of the A38 Derby Junctions Development Consent Order 202[•], which excludes the acquisition of subsoil or airspace only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 31(modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

### Acquisition of subsoil or airspace only

**31.—**(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 23 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over the land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

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(a) Inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).

(b) As inserted by section 202(2) of Schedule 3 to the Housing and Planning Act 2016 (c.22).

(c) As amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c.20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c.2).

(d) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c.22).

(e) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c.20) and S.I. 2012/16.

(f) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c.22).

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

#### **Rights under or over streets**

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

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

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

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

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

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

#### **Temporary use of land for carrying out the authorised development**

**33.**—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 25(2) (time limit for exercise of authority to acquire land compulsorily)—

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

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

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(a) Section 11 was amended by section 14 of, paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and S.I. 2009/1307.

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

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken); or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition and level it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with 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 (including ground strengthening works) have been constructed under paragraph (1)(d); or
- (c) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession 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 ~~(5)~~(6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

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

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

- (a) acquiring new rights over any part of that land under article 26 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 31 (acquisition of subsoil or airspace only).

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

(11) Section 13(a) (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.

(12) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 23 (compulsory acquisition of land) or article 26 (compulsory acquisition of rights) ~~such date to be determined by the undertaker.~~

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(a) Section 13 was amended by section 139, paragraph 27 of Schedule 13 and Schedule 23 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

### Temporary use of land for maintaining the authorised development

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

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

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

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

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land explaining the purpose for which entry is to be taken.

(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 condition and level it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land.

(6) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.

(7) 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.

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

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

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

(11) 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.

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

### Statutory undertakers

35.—(1) Subject to the provisions of article 26(3) (compulsory acquisition of rights), Schedule 9 (protective provisions) and paragraph ~~35(2)~~(2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and

(b) extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

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

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 36 (apparatus and rights of statutory undertakers in stopped up streets).

#### **Apparatus and rights of statutory undertakers in stopped up streets**

**36.**—(1) Where a street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 16 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

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

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

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

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

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

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

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

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

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

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

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

(8) In this article—

“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

**37.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (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 35, 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 36 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

### Special category land

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

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

(3) On the requirements of paragraph (1) being satisfied, the rights to be acquired over the special category (rights) land are to vest in the undertaker and the special category (rights) land is to be discharged from all private rights to which it was previously subject in accordance with article 28(2) (private rights over land).

(4) On the date on which the replacement land is laid out and provided in accordance with the scheme requirements at paragraph 38(1), the replacement land is to vest in the person(s) in whom

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(a) 2003 c.21.

the special category land was vested immediately before it was vested in the undertaker and is to be subject to the same rights, trusts and incidents as attached to the special category land.

(5) In this article—

“the special category land” means the land numbered 1/1c, 1/1d, 1/2z, 1/4a, 1/4b, 2/1a, 2/1d, 2/1e, 2/1g, 2/1h, 2/1i, 2/2c, 2/5, 2/6, 2/7b, 2/10, 3/1u, 3/1y, 3/1z, 3/1aa, 3/2l, 3/2m, 3/2n, 3/4+2q, 4/1a, 4/1e, 4/1g, 4/2a, 4/2e, 4/2f, 4/2g, 4/2h, 4/2i, 4/2j, 4/2k, 4/2l, 4/2o, 4/2p, 4/14 and 4/15 in the book of reference and on the special category land plans and forming part of open space which may be acquired compulsorily under this Order;

“the special category (rights) land” means the land numbered 1/4b, 2/1b, 2/1c, 2/1f, 2/7a, 2/8, 2/9, 3/1w, 3/1x, 4/1b and 4/1d in the book of reference and on the special category land plans and forming part of open space over which rights may be acquired compulsorily under this Order;

“the replacement land” means the land identified as such and numbered 2/1r, 2/1s, 2/2p, 2/2q, 2/2s, 2/2t, 3/1y, 3/2r, 3/22c, 3/23, 3/24, 3/25, 3/26, 3/27, 4/1a, 4/2a, 4/2b, 4/2c, 4/2d, 4/2e, 4/2f, 4/2g, 4/2h, 4/2i, 4/2j, 4/2k, 4/2l, 4/2m, 4/2n, 4/2o, 4/2p, 4/3, 4/4, 4/5, 4/6, 4/7a, 4/7b, 4/7c, 4/8, 4/9, 4/10, 4/11, 4/12, 4/13a, 4/14 and 4/15 in the book of reference and on the special category land plans.

## PART 6 OPERATIONS

### Felling or lopping of trees and removal of hedgerows

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

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

(2) In carrying out any activity authorised by paragraph 39(1), the undertaker must—

- (a) do no unnecessary damage to any tree or shrub;
- (b) pay compensation to any person for any loss or damage arising from such activity; and
- (c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981(a) and the Conservation of Habitats and Species Regulations 2017(b) or any successor acts and regulations.

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

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

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

### Trees subject to tree preservation orders

**40.**—(1) The undertaker may fell or lop any tree described in Schedule 8 (trees subject to tree preservation orders), cut back its roots or undertake such other works described in column (2) of

(a) 1981 c.69.

(b) S.I. 2017/1012.

(c) S.I.1997/1160.

that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

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

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

(a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;

(b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and

(c) the undertaker must consult the relevant planning authority prior to that activity taking place.

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

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

## PART 7

### MISCELLANEOUS AND GENERAL

#### **Application of landlord and tenant law**

**41.**—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.



### Operational land for purposes of the 1990 Act

42. 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

43.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph ~~(d)~~, ~~(fb)~~, ~~(g)~~ or (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised 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 sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
  - (iii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

### Protective provisions

44. Schedule 9 (protective provisions) has effect.

### Crown Rights

45.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description—
  - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land;
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than

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(a) 1990 c.43.  
(b) 1974 c.40.

by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

#### **Certification of plans etc.**

**46.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of each of the plans and documents set out in Schedule 10 (documents to be certified) for certification that they are true copies of the plans and 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**

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

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

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

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

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

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

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

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

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

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(a) 1978 c.30.

(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**

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

#### **Removal of human remains**

49.—(1) In this article “the specified land” means the land within the Order limits.

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

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

(a) publishing a notice for two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

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

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

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

(b) removed to, and cremated in, any crematorium,

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

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

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

(9) If—

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

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

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

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

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

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

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

(14) Section 25 of the Burial Act 1857(a) (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

#### **Appeals relating to the Control of Pollution Act 1974**

**50.**—(1) The undertaker may appeal in the event that a local authority issues a notice under section 60 (control of noise on construction sites), or does not give consent or grants consent but subject to conditions, under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within ~~42~~21 days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;

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(a) 1857 c.81.

- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority and affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
- (d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs 50(2)(c) to 50(2)(e).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) Except where a direction is given under sub-paragraph (11) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid. In considering whether to make any such direction and the terms

on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Department for Communities and Local Government or such guidance as may from time to time replace it.

Signed by authority of the Secretary of State for Transport

Date

*Signed*  
[Title]  
[Department]

## SCHEDULES

### SCHEDULE 1

Articles 2, 5 and 6

#### AUTHORISED DEVELOPMENT

The authorised development is a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

**In the administrative area of Derby City Council:**

**Kingsway**

Work No.1 – shown on sheet(s) no.1 of the works plans being the alteration, re-alignment and grading of the northbound and southbound lanes of the A38 totalling approximately 1.2 kilometres in length to include –

- (a) the construction of a drainage attenuation pond and pipe outfall into Bramble Brook adjacent to the altered A38 (Work No.1) including a private means of access;
- (b) the diversion of the existing Bramble Brook and connection into a new section of culvert;
- (c) the construction of a flood storage area with piped outfall return to Bramble Brook adjacent to the drainage attenuation pond (Work No. 1(a));
- (d) the extension of the existing Bramble Brook culvert 152 metres in length;
- (e) the extension of the existing Bramble Brook culvert for a length of 30 metres in a north westerly direction below the southbound A38 merge slip road (Work No. 5) and the realigned A38 (Work No.1);
- (f) the construction of flood storage areas;
- (g) the improvement of a non-segregated footway/cycle track 80 metres in length on each side of Lyttelton Street;
- (h) the construction of a gantry or similar signage 55m south of the southbound A38 diverge slip road (Work No. 4) at chainage 1850m;
- (i) the widening of the Brackensdale Avenue east and west underbridges;
- (j) works to effect the stopping up of part of the entry and exit lanes off Brackensdale Avenue which connect to the A38;
- (k) the construction of a gantry or similar signage at chainage 2080m;
- (l) works to effect the stopping up of the entry and exit lanes of Raleigh Street which connect to the A38; and
- (m) the alteration of part of Brackensdale Avenue slip road which connects to the A38.

Work No. 2 – shown on sheet no. 1 of the works plans being the construction of a northbound diverge slip road off the A38 570 metres in length that begins at the realigned A38 (Work No. 1) and connects to the Kingsway West Roundabout (Work No. 6(a)) to include—

- (a) the construction of highway drainage attenuation, outfall and access.

Work No. 3 - shown on sheet no. 1 of the works plans being the construction of a northbound merge slip road 550 metres in length off the Kingsway West Roundabout (Work No. 6(a)) connecting into the realigned A38 (Work No. 1), to include –

- (a) the construction and realignment of a section of the National Cycling Network (No. 68 & 54) and the Regional Route (No. 66) 170 metres in length, as shown on the streets rights of way and access plan.

Work No. 4 – shown on sheet no. 1 of the works plans being the construction of a southbound A38 diverge slip road 540 metres in length that begins at the realigned A38 (Work No. 1) and connects into the Kingsway East Roundabout (Work No. 6(b)).

Work No. 5 – shown on sheet no. 1 of the works plans being the construction of a southbound A38 merge slip road 510 metres in length beginning at the Kingsway East Roundabout (Works No. 6(b)) and connecting to the realigned A38 (Work No. 1)

Work No. 6 – shown on sheet no. 1 of the works plans being the alteration, realignment and grading of the A5111, to include –

- (a) the construction of a roundabout (the Kingsway West Roundabout) connecting to the northbound diverge slip road (Work No. 2) and the northbound merge slip road (Work No. 3);
- (b) the construction of a roundabout (the Kingsway East Roundabout) connecting to the southbound diverge slip road (Work No. 4) and the southbound merge slip road (Work No. 5);
- (c) the construction of a link road 65 metres in length connecting the Kingsway East Roundabout and the Kingsway West Roundabout including the construction of an over bridge;
- (d) the construction of 2 controlled crossings in an east and west bound direction;
- (e) the construction, improvement and widening of an existing footway to a non-segregated footway/~~eyeleway~~cycle track 110 metres in length;
- (f) the construction, improvement and widening of an existing footway to a non-segregated footway/~~eyeleway~~cycle track 20m in length; and
- (g) the construction of a footway/~~eyeleway~~cycle track 300 metres in length linking the A5111 Kingsway to Greenwich Drive south and the National Cycle Routes

Work No. 7 – shown on sheet no. 1 of the works plans being the construction of a link road 220 metres in length connecting the Kingsway East Roundabout (Work No. 6(b)) and Kingsway Park Close to include –

- (a) the construction of a new junction and footways;
- (b) the reconfiguration of the existing junction between Lyttelton Street and Kingsway Park Close; and
- (c) the construction, improvement and realignment of the existing footway/~~eyeleway~~routecycle track approximately 50m in length including a controlled crossing

Work No. 8 – shown on sheet no. 1 of the works plans being the establishment of environmental mitigation areas to the west and east of the realigned A38 (Work No. 1) at

- (a) Mackworth Park; and
- (b) Kingsway Hospital.

Work No. 9 – shown on sheet no. 1 of the works plans being the diversion of utilities to accommodate the realignment of the A38, to include the diversion of:

- (a) an 11kV electricity cable by 720 metres;
- (b) an 11kV electricity cable by 137 metres;
- (c) an 11kV electricity cable by 115 metres;
- (d) an 11kV electricity cable by 115 metres;
- (e) a telecoms cable by ~~7245~~ metres;
- (f) a telecoms cable by ~~4572~~ metres;
- (g) a foul sewer pipe by 33 metres;
- (h) a water trunk main by 474 metres;
- (i) a water trunk main by 61 metres;
- (j) an 11 kV electricity cable by 61 metres;
- (k) a 132 kV electricity cable by 61 metres; and
- (l) a gas main by 61 metres.

### Markeaton

Work No.10 shown on sheet no. 2 of the works plans and being the alteration, realignment and grading of the northbound and southbound lanes of the A38 totalling 1.25 kilometres in length to include –

- (a) the construction of a gantry or similar signage 105 metres south of the A38 northbound diverge slip road (Work No. 11) at chainage 2310;
- (b) the construction of a gantry or similar signage 115 metres south of the A38 northbound merge slip road (Work No. 12) at chainage 2890;
- (c) the demolition of the existing Markeaton Park footbridge and the construction of a replacement footbridge including reconfigured ramps and steps;
- (d) the construction of a gantry or similar signage 20 metres south of the northbound diverge slip road connecting to Kedleston Road (Work No. ~~4417~~) at chainage 3250; and
- (e) the construction of a gantry or similar signage 70 metres north of the A38 northbound diverge slip road (Work No. ~~4417~~) at chainage 3375.

Work No. 11 – shown on sheet no. 2 of the works plans and being the construction of a northbound diverge slip road 330 metres in length beginning at the realigned A38 (Work No. 10) and connecting to Markeaton Junction Roundabout (Work No. 16(a)), to include –

- (a) the construction of a gantry or similar signage 35 metres north of the northbound A38 diverge slip road (Work No. 11) at chainage 2500;
- (b) works to effect the stopping up of Enfield Road entry and exit roads onto the realigned A38 including a turning head (Work No. 10); and
- (c) amendments to the access and egress for the filling station and fast-food site.

Work No. 12 – shown on sheet no. 2 of the works plans and being the construction of a northbound merge slip road 255 metres in length beginning at the Markeaton Junction Roundabout (Work No. 16(a)) and connecting to the realigned A38 (Work No. 10).

Work No. 13 – shown on sheet no. 2 of the works plans and being the construction of a southbound diverge slip road 275 metres in length beginning at the realigned A38 (Work No. 10) and connecting to Markeaton Junction Roundabout (Work No. 16(a)), to include –

- (a) the construction of a pumping station adjacent to the realigned A38 (Work No. 10) to include associated drainage works;
- (b) a pond; and
- (c) an access track and footway/~~eyeleway~~cycle track.



Work No. 14 – shown on sheet no. 2 of the works plans and being the construction of a southbound merge slip road 280 metres in length beginning at the Markeaton Junction Roundabout (Work No. 16(a)) and connecting to the realigned A38 (Work No. 10)

Work No. 15 – shown on sheet no. 2 of the works plans and being the construction, improvement and realignment of the existing cycle Regional Route (No. 66) 1.2 kilometres in length adjacent to the realigned A38 (Work No. 10).

Work No. 16 – shown on sheet no. 2 of the works plans and being the alteration realignment and grading of the A52, to include –

- (a) the construction of a roundabout (the Markeaton Junction Roundabout) connecting the realigned A52 (Work No. 16) with the northbound A38 diverge and merge slip roads (Work Nos 11 and 12) and the southbound A38 diverge and merge slip roads (Work Nos 13 and 14) including the construction of two over bridges;
- (b) the construction of a new junction for access to and egress from Markeaton Park 110 metres in length including a roundabout and a park & ride bus stop;
- (c) the construction and alteration of a private means of access to Sutton Close and 253 and 255 Ashbourne Road;
- (d) works to the entrance of Markeaton Park and the construction of a new emergency only access from Markeaton Park 20 metres in length;
- (e) relocation of approximately 186m in length of the boundary wall to Markeaton Park;
- (f) alterations to the access to and egress from the filling station and fast-food site;
- (g) alterations to the access to and egress from the A52 to the Royal School for the Deaf; and
- (h) removal and relocation of a mobile phone mast.

Work No. 17 - shown on sheet no. 2 of the works plans and being the realignment and grading of the A38 northbound diverge slip road 200 metres in length connecting to the realigned A38 (Work No. 10) to Kedleston Road.

Work No. 18 - shown on sheet no. 2 of the works plans and being the realignment and grading of the A38 southbound merge slip road 185 metres in length connecting Kedleston Road with the realigned A38 (Work No. 10).

Work No. 19 – shown on sheet no. 2 of the works plans and being the construction of a temporary compound area/material storage area.

Work No. 20 – shown on sheet no. 2 of the works plans being the establishment of environmental mitigation areas to the west and east of the realigned A38 (Work No. 10).

Work No. 21 – shown on sheet No. 2 of the works plans being the diversion and construction of a utility corridor housing multiple utility apparatus as specified in this work no., including the diversion of:

- (a) an 11kv cable by 627 metres;
- (b) an 11kv cable by 625 metres;
- (c) an 11kv cable by 623 metres;
- (d) a foul sewer pipe by of 480 metres;
- (e) a foul sewer pipe by of 269 metres;
- (f) a foul sewer pipe by of 506 metres;
- (g) a cadent medium pressure pipe by 654 metres;
- (h) a combined sewer pipe by 512 metres;
- (i) a mains water pipe by 491 metres;
- (j) a telecoms cable by 1146 metres;
- (k) a telecoms cable by 785 metres; and

- (l) a telecoms cable by 847 metres.

Work No. 22 – shown on sheet no. 2 of the works plans being the diversion of utilities to accommodate the realignment of the A38 (Work No. 10), to include the diversion of:

- (a) an 11kV electricity cable by 309 metres;
- (b) an 11kV electricity cable by 7 metres;
- (c) a water trunk main by 773 metres;
- (d) a foul sewer pipe by 308 metres;
- (e) a foul sewer pipe by 25 metres;
- (f) a telecoms cable by 28 metres;
- (g) a telecoms cable by 414 metres; and
- (h) a telecoms cable by 17 metres.

**In the administrative area of Derby City Council, Derbyshire County Council and Erewash Borough Council:**

**Little Eaton**

Work No. 23 – shown on sheet no.3 of the works plans and being the alteration, re-alignment and grading of the northbound and southbound lanes of the A38 totalling 1.3 kilometres in length to include –

- (a) works to effect the stopping up and diversion of a section of the Breadsall Footpath (No. 7) 100 metres in length as shown on the streets rights of way and access plan and works to effect the stopping up and diversion of a private means of access 100 metres in length;
- (b) the alteration and extension of the existing flood arch bridge;
- (c) the alteration and extension of the existing railway bridge;
- (d) the construction of two new bridges over Little Eaton Roundabout (Work No. 30(a)).

Work No. 24 – shown on sheet no. 3 of the works plans and being the construction of a northbound diverge slip road 215 metres in length beginning at the realigned A38 (Work No. 23) and connecting to Little Eaton Roundabout (Work No. 30(a)).

Work No. 25 – shown on sheet no.3 of the works plans and being the construction of a northbound merge slip road 380 metres in length beginning at Little Eaton Roundabout (Work No. ~~24~~30(a)) and connecting to the realigned A38 (Work No. 23).

Work No. 26 – shown on sheet no. 3 of the works plans and being the construction of a southbound diverge slip road 540 metres in length beginning at the realigned A38 (Work No. 23) and connecting to Little Eaton Roundabout (Work No. 30(a)), to include –

- (a) the alteration and extension of an existing culvert 125 metres in length;
- (b) the alteration and extension of an existing culvert 290 metres in length under the realigned A38 (Work No. 23);
- (c) the diversion of the existing Dam Brook watercourse by 340 metres connecting to the culvert beneath the A61 (Alfreton Road);
- (d) works to effect the stopping up and diversion of a section of the Breadsall Foot Path (No. 3) for a distance of 405 metres as shown on the streets rights of way and access plan;
- (e) the construction of two drainage attenuation ponds and piped outfall into Dam Brook including the construction of a private access to the attenuation ponds;
- (f) ecology mitigation including ponds;
- (g) the construction of a segregated left lane to the A61; and
- (h) a flood alleviation channel including environmental mitigation measures.

Work No. 27 – shown on sheet no. 3 of the works plans and being the construction of a southbound merge slip road 280 metres in length beginning at the Little Eaton Roundabout (Work No. 30(a)) and connecting to the realigned A38 (Work No. 23).

Work No. 28 – shown on sheet no.3 of the works plans and being the works to stop up Ford Lane, to include –

- (a) the construction of a turning head.

Work No. 29 – shown on sheet no.3 of the works plans and being works to alter Ford Lane Bridge.

Work No. 30 – shown on sheet No. 3 of the works plans and being the alteration, realignment and grading of the A61 (Alfreton Road), to include –

- (a) the alteration of a roundabout (Little Eaton Roundabout) connecting the realigned A61 (Work No. 30) with the northbound A38 diverge and merge slip roads (Works Nos 24 and 25) the southbound A38 merge slip roads (Works Nos 26 and 27) the realigned B6179 (Work No. 30(b)) and Ford Lane (Work No. 30(c));
- (b) the realignment and grading of the B6179 to connect to Little Eaton Roundabout (Work No. 30(a));
- (c) the realignment and grading of Ford Lane to connect with Little Eaton Roundabout (Work No. 30(a));
- (d) the construction and diversion of the existing National Cycle Network Route No. 54 around Little Eaton Roundabout (Work No. 30(a)) connecting to the B6179 for 340 metres; and
- (e) works to effect the stopping up and relocation of the private means of access adjacent to the realigned Alfreton Road.

Work No 31 – shown on sheet no. 3 of the works plans and being the construction of a flood plain compensation area from the River Derwent adjacent to the existing A38 including access; and

- (a) the diversion of a foul sewer by approximately 244 metres in length.

Work No 32 – shown on sheet no. 3 of the works plans and being the erection and accommodation of a temporary works compound.

Work No 33 – shown on sheet no. 3 of the works plans and being the realignment of Ford Lane and reconfiguration of the junction with Lambourn Drive.

Work No. 34 – shown on sheet no. 3 of the works plans and being the reconfiguration of the junction between the A6 Duffield Road and Ford Lane.

Work No. 35 – shown on sheet no. 3 of the works plans being the diversion of utilities to accommodate the realignment of the A38, to include the diversion of:

- (a) an 11kV electricity cable by 106 metres;
- (b) an 11kV electricity cable by 409 metres;
- (c) a water trunk main by 326 metres;
- (d) a water trunk main by 332 metres;
- (e) a foul sewer pipe by 521 metres;
- (f) a cadent medium pressure gas pipe by 192 metres;
- (g) a telecoms cable by 84 metres;
- (h) a telecoms cable by 221 metres;
- (i) a combined sewer pipe by 86 metres; and
- (j) an 11 kV electricity cable by 211 metres.

Work No. 36 – shown on sheets nos 1, 2, 3 and 4 of the works plans being the installation of advanced directional signage, safety barriers and associated equipment.

Work No. 37 – shown on sheet no. 3 of the works plans being the establishment of environmental mitigation areas to the north of the realigned A38 (Work No. 10).

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

- (a) alteration to the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; and altering the level of any such kerb, footpath, footway, cycle track or verge;
- (b) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (c) refurbishment works to any existing bridge;
- (d) the strengthening, alteration or demolition of any structure;
- (e) ramps, means of access including private means of access, public rights of way, cycle tracks and crossing facilities;
- (f) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, barriers, pumping stations, parapets, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (g) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (h) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, pipes, cables, ducts and lights;
- (i) works to alter the course of or otherwise interfere with a watercourse, including private water supplies;
- (j) landscaping, noise bunds and barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (k) works for the benefit or protection of land affected by the authorised development;
- (l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures, earthworks (including soil stripping and storage, site levelling), remediation of contamination;
- (m) the felling of trees;
- (n) working sites, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences; and
- (o) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development.

## SCHEDULE 2 REQUIREMENTS

Article 5

### PART 1 REQUIREMENTS

#### Interpretation

1. In this Schedule—

“CEMP” means the construction environmental management plan;

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

“core hours” means the working hours of 7:30 to 18:00 Monday to Friday excluding Bank Holidays and 8:00 to 13:00 on Saturdays;

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

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

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

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

“preliminary works” means the works set out in table 1.1 of the outline environmental management plan and for the purposes of these requirements the preliminary works are a part and where any requirement allows discharge for a part, discharge may be sought for the preliminary works only;

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

#### Time limits

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

#### Construction Environmental Management Plan

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

(2) The CEMP must—

- (a) be substantially in accordance with the outline environmental management plan certified under article 46 (certification of plans etc.);

- (b) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) incorporate the measures referred to in the environmental statement as being incorporated in the CEMP;
- (d) require adherence to ~~working hours of 07:30 to 18:00 on Mondays to Friday and 08:00 to 13:00 on Saturdays~~ the core hours, except for—
  - (i) night time closures for Markeaton footbridge demolition and installation of a new footbridge;
  - (ii) junction and slip road tie-in works to existing highways;
  - (iii) installation of bridge decks;
  - (iv) installation of sign gantries;
  - (v) installation of temporary and permanent line markings;
  - (vi) overnight traffic management measures, as agreed with the local highway authority;
  - (vii) works associated with traffic management and signal changes; and
  - (viii) any emergency works.

Provided that written notification of the extent, timing and duration of each activity is given to relevant local authorities in advance of any works that are to be undertaken outside of core hours, except for any emergency works, which are to be notified to the relevant local authorities as soon as is practicable.

Any other work carried out outside the core hours or any extension to the core hours ~~may~~ will only be possible with the ~~permitted if there has been~~ prior written agreement of the relevant environmental health officer provided that the activity ~~is~~ does not ~~result in materially new or materially worse than~~ the activities assessed ~~environmental effects as reported~~ in the environmental statement.

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

(4) Prior to completion of construction the undertaker will prepare a HEMP in consultation with the relevant planning authority, the local highway authority and the Environment Agency and submit it to the Secretary of State for its written approval.

~~(4)~~ (5) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP: as approved under sub-paragraph (4).

~~(5)~~ (6) The authorised development must be operated and maintained in accordance with the HEMP approved under sub-paragraph (5).

#### **Details of consultation**

4.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

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

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

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

## Landscaping

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

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

(3) The landscaping scheme prepared under sub-paragraph (1) must be based on the outline environmental management plan and the results of the surveys undertaken under sub-paragraph (2).

(4) The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) details of existing trees to be retained, with measures for their protection during the construction period; and
- (f) implementation timetables for all landscaping works.

## Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under Requirement 5.

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

(3) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

## Fencing

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

## Land and groundwater contamination

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

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

and the assessment has been submitted to and approved in writing by the Secretary of State [following consultation with the Environment Agency](#).

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

(3) In the event that contaminated material which was not previously identified in the environmental statement, including impacted groundwater, is found at any time when carrying out the authorised development, the undertaker must cease construction of the authorised development in the vicinity of that contamination and must report it immediately in writing to the Secretary of State, [the Environment Agency](#) and the relevant planning authority, and in agreement with [the Environment Agency](#) and the relevant planning authority undertake a risk assessment of the contamination, and sub-paragraphs (4) and (5) will apply.

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

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

### **Archaeology**

**9.**—(1) No part of the authorised development is to commence until for that part a scheme for the investigation and mitigation of areas of archaeological interest, reflecting the mitigation measures included in chapter [96](#) of the environmental statement, with provision for sub-written schemes of investigation for each area and each phase (evaluation or detailed excavation or watching brief), has been prepared in consultation with the relevant planning authority, agreed with the County Archaeologist and submitted to and approved in writing by the Secretary of State.

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

(3) A programme of archaeological reporting, post excavation and publication required as part of the archaeological framework strategy and sub-written schemes of investigation referred to in sub-paragraph (1) must be agreed with the County Archaeologist and implemented within a timescale agreed with the County Archaeologist and deposited with the Historic Environment Record of the relevant planning authority within two years of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be—

- (a) retained in situ and reported to the County Archaeologist as soon as reasonably practicable; and
- (b) subject to appropriate mitigation as set out in the archaeological framework strategy and mitigation agreed with the County Archaeologist.

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

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

### **Protected species**

**10.**—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works near their location and report it immediately to the Ecological Clerk of Works.



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

(3) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

#### **Traffic management**

**11.**—(1) No part of the authorised development other than the preliminary works is to commence until a traffic management plan for the construction of the authorised development substantially in accordance with the outline traffic management plan at appendix 2.3, Volume 3 to the environmental statement (application document reference 7.4) has been submitted to and approved in writing by the Secretary of State following consultation with the local highway authority.

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

#### **Detailed design**

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

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

#### **Surface and foul water drainage**

**13.**—(1) No part of the authorised development other than the preliminary works is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in the CEMP and in chapter 4.6.13 of the environmental statement ~~and~~, including means of pollution control, have been submitted to, and approved in writing, by the Secretary of State following consultation with the relevant planning authority, ~~and~~ the local highway authority.

(2) The drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, ~~and~~ the local highway authority.

(3) The surface and foul water drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1) and subsequently maintained.

#### **Flood ~~compensatory~~ compensation and storage**

**14.**—(1) No part of the authorised development at Little Eaton is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency.

~~(2)~~ (2) No part of the authorised development at Kingsway is to commence until a detailed flood ~~compensatory~~ storage scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(3) The scheme prepared under sub-paragraph ~~(1)~~ must provide suitable floodplain compensation for any flood waters that would be displaced by the authorised development in the 1 in 100 year event including 50% allowance for climate change.

~~(5)~~(4) The scheme prepared under sub-paragraph (2) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year event including a ~~50~~40% allowance for climate change.

~~(6)~~(5) The ~~schemes~~schemes must be fully implemented as approved and subsequently maintained.

#### Noise Mitigation

~~14.15.~~15.—(1) No part of the authorised development is to commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) The written details referred to in sub-paragraph (1) must either reflect the mitigation measures included in the environmental statement and the noise barriers must be provided in the locations shown on the environmental mitigation plan(s) or, where the mitigation proposed materially differs from the mitigation identified in the environmental statement, the undertaker must provide evidence with the written details submitted that the mitigation proposed would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement ~~taking into account the mitigation identified in it.~~

(3) The noise mitigation must be constructed in accordance with the approved details referred to in sub-paragraph (1) and must be retained thereafter.

#### Highway lighting

~~15.16.~~16.—(1) No part of the authorised development is to commence until a written scheme of the proposed highway lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and (in the case of proposed lighting for any highway for which the undertaker is not, or will not be following implementation of article 16, the highway authority) the local highway authority.

(2) The standard of the highway lighting to be provided by the scheme referred to in sub-paragraph ~~16~~(1) must either reflect the standard of the highway lighting included in the environmental statement or, where the standard of the highway lighting proposed materially differs from the standard of the highway lighting identified in the environmental statement, the undertaker must provide evidence with the written scheme submitted for approval that the standard of the highway lighting proposed would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement ~~taking into account the lighting identified in it.~~ The standard of the highway lighting must encompass the specification, level of provision, light spillage, intensity and brightness of the highway lighting.

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

(4) Nothing in this requirement restricts the lighting of the authorised development during its construction or where temporarily required for maintenance.

#### Approvals and amendments to approved details

~~16.17.~~17. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.

**PART 2**  
**PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

**Applications made under requirements**

**17,18.**—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 19; or
- (c) such longer period as may be agreed between the parties.

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

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report referred to in paragraph 4 stating that, in the view of a body required to be consulted by the undertaker under the requirement in question, the subject matter of the application is likely to give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement,

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

**Further information**

**18,19.**—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

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

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 18 and in this paragraph.

(4) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

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(a) 1971 c.80.

### Register of requirements

~~19.20.~~—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

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

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

### Anticipatory steps towards compliance with any requirement

~~20.21.~~ If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

## SCHEDULE 3 Articles 14 and 18 CLASSIFICATION OF ROADS, ETC.

### PART 1 TRUNK ROADS

<i>(1)</i> Area	<i>(2)</i> Length of road
<b>Kingsway</b>	
Derby City Council	A38 northbound carriageway between point A and point B, as shown on Sheet 1 (Kingsway junction) of the classification of roads <del>plans</del> , comprising of 1200 metres.
Derby City Council	A38 northbound diverge slip road onto Kingsway West Roundabout between point C and point D, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 588 metres.
Derby City Council	A38 northbound merge slip road onto the A38 northbound carriageway between point E and point F, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 302 metres.
Derby City Council	A38 southbound carriageway between point G and point H, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 1200 metres.
Derby City Council	A38 southbound diverge slip road onto Kingsway East Roundabout between point I and J, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 315 metres.
Derby City Council	A38 southbound merge slip road onto the A38 southbound carriageway between point K and point L, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 528 metres.
Derby City Council	Reference M

	Kingsway West Roundabout from point R to point N, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 118 metres.
Derby City Council	Kingsway West Roundabout junction Overbridge link road between points N and R and points O and Q, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising of 70 metres.
Derby City Council	Reference P Kingsway East Roundabout circulatory carriageway, comprising 208 metres, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans.
<b>Markeaton</b>	
Derby City Council	A38 northbound carriageway road between point BB and point CC, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising of 1234 metres.
Derby City Council	A38 southbound carriageway road between point PP and point QQ, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising of 1239 metres.
<del>Derby City Council</del>	<del>Reference TT Markeaton roundabout circulatory carriageway, comprising 210 metres, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans.</del>
Derby City Council	A38 northbound diverge slip road onto Markeaton junction roundabout between point DD and point EE, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 372 metres.
Derby City Council	A38 northbound diverge slip road onto the A38 northbound carriageway between point JJ and point KK, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 275 metres.
Derby City Council	A38 northbound diverge slip road onto Kedleston Road between point LL and point MM, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 225 metres.
Derby City Council	A38 southbound merge slip road from Kedleston Road onto the A38 southbound carriageway between point NN and point OO, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 207 metres.
Derby City Council	A38 southbound diverge slip road onto Markeaton junction roundabout between point RR and point SS, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 307 metres.
Derby City Council	A38 southbound merge slip road onto the A38 southbound carriageway between point XX and point YY, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising 286 metres.
<b>Little Eaton</b>	
<del>Derby City</del> Derbyshire County Council	A38 northbound carriageway road between point ZZ and point A1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising of 1267 metres.
<del>Derby City</del> Derbyshire County Council	A38 southbound carriageway road between point K1 and point L1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising of 1300 metres.
Derbyshire County Council	Reference Q1 <del>Little Eaton Roundabout circulatory carriageway, comprising 348 metres, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans.</del>

Derbyshire County Council	A38 northbound diverge slip road onto Little Eaton junction roundabout between point B1 and point C1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising 441 metres.
Derbyshire County Council	A38 northbound merge slip road onto the A38 northbound carriageway from Little Eaton junction roundabout between point II and point J1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising 340 metres.
Derbyshire County Council	A38 southbound diverge slip road onto Little Eaton junction roundabout between point M1 and N1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising 524 metres.
Derbyshire County Council	A38 southbound diverge slip road onto the A61 Alfreton road between point O1 and P1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising 260 metres.
Derbyshire County Council	A38 southbound merge slip road onto the A38 <del>westbound</del> southbound carriageway from Little Eaton junction roundabout between point V1 and point W1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising 426 metres.

## PART 2

### DE-TRUNKED ROADS

<i>(1)</i> <u>Area</u>	<i>(2)</i> <u>Length of road</u>
<b>Markeaton</b>	
<u>Derby City Council</u>	<u>Reference A1</u> <u>The whole length of the circulatory carriageway on Markeaton junction as shown on Sheet 4 (Markeaton junction) of the classification of roads plans, comprising 206 metres.</u>
<b>Little Eaton</b>	
<u>Derbyshire County Council</u>	<u>Reference B1</u> <u>The whole length of the circulatory carriageway on Little Eaton junction as shown on Sheet 5 (Little Eaton junction) of the classification of roads plans, comprising 230 metres.</u>

## PART 3

### CLASSIFIED ROADS

<i>(1)</i> <u>Area</u>	<i>(2)</i> <u>Length of road</u>
<b>Kingsway</b>	
Derby City Council	A511 Kingsway Road carriageway between point T and V and point U on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising <del>of</del> 182 metres.
<b>Markeaton</b>	
Derby City Council	A52 Ashbourne Road carriageway between points FF and HH and points II and GG on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising <del>of</del> 264 metres.
<u>Derby City Council</u>	<u>Reference TT</u> <u>Markeaton roundabout circulatory carriageway, comprising 210 metres, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans.</u>

Derby City Council	A52 Ashbourne Road carriageway between points UU and VV and point WW on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising <del>of</del> 87 metres.
<b>Little Eaton</b>	
Derbyshire County Council	B6179 Alfreton Road northbound carriageway between points F1 and H1 and point G1 on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising <del>of</del> 49 metres.
<u>Derbyshire County Council</u>	<u>Reference Q1</u> <u>Little Eaton Roundabout circulatory carriageway, comprising 348 metres, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans.</u>
Derbyshire County Council	A61 Alfreton Road southbound carriageway between point R1 and point S1 on Sheet 3 (Little Eaton junction) classification of roads plans, comprising <del>of</del> 106 metres.
Derbyshire County Council	A61 Alfreton Road northbound carriageway between point T1 and point U1 on Sheet 3 (Little Eaton junction) classification of roads plans, comprising <del>of</del> 106 metres.

#### PART 4

#### ~~PART 3~~

#### UNCLASSIFIED ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
<b>Kingsway</b>	
Derby City Council	Kingsway park close link road between points W and Y and point X, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising <del>of</del> 224 metres.
Derby City Council	Kingsway park close road between point Z and point AA, as shown on Sheet 1 (Kingsway junction) of the classification of roads plans, comprising <del>of</del> 27 metres.
<b>Markeaton</b>	
Derby City Council	Markeaton park access road between point X1 and point Y1, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising <del>of</del> 94 metres.
Derby City Council	Reference Z1 Markeaton park access circulatory carriageway, as shown on Sheet 2 (Markeaton junction) of the classification of roads plans, comprising <del>of</del> 58 metres.
<b>Little Eaton</b>	
Derbyshire County Council	Ford lane between point D1 and point E1, as shown on Sheet 3 (Little Eaton junction) of the classification of roads plans, comprising <del>of</del> 24 metres.

#### PART 5

#### SPEED LIMITS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed limit</i>
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<b>Kingsway</b>		
Derby City Council	A38 northbound carriageway starting at the point 74 metres south of the tip of the nosing of the A38 northbound diverge slip road at Kingsway junction to the point 172 metres north of the tip of the nosing of the A38 northbound diverge slip road at Kingsway junction for a total distance of 246 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	National speed limit
Derby City Council	A38 northbound carriageway starting at the point 172 metres north of the tip of the nosing of the A38 northbound diverge slip road at Kingsway junction to the point 254 metres north of the tip of the nosing of the A38 northbound merge slip road at Kingsway junction for total distance of 954 metres, as shown on Sheet 1 (Kingsway junction) permanent speed limit plans.	50 miles per hour
Derby City Council	A38 northbound diverge slip road starting from the diverge with A38 northbound carriageway to the point where it meets new Kingsway West Roundabout for a total distance of 588 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	National speed limit
Derby City Council	A38 northbound merge slip road starting from the new Kingsway West Roundabout to the point where it merges with A38 northbound carriageway for a total distance of 302 metres, as shown on Sheet 1 (Kingsway junction) permanent of the speed limit.	50 miles per hour
Derby City Council	A38 southbound carriageway starting at the point 328 metres north of the tip of the nosing of the A38 southbound diverge slip road at Kingsway junction to the point 69 metres north of the tip of the nosing of the A38 southbound merge slip road at Kingsway junction for a total distance of 954 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	50 miles per hour
Derby City Council	A38 southbound carriageway starting at the point 69 metres north of the tip of the nosing of the A38 southbound merge slip road at Kingsway junction to the point 178 metres south of the tip of the nosing of the A38 southbound merge slip road at Kingsway junction a total distance of 247m, as shown on Sheet 1 (Kingsway junction permanent) of the speed limit plans.	National speed limit
Derby City Council	A38 southbound diverge slip road starting from the diverge with A38 southbound carriageway to the point where it meets the Kingsway East Roundabout for a total distance of 315 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	50 miles per hour
Derby City Council	A38 southbound merge slip road starting from Kingsway East Roundabout to the point where it merges with A38 southbound carriageway for a total distance of 528 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	National speed limit



Derby City Council	From the Kingsway East Roundabout the entire length of Kingsway Overbridge link road (eastbound and westbound) including Kingsway West Roundabout, a total distance of 348 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	40 miles per hour
Derby City Council	A38 new Kingsway East Roundabout, the whole length of the circulatory carriageway for a total distance of 208 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	40 miles per hour
Derby City Council	A5111 Kingsway eastbound carriageway starting at A38 new Kingsway East Roundabout to the point 182 metres east of the new Kingsway East Roundabout a total distance of 182 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	40 miles per hour
Derby City Council	A5111 Kingsway westbound carriageway starting at the point 182 metres east of A38 new Kingsway East Roundabout to where it meets new Kingsway East Roundabout for a total distance of 182 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	40 miles per hour
Derby City Council	Kingsway Park Close link road (northbound and southbound) starting at the new Kingsway East Roundabout to the point 224 metres north west of the new Kingsway East Roundabout for a total distance of 224 metres, as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	30 miles per hour
Derby City Council	Kingsway park close starting at the junction with Kingsway Park Close Link road to the point 27 metres east of the junction, for a total distance of 27 metres as shown on Sheet 1 (Kingsway junction) of the speed limit plans.	30 miles per hour
<b>Markeaton</b>		
Derby City Council	A38 northbound carriageway starting at the point 260 metres south of the tip of the nosing of the A38 northbound diverge slip road at Markeaton junction to the point 430 metres north of the tip of the nosing of the A38 northbound merge slip road at Markeaton junction for a total distance of 1234 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	50 miles per hour
Derby City Council	A38 southbound carriageway starting at the point 398 metres north of the A38 southbound diverge slip road at Markeaton junction to the point 357 metres south of the A38 southbound merge slip road at Markeaton junction for a total distance of 1239 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans. .	50 miles per hour
Derby City Council	A38 northbound diverge slip road starting from the diverge with A38 northbound carriageway to the point where it meets Markeaton junction roundabout for a total distance of 372 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour

Derby City Council	A38 northbound merge slip road starting at the point 194 metres south of the tip of the nosing of the A38 northbound merge slip road to the point where it merges with the A38 northbound carriageway for a total distance of 275 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	50 miles per hour
Derby City Council	A38 southbound diverge slip road starting from the diverge with A38 southbound carriageway to the point where it meets the A38 Markeaton junction roundabout for a total distance of 307 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	50 miles per hour
Derby City Council	A38 southbound merge slip road starting from Markeaton junction roundabout to the point where it merges with A38 southbound carriageway for a total distance of 286 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	50 miles per hour
Derby City Council	A38 Markeaton junction, for the whole length of the circulatory carriageway for a total distance of 210 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	A52 Ashbourne Road westbound carriageway starting from Markeaton junction roundabout (west side) to the point 232 metres west of the Markeaton junction roundabout for a total distance of 232 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	A52 Ashbourne Road eastbound carriageway starting from a point 232 metres west of the Markeaton junction roundabout (west side) along its length to the point 194 metres south of the tip of the nosing of the A38 northbound merge slip road for a total distance of 255 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	A52 Ashbourne road westbound carriageway starting at a point 87 metres east of the Markeaton junction roundabout (east side) along its length to the point where it joins the A38 Markeaton junction for a total distance of 87 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	A52 Ashbourne road eastbound carriageway starting at a Markeaton junction roundabout (east side) to the point 87 metres east of the Markeaton junction for a total distance of 87 metres as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	Entire length of the new access road starting at the A52 Ashbourne Road into Markeaton park including the roundabout for a total distance of 246 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	30 miles per hour
Derby City Council	A38 northbound diverge slip road starting from the diverge with the A38 northbound carriageway	50 miles per hours

	along its length to the point where it merge with Kedleston Road junction for a total distance of 225 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	
Derby City Council	A38 southbound merge slip road starting from Kedleston Road along its length to the point where it merge with the A38 northbound carriageway for a total distance of 207 metres, as shown on Sheet 2 (Markeaton junction) of the speed limit plans.	50 miles per hour
<b>Little Eaton</b>		
Derbyshire County Council	A38 northbound carriageway starting at a point 231 metres west of the tip of the nosing of the A38 northbound diverge slip road at Little Eaton junction to a point 341 metres north of the tip of the nosing of the A38 northbound merge slip road at Little Eaton junction for a total distance of 1267 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 southbound carriageway starting at a point 280 metres north of the tip of the nosing of the A38 southbound diverge slip road to a point 185 metres west of the tip of the nosing of the A38 southbound merge slip road at Little Eaton junction for a total distance of 1300 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 northbound diverge slip road starting from the diverge with A38 northbound carriageway to the point where it meets Little Eaton junction roundabout for a total distance of 441 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 northbound merge slip road starting from Little Eaton junction roundabout to the point where it merges with the A38 northbound carriageway for a total distance of 340 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 southbound diverge slip road starting from the diverge with A38 southbound carriageway to the point where it meets the Little Eaton junction roundabout, a total distance of 524 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 southbound merge slip road starting from Little Eaton junction roundabout to the point where it merges with A38 southbound carriageway for a total distance of 426 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit
Derbyshire County Council	A38 southbound link road starting from diverge with A38 southbound diverge slip road to the point where it meets A61 Alfreton Road southbound carriageway for a total distance of 260 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	National speed limit

Derbyshire County Council	A38 Little Eaton junction for the whole length of the circulatory carriageway, a total distance of 348 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	60 miles per hour
Derbyshire County Council	A61 Alfreton Road (northbound and southbound) starting at Little Eaton Roundabout to a point 106 metres south of the Little Eaton Roundabout for a total distance of 106 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	60 miles per hour
Derbyshire County Council	B6179 Alfreton Road (northbound and southbound) starting at Little Eaton Roundabout to a point 49 metres north of the Little Eaton junction roundabout for a total distance of 49 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	40 miles per hour
Derbyshire County Council	Ford Lane starting at Little Eaton Roundabout to a point 24 metres west of the Little Eaton Roundabout for a total distance of 24 metres, as shown on Sheet 3 (Little Eaton junction) of the speed limit plans.	30 miles per hour

## PART 6

### TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

(1) Area	(2) Road name, number and length	(3) Measures
<b>Kingsway</b>		
Derby City Council	A38 northbound carriageway From point A to point K on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 1200 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 northbound diverge slip road onto Kingsway West Roundabout From point C to point D on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 588 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 northbound merge slip road onto the A38 northbound carriageway From point J to point B on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 302 metres.	Clearway (to include verges and hard strips)
Derby City Council	Kingsway West Roundabout From point E to point F on Sheet 1 (Kingsway junction) of the traffic regulations plans, for a total distance of 208 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 southbound carriageway From point N to point M on Sheet 1 (Kingsway junction) of the traffic	Clearway (to include verges and hard strips)

	regulations measures plans, for a total distance of 1200 metres.	
Derby City Council	A38 southbound diverge slip road onto the Kingsway East Roundabout From point L to point O on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 315 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 southbound merge slip road onto the A38 southbound carriageway From point P to point Q on (Kingsway junction) of the traffic regulations measures plans, for a total distance of 528 metres.	Clearway (to include verges and hard strips)
Derby City Council	Reference AB Kingsway East Roundabout For the whole length of the circulatory carriageway around Kingsway West Roundabout, a length of 208 metres, as shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derby City Council	Kingsway junction Overbridge Link Road From points E and F to points G and H on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 70 metres.	Clearway (to include verges and hard strips)
Derby City Council	Kingsway Park close link Road From points V and Y and points W and X on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, for a total distance of 190 metres.	(Prohibition and Restriction of waiting) (No <del>stopping</del> waiting) (At Any Time) <del>(Carriageway only)</del>
Derby City Council	Reference A Cherry Tree close to the junction with A5111 Kingsway road westbound carriageway, as shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans.	Prohibition (No right turn)
<u>Derby City Council</u>	<u>Reference N</u> <u>The whole length of the circulatory carriageway on Markeaton junction as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, for a total distance of 206 metres.</u>	<u>Clearway(to include verges and hard strips)</u>
<b>Markeaton</b>		
Derby City Council	A38 northbound carriageway From point A and B on Sheet 2 (Markeaton junction) of the traffic	Clearway (to include verges and hard strips)

	regulations measures plans, for a total distance of 1234 metres.	
Derby City Council	A38 northbound diverge slip road onto Markeaton junction roundabout From point C to point D on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, for a total distance of 372 metres.	Clearway (to include verges and hard strips)
Derby City Council	A38 northbound merge slip road onto the A38 northbound carriageway from point O to point P for a distance of 275 metres, as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derby City Council	A38 southbound carriageway from point S to point T for a total distance of 1239 metres, as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derby City Council	A38 southbound diverge slip road onto Markeaton junction roundabout from point W to point X, for a total distance of 307 metres, as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derby City Council	A38 southbound merge slip road onto A38 southbound carriageway from point AC to point AD for a total distance of 286 metres, as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
<b>Little Eaton</b>		
Derbyshire County Council	A38 northbound carriageway from point A to point B for a total distance of 1267 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	Reference E The entire length of Little Eaton circulatory carriageway, a distance of 348 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	A38 northbound diverge slip road onto Little Eaton junction roundabout from point C to point D for a total distance of 441 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	A38 northbound merge slip road onto the A38 northbound carriageway from point I to point J,	Clearway (to include verges and hard strips)

	a total distance of 340 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	
Derbyshire County Council	A38 southbound carriageway from point K to point L, for a total distance of 1300 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	A38 southbound diverge slip road onto Little Eaton junction roundabout from point M to point N, a total distance of 524 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	A38 southbound diverge slip road onto the A61 southbound carriageway from point O to point P, a total distance of 260 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)
Derbyshire County Council	A38 southbound merge slip road onto A38 southbound carriageway from point U to point V, a total distance of 426 metres, as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	Clearway (to include verges and hard strips)

## PART 7

### REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

(1) Area	(2) Road name, number and length	(3) Title of Order	(4) Revocations or variations
<b>Kingsway</b>			
Derby City Council	A38 northbound carriageway into Kingsway junction from point A01 to point B01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 566 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	Reference C01 The entire length of Kingsway circulatory carriageway a total distance of 495 metres as shown on Sheet 1	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A56 Trunk Road (24	Clearway order to be varied to remove the existing clearway over the existing circulatory carriageway.

	(Kingsway junction) of the traffic regulations measures plans.	Hours Clearway) Order 2006 No. 2706	
Derby City Council	Kingsway junction onto the A38 northbound carriageway from point D01 to point E01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 491 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	A38 southbound carriageway onto Kingsway junction from point F01 and point G01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 475 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	Kingsway junction onto the A38 southbound carriageway from point L01 and point M01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 549 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	A5111 Kingsway eastbound from point R to point S shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 180 metres.	Derby City Council (Prohibition and Restriction of Waiting) <del>(No stopping) (Rural Clearway) (Waiting at Any Time)</del> <del>(Carriageway only)</del>	Order to be varied (Varying the length of the A5111 Kingsway eastbound carriageway to which the order applies to accord with the realigned A5111 Kingsway. ( <del>G23</del> , <del>G24H24</del> , <del>H25</del> and <del>H24H26</del> ) (803)
Derby City Council	A5111 Kingsway westbound from point T to point U shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 180 metres.	Derby City Council (Prohibition and Restriction of Waiting) <del>(No stopping) (Rural Clearway) (Waiting at Any Time)</del> <del>(Carriageway only)</del>	Order to be varied (Varying the length of the A5111 Kingsway westbound carriageway to which the order applies to accord with the realigned A5111 Kingsway. ( <del>G23</del> ,



			<a href="#">G24H24, H25</a> and <a href="#">H24H26</a> (803)
Derby City Council	Kingsway Park Close from point Z to Point AA shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 60 metres.	Derby City Council (Prohibition and Restriction of waiting) (No stopping) (Rural Clearway) (At Any Time) (Carriageway only)	Order to be varied over this length.
Derby City Council	Reference C01 Kingsway roundabout Circulatory carriageway for the whole length of the circulatory carriageway around Kingsway junction shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 487 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove 40mph speed limit over the entire length of circulatory carriageway.
Derby City Council	Kingsway junction onto the A38 northbound carriageway from point D01 to point E01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 491 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove existing 40mph speed limit over this length.
Derby City Council	A38 southbound carriageway into Kingsway junction from point F01 and point G01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 475 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove existing 40mph speed limit over this length.
Derby City Council	A5111 Kingsway eastbound carriageway from point H01 to point I01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 30 metres.	Derby City Council (Speed Order) (40mph Speed Limit)	Order to be varied to remove the existing 40mph speed limit over this length.

Derby City Council	A5111 Kingsway westbound carriageway from point J01 to point K01 shown on Sheet 1 (Kingsway junction) of the traffic regulations measures plans, a total distance of 30 metres.	Derby City Council (Speed Order) (40mph Speed Limit)	Order to be varied to remove the existing 40mph speed limit over this length.
<b>Markeaton</b>			
Derby City Council	A38 northbound carriageway on to Markeaton junction from Point A01 and point C01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 510 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	Reference D01 The entire length of Markeaton circulatory carriageway a total distance of 206 metres as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	Markeaton junction into the A38 northbound carriageway from point E01 and point G01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 500 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	A38 southbound carriageway into Markeaton junction from point K01 and point I01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 494 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	Markeaton junction into the A38 southbound carriageway from	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28,	Clearway order to be varied to remove the existing clearway over this length.

	point J01 and point L01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 510 metres.	Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	
Derby City Council	A38 northbound carriageway diverge slip road onto the Kedleston Road from point Q01 to point R01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 180m.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	A38 southbound merge slip road from Kedleston Road from point S01 to point T01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 197metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derby City Council	A38 northbound carriageway onto Markeaton junction from Point A01 and point C01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 510 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove existing 40mph speed limit over this length.
Derby City Council	Reference D01 The whole length of the circulatory carriageway on Markeaton junction as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 206 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to cover realigned circulatory carriageway 40mph speed limit over the length.
Derby City Council	Markeaton junction into the A38 northbound carriageway from point E01 and point G01 shown on Sheet 2 (Markeaton junction) of the traffic	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove existing 40mph speed limit over this length.

	regulations measures plans, a total distance of 500 metres.		
Derby City Council	A38 southbound carriageway into Markeaton junction from point K01 and point I01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 494 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove existing 40mph speed limit over this length.
Derby City Council	Markeaton junction into the A38 southbound carriageway from point J01 and point L01 shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 510 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be amended to remove existing 40mph speed limit over this length.
Derby City Council	A52 Ashbourne Road from points F and G and points AE and AF shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 204 metres.	Derby City Council (Speed order) (40mph speed limit)	Order to be varied to remove existing 40mph speed limit to 30mph speed limit over this length. (C6) (5003)
Derby City Council	A52 Ashbourne Road (westbound) from point E and point I shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 70 metres.	Clearway	Clearway extents to be varied along the length.
Derby City Council	A52 Ashbourne Road (eastbound) from point H and point J shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 90 metres.	Clearway	Clearway extents to be varied along the length.
Derby City Council	A52 Ashbourne Road (eastbound) from point Z and point Y shown on Sheet 2 (Markeaton junction)	Derby City Council (Prohibition and Restriction of Waiting)	Order to be varied (Varying the length of A52 Ashbourne Road eastbound and westbound)

	of the traffic regulations measures plans, a total distance of 80 metres.	(No waiting ( <del>Mon-Fri 8am-6pm</del> at any time))	carriageway to which the order applied to accord with the realigned A52 Ashbourne Road) (108) (H20, I20) (202)
Derby City Council	A52 Ashbourne Road (westbound) from point AA and point AB shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans, a total distance of 80 metres.	Derby City Council (Prohibition and Restriction of Waiting) (No waiting ( <del>Mon-Fri 8am-6pm</del> at any time))	Order to be varied (Varying the length of A52 Ashbourne Road eastbound and westbound carriageway to which the order applied to accord with the realigned A52 Ashbourne Road) (108) (H20, I20) (202)
Derby City Council	Reference 1 Enfield Road diverge from the A38 northbound carriageway, as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	7.5T Weight limit restriction	Order to be varied.
Derby City Council	Reference 2 An extent of 10 metres from A38 northbound carriageway with the junction Enfield Road as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	No Entry	Order to be revoked.
Derby City Council	Reference 3 A52 Ashbourne Road eastbound diverge from the existing Markeaton roundabout as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	7.5T Weight limit restriction	Order to be varied to move weight limit restriction to point Z.
Derby City Council	Reference 4 Queensway access to private properties, from A52 Ashbourne Road eastbound carriageway as shown on Sheet 2	Derby City Council (Prohibitions of driving of motor vehicles exemptions 1 and 2) (Moving Vehicle Restrictions) (Principal Order)	Order to be revoked to remove existing moving vehicle restriction principal order over this length. (H20, I19 and I20) (5103)

	(Markeaton junction) of the traffic regulations measures plans, a total distance of 300 metres.		
Derby City Council	Reference 5 Exit Road from Markeaton Park on to the A52 Ashbourne Road eastbound carriageway as shown on Sheet 2 (Markeaton junction) of the traffic regulations measures plans.	No Entry	Order to be revoked.
<b>Little Eaton</b>			
Derbyshire County Council	A38 <del>eastbound</del> northbound carriageway into Little Eaton junction from point A01 and point B01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 468 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derbyshire County Council	Reference C01 A38 Little Eaton junction circulatory carriageway, the entire length of the circulatory carriageway a total distance of 230 metres as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derbyshire County Council	Little Eaton junction into the A38 northbound carriageway from point D01 and point E01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 660 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derbyshire County Council	A38 southbound carriageway into Little Eaton roundabout from point H01 and	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28,	Clearway order to be varied to remove the existing clearway over this length.

	point I01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 680 metres.	Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	
Derbyshire County Council	A38 southbound diverge slip road to A61 <del>eastbound</del> southbound carriageway from point J01 and point K01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 260 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derbyshire County Council	Little Eaton junction into the A38 <del>northbound</del> southbound carriageway from point P01 and point Q01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 480 metres.	The A38 Trunk Road (Between A50 Derby Southern bypass and M1 junction 28, Derbyshire) and the A516 Trunk Road (24 Hours Clearway) Order 2006 No. 2706	Clearway order to be varied to remove the existing clearway over this length.
Derbyshire County Council	A61 Alfreton Road (southbound carriageway) from point L01 to M01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 75 metres.	Clearway	Order to be varied to remove the existing clearway over this length.
Derbyshire County Council	A61 Alfreton Road (northbound carriageway) From point O01 to N01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 75 metres.	Clearway	Order to be varied to remove the existing clearway over this length.
Derbyshire County Council	A61 Alfreton Road (southbound carriageway) from point Q to point R on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, for a total	Clearway	Order to be varied (varying the length of A61 Alfreton Road <del>eastbound</del> southbound carriageway) to which the order applied).

	distance of 111 metres.		
Derbyshire County Council	A61 Alfreton Road (northbound carriageway) from point S to point T on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, for a total distance of 111 metres.	Clearway	Order to be varied (varying the length of A61 Alfreton Road <del>westbound</del> <u>northbound</u> carriageway to which the order applied).
Derbyshire County Council	B6179 Alfreton Road (northbound and southbound) From point F to point G on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, for a total distance of 50 metres.	Clearway	Order to be varied (varying the length of B6179 Alfreton Road northbound carriageway to which the order applied).
Derbyshire County Council	A38 northbound carriageway into Little Eaton junction from point A01 to point B01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 460 metres	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be varied to vary the length of national speed limit.
Derbyshire County Council	Little Eaton junction onto A38 northbound carriageway from point D01 to point E01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 660 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be varied to vary the length of national speed limit.
Derbyshire County Council	Reference C01 A38 Little Eaton junction circulatory carriageway, the entire length of the circulatory carriageway, a total distance of 210 metres as shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be varied to remove national speed limit over this length.



Derbyshire County Council	A38 southbound carriageway onto Little Eaton junction from point H01 to Point I01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 680 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2707	Order to be varied to vary the length of national speed limit.
Derbyshire County Council	A38 southbound link road to A61 southbound carriageway from point J01 and point K01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 260 metres.	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2708	Order to be varied to vary the length of national speed limit.
Derbyshire County Council	Little Eaton junction onto A38 southbound carriageway from point P01 to point Q01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 480 metres	The A38 Trunk Road (A50 to A61, Derbyshire) and the A516 Trunk Road (40 miles per hour speed limit and derestriction) Order 2006 No. 2708	Order to be varied to vary the length of national speed limit.
Derbyshire County Council	A61 Alfreton Road (southbound carriageway) from point L01 to M01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 75 metres.	National Speed Limit	Order to be varied to remove national speed limit over this length.
Derbyshire County Council	A61 Alfreton Road (northbound carriageway) from point O01 to N01 shown on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, a total distance of 75 metres.	National Speed Limit	Order to be varied to remove national speed limit over this length.
Derbyshire County Council	Ford Lane from points R01 and T01 to point S01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, for a	Clearway	Clearway extents to be revoked.

	total distance of 30 metres.		
Derbyshire County Council	Ford Lane from point H to point W on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, for a total distance of 20 metres.	Clearway	Clearway extents to be varied over this length.
Derbyshire County Council	Ford Lane (northbound and southbound carriageway) from points R01 and T01 to point U01 on Sheet 3 (Little Eaton junction) of the traffic regulations measures plans, for a total distance of 112 metres.	National Speed Limit	Order to be varied to remove national speed limit over this length.

## PART 78

### PUBLIC RIGHTS OF WAY

<i>(1)</i> Area	<i>(2)</i> Status and length of public right of way
<b>Kingsway</b>	
Derby City Council	169 metres footway/cycle track from point AA to point AC to point AB shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	89 metres footway/cycle track from point AD to point AE shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	128 metres footway/cycle track from point AF to point AK shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	84 metres footway/cycle track from point AC to point AG shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	141 metres footway/cycle track from point AH to point AI shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	198 metres footway/cycle track from point AJ to point AL shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	20 metres footway/cycle track from point AM to point AN shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	22 metres footway/cycle track from point AO to point AP shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.

Derby City Council	16 metres footway/cycle track from point AQ to point AR shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	166 metres footway from point AP to point AU shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	119 metres footway from point AQ to point AT shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	62 metres footway from point AW to point AV shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	38 metres footway from point AX to point AY shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	41 metres footway/cycle track from point BB to BD shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
<b>Markeaton</b>	
Derby City Council	98 metres footway/cycle track from point AA to AB shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	17 metres footway/cycle track from point AD to AE shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	19 metres footway from point AE to AF shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	10 metres footway from point AG to AH shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	130 metres footway from point AI to BJ shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	105 metres footway from point BK to AM shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	43 metres footway/cycle track from point AK to AL shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	73 metres footway/cycle track from point AM to AN to BL to AO shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	27 metres footway/cycle track from point AO to AP shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	68 metres footway/cycle track from point AQ to AR shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	277 metres footway/cycle track from point AS to AV to AT shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	24 metres footway/cycle track from point AX to BA shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	658 metres footway/cycle track from point BD to BE shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	84 metres footway/cycle track from point BF to BG to BH to BI shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	85 metres footway/cycle track from point AZ to AY to BA shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	312 metres footway/cycle track from point AV to BN shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	618 metres footway/cycle track from point AW to BN to AX to AY as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.

Derby City Council	28 metres footway/cycle track from point BB to BC as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
<b>Little Eaton</b>	
Derbyshire County Council	442 metres of footway/cycle track from point AA to AB to AC shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	62 metres of footway/cycle track from point AD to AE shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	150 metres of footway/cycle track from point AH to AI shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	25 metres of footway/cycle track from point AF to AG shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	80 metres of footway/cycle track from point AJ to AK shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.

#### SCHEDULE 4

Articles 15 and 25

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

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

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

## PART 1

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

(1) Area	(2) Highways to be stopped up	(3) Extent of stopping up	(4) New Highway to be substituted/provided
<b>Kingsway</b>			
N/A	N/A	N/A	N/A
<b>Markeaton</b>			
Derby City Council	Footpath/cycle track From A38 northbound carriageway in a westerly direction to Greenwich Drive North.	Entire length of footway/cycle track from point A01 to A02 (a total distance of 23 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	<u>N/A</u>
Derby City Council	Footpath/cycle track From A38 northbound carriageway in a westerly direction to Greenwich Drive North.	Entire length of footway/cycle track from point A03 to A04 (a total distance of 9 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	<u>N/A</u>
Derby City Council	Footpath/cycle track From A38 southbound carriageway in an easterly direction to Thurcroft Close.	Entire length of footway/cycle track from point A45 to A46 (a total distance of 11 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	<u>N/A</u>
Derby City Council	Footpath/cycle track from the A38 southbound carriageway, north of the Markeaton junction, in a easterly direction.	Length of footway/cycle track from point A27 to A28 (a total distance of 4 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	<u>N/A</u>
Derby City Council	Enfield Road exit from the A38 northbound carriageway	Reference A07 An extent of 19 metres from the junction with the A38 northbound carriageway to Enfield Road as shown on Sheet 2 (Markeaton junction) of the streets	<u>N/A</u>

		rights of way and access plans.	
Derby City Council	Enfield Road entry on to the A38 northbound carriageway	Reference A08 An extent of 12 metres from the junction with the Enfield Road to the A38 northbound carriageway as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	<u>N/A</u>
Derby City Council	Footways/cycle track west of the A38 northbound carriageway.	Entire length of footway/cycle track on point A50, a total distance of 7 metres as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	<u>N/A</u>
<b>Little Eaton</b>			
Derbyshire County council	Ford Lane	Reference A02 A length of 112 metres north of its junction with the A38 northbound carriageway, as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.	<u>N/A</u>

## PART 2

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

<i>(1)</i> Area	<i>(2)</i> Highway to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> New Highway to be substituted/provided
<b>Kingsway</b>			
Derby City Council	A38 northbound carriageway	Reference A04 Existing A38 northbound carriageway starting from Kingsway junction roundabout to a point 98 metres south of the Kingsway junction roundabout as shown on Sheet 1 (Kingsway junction)	Reference A and B as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans. Reference A - Realigned A38 northbound carriageway starting at a point 74 metres south of the tip of the

		of the streets rights of way and access plans.	nosing of the A38 northbound diverge slip road at Kingsway junction to the point 254 metres north of the tip of the nosing of the A38 northbound merge slip road at Kingsway junction, a total distance of 1200 metres. Reference B - New A38 northbound diverge slip road starting from the diverge with A38 northbound carriageway to the point where it meets the new Kingsway junction roundabout, a total distance of 588 metres.
Derby City Council	Kingsway Junction Circulatory carriageway	Reference A05 The whole length of Kingsway junction circulatory carriageway, an extent of 495 metres, as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	Reference C, D and E as shown on Sheet 1 (Kingsway junction) of the rights of way and access plans. Reference C - New Kingsway West Roundabout, a total distance of 118 metres. Reference D - New Kingsway Junction Overbridge link road for a length of 70m. Reference E - New Kingsway East Roundabout, a total distance of 208 metres.
Derby City Council	N/A	N/A	Reference F as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans. New A38 northbound merge slip road starting from new Kingsway junction roundabout to the point where it merges with A38 northbound

			carriageway, a total distance of 302 metres.
Derby City Council	Footway-68 (north of the existing A38 northbound carriageway and south of Greenwich Drive South)	Reference A09, <del>A10</del> and <del>A10A12</del> To be stopped up for a distance of 176 metres on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	New footway/ <del>eye</del> way/ <del>cycl</del> e track from point AA to AC to AB for a length of 169 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	Reference A11 To be stopped up for a distance of 23 metres on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	New footway/cycle track from point AC to AG for a length of 84 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	Brackensdale Avenue link road with the A38 northbound carriageway	Reference A13 An extent of link road from Brackensdale avenue to the A38 northbound carriageway, starting at the point 35 metres north of where it meets Brackensdale avenue junction to the A38 northbound carriageway, a total length of 106 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	Reference G as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.  New Kingsway Park Close link road starting at <del>it</del> -sits junction with the new Kingsway East Roundabout for a length of 224 metres in a north easterly direction to meet the existing Kingsway Park Close.
Derby City Council	N/A	N/A	New footway/ <del>eye</del> way/ <del>cycl</del> e track from point AO to AP for a length of 22 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	Raleigh street junction with the A38 southbound carriageway.	Reference A18 An extent of 50 metres east from the Raleigh Street junction with the A38 southbound carriageway as shown on Sheet 1 (Kingsway junction) of the streets	Reference G (as described above) as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.



		rights of way and access plans.	
Derby City Council	Footway	Reference A21 To be stopped up for a distance of 30 metres on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	Footway/ <del>Cycleway</del> <del>Cycle track</del> from point AM to AN for a length of 20 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	<del>N/A</del> <u>Ashbourne Road exit from the A5111 eastbound carriageway</u>	<del>N/A</del> <u>Reference A22</u> <u>An extent of 12 metres from the junction with the A5111 eastbound and the A38 northbound carriageway as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.</u>	Reference J and K as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.  Realigned A5111 Kingsway eastbound and westbound starting at Kingsway East Roundabout to the point 182 metres east of the Kingsway East Roundabout, a total distance of 182 metres.
Derby City Council	N/A	N/A	Reference I and L as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.  Reference I - Realigned A38 southbound carriageway starting at a point 328 metres north of the tip of the nosing of the A38 southbound diverge slip road at Kingsway junction roundabout to the point 177 metres south of the tip of the nosing of the A38 southbound merge slip road at Kingsway junction roundabout, a total distance of 1200 metres.  Reference L - New A38 southbound merge slip road starting from new Kingsway East Roundabout to the

			point where it merges with A38 southbound carriageway, a total distance of 528 metres.
Derby City Council	N/A	N/A	Reference H as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.  New A38 southbound diverge slip road starting from the diverge with A38 southbound carriageway to the point where it meets the new Kingsway East Roundabout, a total distance of 315 metres.
Derby City Council	N/A	N/A	New footway/cycle track from point AD to AE for a length of 89 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AF to AK for a length of 128 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AH to AI for a length of 141 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AJ to AL for a length of 198 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AQ

			to AR for a length of 16 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway from point AP to AU for a length of 166 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway from point AQ to AT for a length of 119 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway from point AW to AV for a length of 62 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point BB to BD for a length of 41 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway from point AX to AY for a length of 38 metres as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
<b>Markeaton</b>			
Derby City Council	N/A	N/A	References A and B as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.  Reference A - Realigned A38 northbound carriageway starting at the point 259 metres south of the tip of the nosing of the A38

			<p>northbound diverge slip road at Markeaton junction roundabout to the point 429 metres north of the tip of the nosing of the A38 northbound merge slip road at Markeaton junction roundabout, a total distance of 1234 metres.</p> <p>Reference B - New A38 northbound diverge slip road starting from the diverge with A378 northbound carriageway to the point where it meets Markeaton junction roundabout, a total distance of 372 metres.</p>
Derby City Council	Markeaton junction Circulatory carriageway	Reference A21 The whole length of Markeaton circulatory carriageway, an extent of 206 metres, as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	<p>Reference C as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.</p> <p>New Markeaton junction circulatory carriageway, an extent of 210 metres.</p>
Derby City Council	N/A	N/A	<p>Reference D and E as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.</p> <p>Realigned A52 Ashbourne Road westbound and eastbound carriageway starting at Markeaton junction roundabout to a point 237 metres west from the Markeaton junction roundabout, a total distance of 237 metres.</p>
Derby City Council	N/A	N/A	Reference F as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.

			New A38 northbound merge slip road starting from the Markeaton junction roundabout to the point where it merges with the A38 northbound carriageway, a total distance of 275 metres.
Derby City Council	N/A	N/A	Reference G as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.  Reference G- Realigned A38 northbound diverge slip road onto Kedleston Road junction from the start of the diverge from the A38 northbound carriageway along its length to its meets with junction Kedleston Road, a length of 262 metres.
Derby City Council	N/A	N/A	Reference H as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans  Realigned southbound merge slip road onto the A38 southbound carriageway from the start of the junction with the Kedleston Road along its length of 171 metres to where it meets with A38 southbound carriageway.
Derby City Council	N/A	N/A	References I and J as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.  Reference I-Realigned A38 southbound carriageway starting at

			<p>the point 398 metres north of the A38 southbound diverge slip road nosing at Markeaton junction to the point 357 metres south of the A38 southbound merge slip road at Markeaton junction roundabout, a total distance of 1239 metres.</p> <p>Reference J-New A38 southbound diverge slip road starting from the diverge with A38 southbound carriageway to the point where it meets the A38 Markeaton junction roundabout, a total distance of 307 metres.</p>
Derby City Council	<u><a href="#">N/A A52 Ashbourne Road with the A38 circulatory</a></u>	<u><a href="#">N/A Reference A47 To be stopped up for a distance of 14 metres as shown on Sheet 2 (Markeaton junction) rights of way and access plans.</a></u>	<p>Reference K and L as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.</p> <p>Reference K - Realigned A52 Ashbourne Road eastbound carriageway starting at the Markeaton junction roundabout to the point 87 metres east of the Markeaton junction roundabout, a total distance of 87 metres.</p> <p>Reference L - Realigned A52 Ashbourne Road westbound starting at the point 87 metres west of the Markeaton junction roundabout to the point where it meets the Markeaton junction roundabout, a total distance of 87 metres.</p>
Derby City Council	N/A	N/A	Reference M as shown on Sheet 2

			(Markeaton junction) of the streets rights of way and access plans.  New A38 southbound merge slip road starting from Markeaton junction roundabout to the point where it merges with A38 southbound carriageway, a total distance of 286 metres.
Derby City Council	<u>N/A</u> Footway/cycle track on the east side of the A38 northbound carriageway	<u>N/A</u> Reference A10 To be stopped up for a distance of 53 metres as shown on Sheet 2 (Markeaton junction) rights of way and access plans.	Realigned footway/cycle track from point AA to AB (a total distance of 98 metres) on the south west side of the Markeaton junction roundabout, as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway from point AI to BJ (a total distance of 130 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway from point BK to AM (a total distance of 185 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Footbridge crossing the A38 northbound and southbound carriageway.	Entire length of footbridge and ramps, a total distance of 226 metres from point A23 to A24 as shown on Sheet 2 (Markeaton junction) rights of way and access plans.	New footway/cycle track including footway/cycle track bridge from point AV TO BN (a total distance of 312 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Footway/cycle track on the north side of the A38 northbound carriageway	To be stopped up for a distance of 44 metres from point A25 to A26 as shown on	New footway/cycle track from point AS to AV to AT (a total distance of 277

		Sheet 2 (Markeaton junction) rights of way and access plans.	metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AW to BN to AX to AY (a total distance of 618 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway/cycle track from point BD to BE (a total distance of 658 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway/cycle track from point AD to AE (a total distance of 17 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway from point AE to AF (a total distance of 19 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway from point AG to AH (a total distance of 10 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AK to AL (a total distance of 43 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.



Derby City Council	N/A	N/A	New footway/cycle track from point AM to AN to BL to AO (a total distance of 73 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AO to AP (a total distance of 27 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AQ to AR (a total distance of 68 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point AX to BA (a total distance of 24 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	New footway/cycle track from point BF to BG to BH to BI (a total distance of 84 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway/cycle track from point AZ to AY to BA (a total distance of 85 metres) as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Realigned footway/cycle track from point BB to BC (a total distance of 28 metres) as shown on

			Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
<b>Little Eaton</b>			
Derbyshire County Council	N/A	N/A	<p>References A and B, as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.</p> <p>Reference A - Realigned A38 northbound carriageway starting at a point 231 metres west of the tip of the nosing of the A38 northbound diverge slip road at Little Eaton junction to the point 341 metres north of the tip of the nosing of the A38 northbound merge slip road at Little Eaton junction, a total distance of 1267 metres.</p> <p>Reference B - New A38 northbound diverge slip road starting from the diverge with A38 <del>eastbound</del>northbound carriageway to the point where it meets the Little Eaton junction roundabout, a total distance of 441 metres.</p>
Derbyshire County Council	N/A	N/A	<p>Reference D, as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.</p> <p>Realigned B6179 Alfreton Road starting at Little Eaton junction roundabout to the point 49 metres north of the Little Eaton junction roundabout, a total distance of 49 metres.</p>

Derbyshire County Council	Little Eaton circulatory carriageway	Reference A09 The entire length of the existing Little Eaton circulatory carriageway, an extent of 230 metres, and maintenance access, as shown on Sheet 3 (Little Eaton junction) streets rights of way and access plans.	Reference E New Little Eaton Junction roundabout, a length of 348 metres, as shown on Sheet 3 (Little Eaton junction) streets rights of way and access plans.
Derbyshire County Council	A38 northbound carriageway	Reference A10 A total length of 518 metres on A38 northbound carriageway commencing at the existing Little Eaton junction in a northerly direction, as shown on Sheet 3 (Little Eaton junction) streets rights of way and access plans	Reference A (as described above) and F as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.  Reference F - New A38 northbound merge slip road starting from Little Eaton junction roundabout to the point where it merges with the A38 northbound carriageway, a total distance of 340 metres. .
Derbyshire County Council	A38 southbound carriageway	Reference A11 and A12 A total extent of 460 metres on the A38 southbound carriageway from the existing Little Eaton roundabout in a northerly direction, as shown on Sheet 3 (Little Eaton junction) rights of way and access plans.	References G, H and I as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.  Reference G - Realigned A38 southbound carriageway starting at a point 278 metres north of the tip of the nosing of the A38 southbound diverge slip road at Little Eaton junction to the point 183 metres west of the tip of the nosing of the A38 <del>westbound</del> southbound merge slip road at Little Eaton junction, a total distance of 1300 metres.  Reference H - New A38 southbound

			<p>diverge slip road starting from the diverge with A38 southbound carriageway to the point where it meets the Little Eaton junction, a total distance of 524 metres.</p> <p>Reference I - New A38 southbound diverge slip road starting from the diverge with the A38 southbound diverge slip road at Little Eaton junction to the point where it meets the A61 Alfreton Road southbound carriageway, a total distance of 188 metres.</p>
Derbyshire County Council	N/A	N/A	<p>Reference J and K as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.</p> <p>Reference J - Realigned A61 Alfreton Road southbound carriageway starting at Little Eaton junction roundabout to the point 106 metres south of the Little Eaton junction roundabout, a total distance of 106 metres.</p> <p>Reference K - Realigned A61 Alfreton Road northbound carriageway starting at a point 106 metres south of the Little Eaton junction roundabout to the point where it meets the Little Eaton junction roundabout, a</p>

			total distance of 106 metres.
Derbyshire County Council	N/A	N/A	Reference C as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.  Reference C- Realigned Ford Lane starting at Little Eaton junction roundabout to the point 24 metres west of the Little Eaton junction roundabout, a total distance of 24 metres.
Derbyshire County Council	A38 <del>westbound</del> southbound carriageway	N/A	Reference L as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.  New A38 southbound merge slip road starting from Little Eaton junction roundabout to the point where it merges with A38 southbound carriageway, a total distance of 426 metres.
Derbyshire County Council	N/A	N/A	Realigned footway/cycle track from point AA to AB to AC for a length of 442 metres as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	N/A	N/A	Realigned footway/cycle track from point AD to AE for a length of 62 metres as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	N/A	N/A	New footway/cycle track from point AF to AG for a length of 25 metres as shown on Sheet 3 (Little Eaton

			junction) of the streets rights of way and access plans.
Derbyshire County Council	N/A	N/A	New footway/cycle track from point AH and AI for a length of 150 metres as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
Derbyshire County Council	N/A	N/A	New footway/cycle track from point AJ and AK for a length of 80 metres as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.

### PART 3

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

(1) Area	(2) Private means of access to be stopped up	(3) Extent of stopping up	(4) <del>New private means of access to be substituted or provided</del>
<b>Kingsway</b>			
N/A	N/A	N/A	<del>N/A</del>
<b>Markeaton</b>			
Derby City Council	Footways/cycle track between houses No. 18 and 20 Queensway, from the Queensway access Road heading in an easterly direction.	Entire length of footway/cycle track from point A14 to A15, a total distance of 30 metres as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House No. 4 Queensway)	Reference B02 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House No. 6 Queensway)	Reference B03 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	

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Derby City Council	Access to private property (House No. 8 Queensway)	Reference B04 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House No. 10 Queensway)	Reference B05 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House No. 12 Queensway)	Reference B06 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House No. 14 Queensway)	Reference B07 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	access to private property (House No. 16 Queensway)	Reference B08 An extent of 10 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House No. 18 Queensway)	Reference B09 An extent of 5 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House No. 2 Queensway)	Reference B12 An extent of 3 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House no. 257 Ashbourne Road)	Reference B15 An extent of 3 metres from the junction with A52 Ashbourne Road westbound carriageway properties as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	

Derby City Council	access to private property (House No. 20 Queensway)	Reference B16 An extent of 4 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	access to private property (House No. 22 Queensway)	Reference B17 An extent of 3 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House No. 24 Queensway)	Reference B18 An extent of 3 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House No. 26 Queensway)	Reference B19 An extent of 3 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House No. 30 Queensway)	Reference B20 An extent of 3 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
Derby City Council	Access to private property (House No. 32 Queensway)	Reference B21 An extent of 3 metres from the junction with footways to the private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	
<b>Little Eaton</b>			
N/A	N/A	N/A	N/A

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#### PART 4

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

(1) Area	(2) Private means of access to be stopped up	(3) Extent of stopping up	(4) New private means of access to be substituted/provided



<b>Kingsway</b>			
Derby City Council	Reference B02 Access to private property from Kingsway Park Close	An extent of 22 metres north from the junction with the Kingsway Park Close as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.	Reference 1 Realigned private means of access on Kingsway park close link road, 230m south of the junction with Lytleton Street road as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Reference 2 A new private means of access to a buried tank on A38 northbound diverge slip road, starting at a point 180 metres south of Kingsway West Roundabout, a total distance of 19 metres including 20 metres turning head as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
Derby City Council	N/A	N/A	Reference 3 A new private means of access to proposed balancing pond on A38 northbound carriageway, starting at a point 369 metres north of the tip of the nosing of A38 northbound diverge slip road, a distance of 35 metres including the 20 metres length of turning head as shown on Sheet 1 (Kingsway junction) of the streets rights of way and access plans.
<b>Markeaton</b>			
Derby City Council	-	-	Reference 1 A new private means of access to a buried tank off new footway/ <a href="#">cycleyeway/cycle track</a> (BN to AX), a total distance of 11 metres as shown on Sheet 2 (Markeaton

			junction) of the streets rights of way and access plans.
Derby City Council	Access to private property No. 253 Ashbourne Road	Reference B13 An extent of 1 metres from the A52 Ashbourne Road westbound carriageway to private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	Reference 2 From the A52 Ashbourne Road westbound carriageway to private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to private property No. 255 Ashbourne Road	Reference B14 An extent of 1 metres from the A52 Ashbourne Road westbound carriageway to private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.	Reference 2 From the A52 Ashbourne Road westbound carriageway to private property as shown on Sheet 2 (Markeaton junction) of the streets rights of way and access plans.
Derby City Council	Access to properties on Sutton Close	Reference B22 An extent of 5 metres from the A52 Ashbourne Road westbound carriageway to Sutton Close as shown on Sheet 2 (Markeaton junction) streets rights of way and access plans.	Reference 2 From the A52 Ashbourne Road westbound carriageway to private properties on Sutton Close as shown on Sheet 2 (Mareaton junction) of the streets rights of way and access plans.
<b>Little Eaton</b>			
Derbyshire County Council	Access to private land	Reference B01 Access to private land (a length of 14m) from the A61 Alfreton northbound carriageway, as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.	Reference 1 Access to private land (a length of 14m) from the A61 Alfreton road northbound carriageway at a point 170 metres south of the existing Little Eaton roundabout, as shown on Sheet 3 (Little Eaton junction) of the rights on way and access plans.
Derbyshire County Council	-	-	Reference 2 A new private means of access to new balancing ponds, starting from the A61 Alfreton road

			southbound carriageway including the entire length of roads around ponds (a total distance of 256 metres) as shown on Sheet 3 (Little Eaton junction) of the streets rights of way and access plans.
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### SCHEDULE 5

Article 26

#### LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot reference number shown on land plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Relevant part of the authorised development</i>
Land Plans – Sheet 1		
1/3a	Required for the establishment and maintenance of environmental mitigation and enhancement areas	Work No. 8
1/3b	Required for the establishment and maintenance of environmental mitigation and enhancement areas and the diversion and maintenance of and access to utilities and the establishment and maintenance of flood storage areas	Work No. 1, 8 and 9
1/4b	Required for the establishment of environmental mitigation and enhancement and the diversion and maintenance of and access to utilities	Work No. 8 and 9
Land Plans – Sheet 2		
2/1b	Required for the diversion and maintenance of and access to utilities <u>and the establishment and maintenance of environmental mitigation and enhancement</u>	Work No. <u>8 and 9</u>
2/1c	Required for the construction of a diverge slip road and for the establishment of environmental mitigation and enhancement areas <u>and the construction of highway drainage attenuation</u>	Work No. 2 and 8
2/1f	Required for the construction of a cycle track and the diversion and maintenance of and access to utilities	Work No. 3 and 9

2/1o	Required for the construction and reconfiguration of the junction between Lyttelton Street and Kingsway Park Close and the diversion and maintenance and access to utilities	Work No. 7 and 9
2/1p	Required for the construction and reconfiguration of the junction between Lyttelton Street and Kingsway Park Close and the diversion and maintenance and access to utilities	Work No. 7 and 9
2/7a and 2/8	Required for the diversion construction and maintenance of a cycle track	Work No. 3
2/9	Required for the construction and maintenance of a cycle track and the diversion and maintenance of and access to utilities	Work No. 3 and 9
2/13a	Required to construct a link road and the diversion and maintenance and access to utilities	Work No. 7 and 9
2/19a	Required to construct a link road and the diversion and maintenance of and access to utilities <u>and the construction of footways</u>	Work No. 7 and 9
2/19b	Required to construct a link road and the diversion and maintenance of and access to utilities and the reconfiguration of Lyttelton junction	Work No. 7 and 9
Land Plans – Sheet 3		
3/1p and 3/1q	Required for the construction of a northbound diverge slip road and the diversion and maintenance of and access to utilities <u>and the stopping up of the Enfield Road entry and exit roads</u>	Work No. 11 and 22
<del>3/1w</del>	<del>Required for the diversion installation and maintenance of and access to a utility corridor</del>	<del>Work No. 21</del>
<u>3/1w and 3/1x</u>	Required for the diversion and maintenance of and access to a utility corridor and construction of a new emergency access	Work No. 16 and 21
3/5a	Required for the alteration, realignment and grading of	Work No. 10, 15 and 22

	highway; the construction, improvement and realignment of cycle <del>way</del> track and the diversion and maintenance of and access to utilities	
3/9b	Required for alterations to the access to and egress from the filling station and fast-food site and the diversion and maintenance of utilities	Work No. 16 and 22
<del>3/16a, 3/17 and 3/19</del>	<del>Required for the construction and alteration of a private means of access</del>	<del>Work No. 16</del>
3/22b	Required for the construction of a southbound diverge slip and alteration realignment and grading of highway and the construction and maintenance of a noise barrier <u>and alterations to the access to and egress from the A52 to the Royal School for the Deaf</u>	Work No. 13 and 16
Land Plans - Sheet 4		
4/1b	Required for the diversion and maintenance of and access to a utility corridor and for the demolition of a footbridge and replacement of a footbridge	Work No. <del>24</del> 10 and <del>10</del> 21
4/1d	Required for the alteration, realignment and grading of a highway	Work No. 10, <del>21</del> and <del>22</del>
4/7b	Required for the construction and maintenance of a noise barrier	Work No. 13
Land Plans – Sheet 6		
6/2	Required for the construction and maintenance of a flood plain compensation area and the diversion and maintenance of and access to utilities	Work No. 31
Land Plans – Sheet 7		
7/5	Required for the construction and maintenance of a flood plain compensation area and the diversion and maintenance of and access to utilities	Work No. 31
Land Plans – Sheet 8		
8/6	Required for the access construction and maintenance of a railbridge	Work No. 23, <del>24</del> and <del>27</del>
<del>8/21</del>	<del>Required for the diversion and maintenance of and access to utilities</del>	<del>Work No. 35</del>

8/23b, <u>8/25c and 8/21</u>	Required for the diversion and maintenance of and access to utilities	Work No. 35
Land Plans – Sheet 9		
9/6b	Required for the alteration, realignment and grading of northbound and southbound carriageways, the construction of a southbound diverge slip road and the diversion and maintenance of and <del>access</del> <u>access</u> to utilities	Work No. 23, 26 and <del>25</del> <u>35</u>

## SCHEDULE 6

RefArticle 26

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

#### Compensation enactments

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

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5) (a) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the A38 Derby Junctions Development Consent Order 202[\*] (the “A38 Derby Junctions Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the A38 Derby Junctions Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and

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(a) 1973 c.26.

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

#### **Application of Part 1 of the 1965 Act**

4. Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 23 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 26(1) (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

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

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

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

(4) 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.

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 23), 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; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference

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(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).  
(b) Section 11B was inserted by section 187(3) of the above Act.

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.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 29(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

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

### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 30 (application of the 1981 Act) of the A38 Derby Junctions Development Consent Order 202[•] in respect of the land to which the notice to treat relates.

(2) But see article 31(3) (acquisition of subsoil or airspace only) of the A38 Derby Junctions Development Consent Order 202[•] which excludes the acquisition of subsoil or airspace only from this Schedule.

(2) In this Schedule, “house” includes any park or garden belonging to a house.

### **Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

### **Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.



### Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right of the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making the determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or 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 of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”

## SCHEDULE 7

Article 33

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Plot Reference Number shown on land plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
Land Plans – Sheet 1		
1/3c	Required for the establishment of environmental mitigation and enhancement.	Work No. 8
1/4a	Required for the establishment of environmental mitigation and enhancement.	Work No. 8
Land Plans – Sheet 2		
2/1a, <del>2/1b</del>	Required for the establishment of environmental mitigation and enhancement	Work No. 8
2/1d	Required for the construction of a northbound merge slip	Work No. 3

	road <del>and construction and</del> <del>realignment of a cycle track</del>	
<del>2/4In</del>	Required for the construction of a link road and the construction and maintenance of a noise barrier	Work No. 7
2/1r	Required for the widening of the Brackensdale Avenue east and west underbridges, the alteration of part of the entry and exit lanes off Brackensdale Avenue which connects to the A38; and the reconfiguration of the existing junction between Lyttelton Street and Kingsway Park Close	Work No. 1 and 7
2/1s	Required for the alteration of part of the entry and exit lanes off Brackensdale Avenue which connects to the A38 and works to effect the stopping up of part of the entry and exit lanes off Brackensdale Avenue which connect to the A38	Work No. 1
2/1t	Required for works to effect the stopping up of part of the entry and exit lanes off Brackensdale Avenue which connect to the A38	Work No. 1
2/1u	Required for the alteration, realignment and grading of highway	Work No. 1
2/3	Required for the establishment of environmental mitigation and enhancement	Work No. <del>8b8</del>
2/6	Required for the construction of a cycle track <del>and</del> <del>establishment of</del> <del>environmental mitigation and</del> <del>enhancement</del>	Work No. 3 <del>and 8</del>
2/13c	Required to construct a link road	Work No. 7
Land Plans – Sheet 3		
<del>3/4b1aa</del>	Required for the <del>alteration,</del> <del>realignment</del> <del>diversion</del> and <del>grading</del> <del>construction</del> of the A38a utility corridor	Work No. <del>4021</del>
<del>3/4e</del>	<del>Required for the alteration,</del> <del>realignment and grading of the</del> <del>A38</del>	<del>Work No. 10</del>
<del>3/1b, 3/1c and 3/1d</del>	Required for the alteration, realignment and grading of the A38	Work No. 10
3/1g and 3/1h	Required for works to effect the stopping up of the entry	Work No. <del>401</del> and 15

	and exit lanes of Raleigh Street which connect to the A38; and the improvement and realignment of a cycle track	
3/li	Required for the alteration, realignment and grading of highway and the construction, improvement and realignment of a cycle track	Work No. 10 and 15
3/lj	Required for the alteration, <del>realignment</del> <u>realignment</u> and grading of the A38	Work No. 10
3/ln	Required for the construction of the A38 and the northbound diverge slip road	Work No. 10 and 11
3/lt and 3/8b	Required for alterations to the access and egress from the filling station and fast-food site	Work No. 16
3/lv	Required for the construction of a new junction for access to and egress from Markeaton Park including a roundabout and a park & ride bus stop; works to effect the stopping up of the entrance to Markeaton Park; new emergency access from <del>Mareaton</del> <u>Markeaton</u> Park and relocation of the boundary wall to Markeaton Park	Work No. 16
3/4	Required for the alteration, realignment and grading of highway and the construction, improvement and realignment of the existing cycle track <u>and access to undertake utility diversion works</u>	Work No. 10, <u>15</u> and <del>15-22</del>
3/5b	Required for the alteration, realignment and grading of highway and the construction of a southbound merge slip road	Work No. 10 and 14
3/5d	Required for the construction of a temporary construction compound	Work No. 19
3/8a and 3/9a	Required for amendments to the access to and egress from the filling station and fast-food site	Work No. 11
<u>3/15a</u>	<u>Required for the construction and alteration of a private means of access</u>	<u>Work No. 16</u>
Land Plans – Sheet 4		
4/1c	Required for the construction of a southbound merge slip	Work No. 14 <u>and 21</u>

	road and access to undertake utility diversion works	
4/1f	Required for the establishment of environmental mitigation and enhancement areas	Work No. 20
<del>4/4d1h</del> and <del>4/4h7d</del>	Required to establish environmental mitigation and enhancement areas	Work No. 20
4/13b	Required for the establishment of environmental mitigation and enhancement areas	Work No. 20
Land Plans – Sheet 5		
5/1 and 5/2	Required to establish environmental mitigation and enhancement areas	Work No. 20
Land Plans – Sheet 7		
7/1a, 7/1b, 7/2, 7/1d and 7/1c	Required for the reconfiguration of highway and a junction	Work No. 34
<del>7/1f</del> and <del>7/12</del>	<u>Required for the realignment of Ford Land and the reconfiguration of the junction with Lambourn Drive and the alteration of Ford Lane Bridge</u>	<u>Work No. 29 and 33</u>
7/6, 7/7a and 7/7b	Required for the construction of flood compensation area	Work No. 31
7/17a	Required for the alteration, realignment and grading of carriageway <u>and the construction of a southbound merge slip road</u> and works to effect the stopping up and diversion of a section of a footpath and works to effect the stopping up and diversion of a private means of access	Work No. 23 <u>and 27</u>
7/14	Required for the alteration, realignment and grading of the carriageway and the construction of a southbound merge slip road	Work No. 23 and 27
7/17c	Required for the alteration, realignment and grading of the northbound and southbound lanes of the carriageway and the southbound merge slip road	Work No. 23 and 27
7/9, 7/8, 7/1e, <del>7/4f</del> , <del>7/10</del> , <del>7/11</del> and <del>7/4211</del>	Required for the realignment of Ford Lane and the reconfiguration of the junction with Lambourn Drive	Work No. 33
7/1g	Required for the establishment of environmental mitigation areas	Work No. 37

7/1h and 7/li	Required for alterations to a bridge on Ford Lane	Work No.29
7/1j and 7/13	Required for works to stop up a highway and carry out works on a bridge	Work No. 28 and 29
Land Plans – Sheet 8		
8/1	Required for the erection and accommodation of a temporary works compound	Work No. 32
8/2, 8/3a and 8/3c	Required for the alteration, realignment and grading of the northbound and southbound carriageways and the construction of a southbound merge slip road	Work No.23 and 27
8/5 and 8/8	Required for the alteration, realignment and grading of the northbound and southbound carriageway and alteration and extension to an existing railway bridge	Work No. 23
8/18 and 8/19	Required for the realignment and grading of Ford Lane to connect to the Little Eaton Roundabout	Work No. 30
8/10b	Required for the alteration, realignment and grading of the northbound and southbound lanes, construction of a southbound merge slip road and the alteration, realignment and grading of carriageway	Work No. 23, 27 and 30
8/10c and 8/11	Required for the construction of a southbound diverge slip road and the alteration, realignment and grading of carriageway	Work No. <u>26 and 30</u>
<del>8/4h, 8/15, 8/16b, 8/24b, 8/25e</del> and 8/25b	Required for the alteration, realignment and grading of northbound and southbound carriageway, construction of a southbound diverge slip road and the erection and accommodation of a works compound	Work No. 23, <del>26</del> and <del>32</del> <u>26</u>
<del>8/24b</del>	<del>Required for the alteration, realignment and grading of northbound and southbound carriageway, construction of a southbound diverge slip road</del>	<del>Work No. 23, 26 and 26h</del>
<del>8/23b</del>	<del>Required for the alteration, realignment and grading of northbound and southbound carriageway, construction of a southbound diverge slip road and the diversion of utilities</del>	<del>Work No. 23, 26, 26h and 35e</del>

8/1	Required for site preparation and clearance works for a temporary works compound	Work No. 32
Land Plans – Sheet 9		
9/1, 9/2, 9/3, 9/4	Required for the erection and accommodation of a temporary works compound	Work No. 32

## SCHEDULE 8

Article 40

### TREES SUBJECT TO TREE PRESERVATION ORDERS

(1) Name of Order/Type of tree	(2) Work to be carried out	(3) Relevant part of the authorised development
Land at Royal School for the Deaf, Land at the R.S.D Ashbourne Road, Derby (TPO No. 456)	Tree Removal	Work No. 13
Northern boundary of playing field and adjacent to 32 Queensway, Royal School for the Deaf (160)	Tree Removal	Work No. 13
Land to the north and east of Queensway, Land to the north of Markeaton Street (116)	Tree Removal	Work No. 10
Land at Sturgess Fields (197)	Tree Removal	Work No. 10

## SCHEDULE 9

Article 44

### PROTECTIVE PROVISIONS

#### PART 1

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

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

2. In this Part of this Schedule—

“alternative apparatus” means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a), belonging to or maintained by that utility undertaker;

~~(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;~~

~~(c)~~(b) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(a) 1989 c.29.

~~(b) 1986 c.44.~~

~~(d)~~(c) \_\_\_\_\_ in the case of a sewerage undertaker—

- (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(a); and
- (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act(b),

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

“functions” includes powers and duties;

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

“plan” 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; and

“utility undertaker” means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

~~(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;~~

~~(e)~~(b) \_\_\_\_\_ a water undertaker within the meaning of the Water Industry Act 1991; and

~~(d)~~(c) \_\_\_\_\_ a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

### **On street apparatus**

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

### **Apparatus in stopped up streets**

4.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets and highways), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

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(a) 1991 c.56.

(b) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c.29).

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 21 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### **Acquisition of land**

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

### **Removal of apparatus**

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

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

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



### **Facilities and rights for alternative apparatus**

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

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

### **Retained apparatus**

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

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

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

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

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

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

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

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

## Expenses and costs

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary then, if such placing involves cost exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

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

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

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

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

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

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

### Cooperation

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

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

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

15. In this Part of this Schedule—

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

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

“the electronic communications code” has the same meaning as in section 106(b) (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

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

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code; and

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

16. The exercise of the powers conferred by article 35 (statutory undertakers) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

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(a) 2003 c.21.

(b) Section 106 was amended by section 4 of the Digital Economy Act 2017.

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

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

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

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

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

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 48 (arbitration).

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

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.
- (c) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

## PART 3

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

18.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

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

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage ~~or~~, flood defence or tidal monitoring ~~and any ancillary works constructed as a consequence of works carried out for drainage purposes;~~

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to—

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

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

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

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 28.

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

(a) must not be unreasonably withheld or delayed;

~~(b) in the case of a refusal must be accompanied by a statement of grounds of refusal;~~

~~(c)~~ (c) is deemed to have been given/refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval ~~and, in the case of a refusal, accompanied by a statement of the grounds of refusal;~~ and

~~(d)~~ (d) may be given subject to such reasonable requirements as the Agency may make/have for the protection of any drainage work, fishery or water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

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

~~(a) a requirement for the undertaker to carry out monitoring during the implementation of any de-watering scheme approved by the Agency under this paragraph and to supply data arising from that monitoring to the Agency; and~~

~~(b) a requirement for the undertaker not to prevent or materially restrict the Agency’s use of any access route during construction of the specified work or, where that is not possible owing to the nature of the work, a requirement for the undertaker to provide for use by the Agency during construction of the specified work a reasonably suitable alternative to the access route.~~

~~(5)~~ (4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph ~~(3)(b);(3)(c)~~.

**20.** Without ~~limitation on the scope of limiting~~ paragraph ~~20, but subject always to the provisions of that paragraph as to reasonableness~~19, the requirements which the Agency may make/have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

by reason of any specified work.

21.—(1) Subject to sub-paragraph ~~(2)~~(2), any specified work, and all protective works required by the Agency under paragraph ~~21~~20, must be constructed—

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

and the Agency ~~is~~shall be entitled by its officer to watch and inspect the construction of such works.

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

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

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

(5) Subject to sub-paragraph ~~(6)~~(6), if, within a reasonable period, being not less than 28 days ~~from beginning with~~ the date when a notice under sub-paragraph ~~(4)~~(4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure ~~reasonably~~ incurred by the Agency in so doing ~~is~~shall be recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph ~~(4)~~(4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency ~~must~~shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph ~~(5)~~(5) until the dispute has been finally determined in accordance with paragraph 28.

22.—(1) Subject to sub-paragraph ~~(6)~~(7) the undertaker must from the commencement of the construction of ~~at~~the specified ~~work~~works until the date falling 12 months from the date of completion of ~~such specified work~~those works ("the maintenance period"), maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified ~~work~~works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) Upon the expiry of the maintenance period, the drainage work must be maintained by the highway authority of the highway to which the specified work relates.

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

(4) Subject to sub-paragraph ~~(5)~~(6), if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph ~~(2)~~(3) on the person liable for maintenance, ~~that~~the person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is reasonably necessary for such compliance and any reasonable expenditure ~~reasonably~~ incurred by the Agency in so doing shall be recoverable from that person.

(5) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these Protective Provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part ~~of them~~thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part ~~of them~~thereof would cause greater damage than compliance with the written notice.

(6) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph ~~(2),(3)~~, the Agency ~~must~~shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph ~~(3)(4)~~ until the dispute has been finally determined in accordance with paragraph 28.

(7) This paragraph does not apply to—

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

**23.** If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in ~~so doing~~so from the undertaker.

**24.** If by reason of construction of a specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to ~~access~~maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

**25.—**(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in a fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to a fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are required under sub-paragraph ~~(2),(2)~~, the Agency may take those steps and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the undertaker.

~~(4) — In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any reasonable expenditure reasonably incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.~~

**26.** The undertaker must repay to the Agency all reasonable costs, charges; ~~and~~ expenses; ~~damages and losses not otherwise provided for in this Part of this Schedule~~ which the Agency may be reasonably ~~incurred or suffered by the Agency by reason of~~ incur—

- (a) in the examination or approval of plans under this Part of this Schedule;

- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works; or.

27.—(1) The undertaker must make reasonable compensation for costs and losses which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction of any specified works comprised within the authorised works; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or ~~others~~ other whilst engaged upon the construction, ~~operation or maintenance of~~ of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges; and
- (b) staff costs and overheads;
- (c) legal costs;

“losses” includes physical damage.

~~(2)~~(3) The undertaker must make reasonable compensation for liabilities, claims and demands arising out of or in connection with the authorised development or dealing with any failure of the authorised development otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
  - (b) any interest element of sums claimed or demanded;
- “liabilities” includes—
- (a) contractual liabilities;
  - (b) tortious liabilities (including liabilities for negligence or nuisance);
  - (c) liabilities to pay statutory compensation or for breach of statutory duty; and
  - (d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable written notice of any such claim or demand.

(6) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(7) The Agency must not compromise or settle any such claim or demand or make any admission which might be prejudicial to the claim or demand without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(8) The Agency must at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or losses.

(9) The Agency must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

~~(3)~~ The fact that any ~~aetwork~~ or thing may have ~~has~~ been ~~executed or done~~ —

- ~~(a) by the Agency on behalf of the undertaker; or~~
- ~~(b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Agency, or in a manner a plan approved by the Agency, or under its supervision or the supervision of to its duly authorised representative,~~



~~(4)(10) does not excuse satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the undertaker from any liability under the provisions of this paragraph Part of this Schedule.~~

~~(5)(11) Nothing in sub-this paragraph (2) imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the act, neglect or default of the Agency, its officers, servants, contractors or agents.~~

~~(6) The Agency must give the undertaker written notice of any such claim or demand as is referred to in sub-paragraph (1) as soon as it becomes aware of such claim or demand, and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker, such consent not to be unreasonably conditioned, withheld or delayed.~~

28. Any dispute arising between the undertaker and the Agency under this Part of this Schedule ~~is to will, if the parties agree,~~ be determined by arbitration under article 48 (arbitration), ~~but will otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.~~

## PART 4

### FOR THE PROTECTION OF NETWORK RAIL

~~27-29.~~ The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph ~~42~~43, any other person on whom rights or obligations are conferred by that paragraph.

~~28,30.~~—(1) In this Part of this Schedule—

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

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

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

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

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

“protective works” means any works specified by the engineer under paragraph 33(4);

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

“railway property” means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

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

(b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

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

~~29.31.~~—(1) Where under this Part of this Schedule Network Rail is required to give its consent, ~~agreement~~ or approval in respect of any matter, that consent, ~~agreement~~ or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

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

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

~~30.32.~~—(1) The undertaker must not exercise the powers conferred by articles 15 (temporary stopping up and restriction of use of streets), 16 (permanent stopping up and restriction of use of streets and private means of access), 17 (access to works), 20 (discharge of water), 21 (protective works to buildings), 22 (authority to survey and investigate the land), 23 (compulsory acquisition of land), 26 (compulsory acquisition of rights), 28 (private rights over land), 31 (acquisition of subsoil or airspace only), 32 (rights under or over streets), 33 (temporary use of land for carrying out the authorised development), 34 (temporary use of land for maintaining the authorised development), 35 (statutory undertakers), 39 (felling or lopping of trees and removal of hedgerows) and 40 (trees subject to tree preservation orders) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act or article 35 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be extinguished or diverted with the consent of Network Rail.

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

~~(4)~~(5) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

~~31.33.~~—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration: under article 48 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to communicate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not communicated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works in question until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

~~32,34~~.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 33(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 33;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

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

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

~~33,35~~. The undertaker must—

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

~~34,36~~. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

~~35,37~~.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of

railway property or the continued safe operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which are expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective work ~~because~~which in the opinion of the engineer ~~it~~ is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or the protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any approval of the specified work or protective work in question under paragraph 33, pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 38(a), provide such details of the formula or method of calculation by which those sums have been calculated as the undertaker may reasonably require.

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

~~36.38.~~ **38.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 33(3) or in constructing any protective works under the provisions of paragraph 33(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the ~~reasonable~~ opinion of the engineer be required to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

~~37.39.~~—(1) In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 33 for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 33) in order to identify all potential causes of EMI and the measures ~~required~~ required to eliminate them;
- (b) Network Rail must ~~promptly~~ make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus ~~for the purposes of identified pursuant to~~ sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 33 has effect subject to this sub-paragraph.

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

(7) In the event of EMI having occurred—

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

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved underpursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 34.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 4243(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating

access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 38(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 048 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Engineering and Technology.

~~38-40.~~ If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or the protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as ~~to~~ not adversely to affect railway property.

~~39-41.~~ The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

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

~~40-43.~~—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or a protective work or the failure of it;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or protective work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under ~~his~~ the engineer's supervision will not (if it was done without negligence on the part of Network Rail or its employees, contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand ~~made against Network Rail that the undertaker may be liable to pay under this Part of this Schedule~~ and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) ~~may~~ shall if relevant include a sum equivalent to the relevant costs.

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

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

(6) In this paragraph—

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

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

~~41.44.~~ Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses, ~~future cost forecasts~~ and other liabilities for which the undertaker is or will become liable ~~underpursuant to~~ this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph ~~42.43~~) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made ~~underpursuant to~~ this Part of this Schedule (including any claim relating to those relevant costs).

~~42.45.~~ In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

~~43.46.~~ The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

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

~~44.47.~~ Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

~~45.48.~~ The undertaker must give written notice to Network Rail where any application is proposed to be made by the undertaker for the Secretary of State’s consent under article 10 (consent to transfer benefit of order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

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

~~46.49.~~ The undertaker must no later than 28 days from the date that the plans and documents referred to in article 46 (certification of plans etc.) are certified by the Secretary of State ~~in accordance with article~~ provide a set of those plans and documents to Network Rail in ~~the form of a computer disc with read-only memory format specified by Network Rail.~~

## PART 5

### FOR THE PROTECTION OF CADENT GAS LIMITED

#### Application

50. The following provisions apply for the protection of Cadent, unless otherwise agreed in writing between the undertaker and Cadent.

#### Interpretation

51. In this Part of this Schedule—

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“Cadent” means Cadent Gas Limited and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“commence” has the same meaning as in article 2(1) of the Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, establishment of working areas and compounds, and delivery of construction materials, plant and equipment;

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

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

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

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

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



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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, protect, use, access, replace, renew or remove;

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

“rights” includes restrictive covenants, and in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

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

(a) are or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 55(2) or otherwise.

#### **On Street Apparatus**

52.—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provision of Part 3 of the 1991 Act, except for -

(a) Paragraphs 52 (apparatus of Cadent in stopped up streets), 57 (retained apparatus: protection of Cadent), 58 (expenses) and 59 (indemnity); and

(b) Where sub-paragraph (2) applies, paragraph 55 (removal of apparatus) and 56 (facilities and rights for alternative apparatus).

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but is not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

#### **Apparatus of Cadent in stopped up streets**

53.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), if Cadent has any apparatus in the street or accessed via that street Cadent 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 Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 55.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (temporary stopping up and restriction of use of streets and highways), Cadent will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway

(3) The Protective Provisions in this Part of this Schedule apply and take precedence over article 36(2) to (7) to the Order which shall not apply to Cadent.

#### **Protective works to buildings**

54.—(1) The undertaker must exercise the powers conferred by article 21 (protective work to buildings), so as not to obstruct or render less convenient the access to any apparatus without the

written consent of Cadent (such consent not to be unreasonably withheld or delayed) and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

(a) pay compensation to Cadent for any loss sustained by it; and

(b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

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

#### **Acquisition of land**

55.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land of Cadent, or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent, otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by Cadent under paragraph 57 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph 54(1).

(5) As a condition of an agreement between the parties under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where the undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 55 do not apply, the undertaker must, unless Cadent agrees otherwise:

(a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; or

(b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

#### **Removal of apparatus**

56.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 54, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and, the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and 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 Cadent advance written notice of that requirement, together with a plan and section 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 Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 56(1)) the necessary facilities and rights:

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If 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, Cadent 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 assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

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

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

#### **Facilities and rights for alternative apparatus**

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter may be referred

to arbitration in accordance with paragraph 63 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection of Cadent**

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

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

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

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with -

- (a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent is entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement

(8) If Cadent, 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 49 to 51 and 54 to 56 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 55(2).

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

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works -

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent retains the right to carry out further necessary protective works for the safeguarding of its apparatus and can recover any such costs in accordance with paragraph 58.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) In this paragraph “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works reasonably believes to be existing or imminent) which are likely to cause danger to persons or property.

### **Expenses**

59.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated (subject to Cadent first providing to the undertaker a detailed design and estimate which is to be agreed between the parties) or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent:
  - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 55(3) if it elects to do so; or
  - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 57(6).

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

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

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

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

agreement, is not determined by arbitration in accordance with paragraph 63 (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 Cadent by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place 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.
- (c) An amount which apart from this sub-paragraph would be payable to Cadent 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 Cadent 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**

60.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works 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 the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs properly incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief does not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 10;

(c) any indirect or consequential loss of any third party arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) Cadent must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably requested to do so by the undertaker Cadent must provide an explanation of how the claim has been minimised.

#### **Enactments and agreements**

61. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent 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**

62.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 55(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 57, 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 works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted to Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

#### **Access**

63. If in consequence of the agreement reached in accordance with sub-paragraph 54(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### **Arbitration**

64. Save for differences or disputes arising under sub-paragraphs 55(2) and 55(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 48 (arbitration).

#### **Notices**

65. Notwithstanding article 47 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 57(1) must be sent via email to Cadent Gas Limited Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) as well as via post to Plant Protection, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA, or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 10

Article 46

DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference/revision and date</i>	<i>(3)</i> <i>Revision Examination Reference</i>
Book of reference – Regulation 5(2)(d)	<u>TR010022/APP Document 4.3(b) - 19 May 2020</u>	<u>REP13-002</u>
Classification of Roads Plans	<u>TR010022/APP 2.9 Document 2.9(a) - 19 December 2019</u>	<u>REP3-001</u>
Crown Land Plans - Regulation 5(2)(n) and 5(4)	<u>TR010022/APP 2.4 Document 2.4(a) - 19 November 2019</u>	<u>REP2-004</u>
<u>Engineering Section Drawings – Regulations 5(2)(o) 5(4) and 6(2)</u>	<u>Document 2.10 - 23 April 2019</u>	<u>APP-014</u>
<u>Engineering Section Drawings – Regulations 5(2)(o) 5(4) and 6(2) Environmental Statement - Regulation 5(2)(a), excluding chapters 7, 8, 12; figures 7.1A and 7.5; and appendices 2.1, 2.2, 7.2, 8.20, 13.2A and 13.2B</u>	<u>TR010022/APP 2.10 Documents 6.1, 6.2 and 6.3 - 23 April 2019</u>	<u>APP-039 to APP-240, excluding APP-045, APP-046, APP-050, APP-085, APP-091, APP-159, APP-160, APP-177, APP-217, APP-229 and APP-230</u>
<u>Environmental Statement – Regulation 5(2)(a), chapters 7(a), 8(a), 12(a); appendices 2.2(a), 7.2(a), 8.20(a), 13.2A(a) and 13.2B(a); and figures 7.1(a) and 7.5(a)</u>	<u>TR010022/APP Documents 6.1, 6.2 and 6.3</u> <u>Chapter 7(a) – November 2019</u> <u>Chapter 8(a) – 26 March 2020</u> <u>Chapter 12(a) – 26 March 2020</u> <u>Appendix 2.2(a) – June 2020</u> <u>Appendix 7.2(a) – 26 March 2020</u> <u>Appendix 8.20(a) – 26 March 2020</u> <u>Appendix 13.2A(a)- 26 March 2020</u> <u>Appendix 13.2B(a) – 3 February 2020</u> <u>Figure 7.1A(a) – 19 November 2019</u> <u>Figure 7.5(a) – 26 March 2020</u>	<u>REP2-008, REP9-009, REP9-011, REP-14-[tbc], REP2-010, REP9-013, REP9-014, REP9-015, REP9-017 and REP9-018</u>



<u>Environmental Statement Addendum</u>	<u>Document 6.14</u>	<u>REP14-[tbc]</u>
General Arrangement Plans - Regulation 5(2)(o)	<u>TR010022/APP 2.6 Document 2.6(b) – 19 November 2019</u>	<u>REP2-006</u>
<u>Hedgerows Plans – Regulation 8(1)(c)(ii)</u>	<u>Document 8.50 – 19 December 2019</u>	<u>REP3-021</u>
Land Plans - Regulation 5(2)(i) and 5(4)	<u>TR010022/APP Document 2.2(c) – 26 March 2020</u>	<u>REP9-003</u>
Location <del>Plan</del> Plans - Regulation 5(2)(d)	<u>TR010022/APP Document 2.1 – 23 April 2019</u>	<u>APP-005</u>
Outline Environmental Management Plan	<u>TR010022/APP Document 6.12(f) – 18 June 2020</u>	<u>REP14-[tbc]</u>
Special Category Land Plans	<u>TR010022/APP 2.3 Document 2.3(b) – 19 November 2019</u>	<u>REP2-003</u>
Streets Rights of Way and Access Plans – Regulation 5(2)(k) 5(4) and 6(2)	<u>TR010022/APP Document 2.7(b) – 10 March 2020</u>	<u>REP7-002</u>
<u>Traffic Management Plan</u>	<u>Document 7.4(c) – 18 June 2020</u>	<u>REP14-[tbc]</u>
Traffic Regulations Measures Plans	<u>TR010022/APP Document 2.8(a) – 3 February 2020</u>	<u>REP4-003</u>
Works Plans - Regulation 5(2)(j) and 5(4)	<u>TR010022/APP 2.5 Document 2.5(b) – 19 November 2019</u>	<u>REP2-005</u>

#### EXPLANATORY NOTE

*(This note is not part of the Order)*

The Order authorises Highways England to undertake alterations, realignment and grading of three sections of the A38 known Kingsway, Markeaton and Little Eaton and to carry out all associated works.

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

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

A copy of the plans, engineering section drawings, book of reference and environmental statement mentioned in this Order and certified in accordance with article 46 (certification of plans etc.) may be inspected free of charge during working hours at Highways England, Floor 5, Two Colmore Square, 38 Colmore Circus, Birmingham B4 6BN.