

# M25 junction 28 improvement scheme

TR010029

## 9.28 Schedule of Changes to draft Development Consent Order

Rule 5(2)(q)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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# Infrastructure Planning

## Planning Act 2008

### The Infrastructure Planning (Examination Procedure) Rules 2010

### M25 junction 28 scheme

### Development Consent Order 202[x ]

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## 9.28 SCHEDULE OF CHANGES TO DRAFT DEVELOPMENT CONSENT ORDER

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<b>Rule Number:</b>	Rule 5(2)(q)
<b>Planning Inspectorate Scheme Reference</b>	TR010029
<b>Application Document Reference</b>	TR010029/EXAM/9.28
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<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
0	4 February 2021	Deadline 2

The documents summaries the proposed amendments to the dDCO which were submitted at Deadline 2 (4 February 2021). These amendments are to the version of the dDCO submitted as part of the Application (Document reference APP-015). For ease of reference, text shown emboldened in red identifies insertion of new text, while text shown with a strike through are proposed for deletion.

No	Provision	Suggested amendment	Explanation for change
1.	Contents	Article 13 updated to “Temporary <b>closure</b> alteration, diversion and restriction of use of streets”	Correction to bring contents table into line with the proposed amended heading of Article 13.
2.	Contents	Article 14 updated to “Use of private roads <del>for construction</del> ”	Correction to bring contents table into line with the proposed amended heading of Article 14.
3.	Contents	Schedule 7 updated to “MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS <b>AND IMPOSITION OF RESTRICTIVE COVENANTS</b> ”	Correction to bring contents table into line with the proposed amended heading of Schedule 7.
4.	Preamble	Remove [ ]	Correction
5.	Article 2 – definition of “Book of reference”	means the <b>document of that description listed in Schedule 10 (documents to be certified)</b> and certified <del>book of reference certified</del> by the Secretary of State as the book of reference for the purposes of this Order;	Revised to address ExA comment in WQ1 DCO 1.1.
6.	Article 2 – definition of “commence”	“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 and mitigation works, ecological surveys, <del>mitigation and habitat creation works,</del> <b>installation of amphibian fencing and pre-construction ecological mitigation under licenses</b> , investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, site clearance <b>in connection with Work No. 29 and the establishment of construction</b>	Revised to address ExA comments in WQ1.

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		<del>compounds, diversion and laying of underground apparatus, site clearance, demolition work, enabling works and the temporary display of site notices or information, and “commencement” is to be construed accordingly;</del>	
7.	Article 2 – definition of “electronic transmission”	<p>“electronic transmission” means a communication transmitted-</p> <p>(a) by means of an electronic communications network; or</p> <p>(b) by other means but while in electronic form</p> <p><b>and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning electronic communications networks and services) of the Communications Act 2003;</b></p> <p>inserted footnote “(h) 2003 c. 21.”</p>	<p>This definition is proposed to provide greater clarity and is in line with the recently made A303 (Amesbury to Berwick Down) DCO 2020 and A38 Derby Junctions DCO 2021.</p> <p>Inserted footnote for the Communications Act 2003.</p>
8.	Article 2 – definition “the engineering drawings and sections”	<p>means the drawings and sections <b>of that description</b> listed in Schedule 10 (documents to be certified) and certified <del>as the engineering drawings and sections</del> by the Secretary of State <b>as the engineering drawings and sections</b> for the purposes of this Order;</p>	Revised to address ExA comment in WQ1 DCO 1.1.
9.	Article 2 – definition “environmental statement”	<p>means the document of that description listed in Schedule 10 (documents to be certified) and certified <del>as the environmental statement</del> by the Secretary of State <b>as the environmental statement</b> for the purposes of this Order;</p>	Revised to address ExA comment in WQ1 DCO 1.1.
10.	Article 2 – definition “the land plans”	<p>Means the plans of that description listed in Schedule 10 (documents to be certified) and certified <del>as the land plans</del> by the Secretary of State <b>as the land plans</b> for the purposes of this Order;</p>	Revised to address ExA comment in WQ1 DCO 1.1.
11.	Article 2 - definition of “maintain”	<p>“maintain” in relation to any part of the authorised development includes to inspect, repair, adjust, alter, improve, landscape, preserve, remove, <b>decommission</b>, reconstruct, refurbish or replace, provided such works do not give rise to any materially new or materially different environmental effects to those identified in</p>	<p>The word “decommission” has been included at the request of Cadent Gas Limited to ensure that its right to “maintain” the diverted gas pipeline under work no. 29 includes the right to decommission it.</p>

No	Provision	Suggested amendment	Explanation for change
		the environmental statement, and any derivative of “maintain” is to be construed accordingly;	
12.	Article 2 – definition “Outline CEMP”	“ <del>o</del> <b>Outline CEMP</b> ” means the document of that description <b>listed in Schedule 10 (documents to be certified)</b> <del>submitted with the application for this Order and certified as the outline CEMP by the Secretary of State</del> <b>as the Outline CEMP</b> for the purposes of this Order;	Revised to address ExA comment in WQ1 DCO 1.1.
13.	Article 2 – definition of “Secretary of State”	Definition added: <b>“Secretary of State” means the Secretary of State for Transport</b> ”	Revised to address ExA comment in WQ1 DCO 1.7.
14.	Article 2 – definition “the speed limits and traffic regulation plans”	means the plans of that description <b>listed in Schedule 10 (documents to be certified) and</b> certified by the Secretary of State as the speed limits and traffic regulation plans for the purposes of this Order;	Revised to address ExA comment in WQ1 DCO 1.1.
15.	Article 2 – definition of “streets, rights of way and access plans”	means the plans of that description listed in Schedule 10 (documents to be certified) and certified <del>as the streets, rights of way and access plans</del> by the Secretary of State <b>as the streets, rights of way and access plans</b> for the purposes of this Order;	Revised to be consistent with ExA comments in WQ1.
16.	Article 2 – definition of “UKPN”	“UKPN” means <b>Eastern Power Networks Plc (company registration number 02366906)</b> <del>UK Power Networks (Operations) Limited (Company Number 03870728)</del> whose registered office is Newington House, 237 Southwark Bridge Road, London, SE1 6NP;	UKPN confirmed that “UKPN” should be defined as meaning Eastern Power Networks and the proposed change reflects that request.
17.	Article 2 – definition “works plans”	means the plans <b>of that description</b> listed in Schedule 10 (documents to be certified) and certified <del>as the works plans</del> by the Secretary of State <b>as the works plans</b> for the purposes of this Order.	Revised to address ExA comment in WQ1 DCO 1.1.

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18.	Article 2(3)(a)	to an affected person directly, <del>whether</del> <b>where</b> that person's land or rights over land have been adversely affected by this Order, and	Correction
19.	Article 8(2)	(2) Paragraph (1) does not apply to the works for which <del>the</del> 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.	Correction
20.	Article 9(4)	(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) Cadent (or a related subsidiary company) for the purposes of Work No. 29; (b) UKPN (or a related subsidiary company) for the purposes of Work No. 30; <b>or</b> (c) the Environment Agency for the purposes of Work Nos. 23A, 23B, 23C and 23D.	Correction
21.	Article 10(4)	article 13 (temporary <b>closure</b> , alteration, diversion and restriction of use of streets)	Correction to reflect heading of article 13
22.	Article 11(4)	In the case of a bridge constructed under this Order to carry a highway (other than a trunk road or special road) over a trunk road or special road, the highway surface (being those elements over the waterproofing membrane <del>and</del> ) must be maintained by and at the expense of the local highway authority unless otherwise agreed in writing between the undertaker and the local highway authority, and the remainder of the bridge, including the waterproofing membrane, and structure below, must be maintained by and at the expense of the undertaker.	Correction
23.	Article 13	Amend so that title reads 'Temporary <b>closure</b> , alteration, diversion and restriction of use of streets'  and	Correction. Development consent orders promoted by Highways England (and others) usually provide that this power extends to 'stopping-up'. This had been removed because 'stopping-up' as a term sounds permanent in nature and that the wording in sub

No	Provision	Suggested amendment	Explanation for change
		13(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily <b>close</b> , alter, divert or restrict the use of any street and may for any reasonable time -	paragraph (1) 'restriction of use' would allow the temporary closure of street. However, in the light of Highways England precedent and to avoid any unintended confusion as to what is permitted under this article, the term "closure" is used.. This word is clearer than the well precedented term 'stopping –up' and it was used in the recently made Southampton to London Pipeline DCO.
24.	Article 13(5)	Part 1 ( <b>determination of questions of disputed compensation</b> ) of the 1961 Act.	Revised for consistency
25.	Article 14	Amend title to "Use of private roads <del>for construction</del> "	Correction
26.	Article 14(1)	The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction <b>and maintenance</b> of the authorised development.	This amendment was made to reflect the recently made Southampton to London Pipeline DCO and extend the intended use of this article to maintenance as well as construction. This would authorise use by Highways England (or other persons who are transferred this statutory right pursuant to article 8) of private roads within the Order limits by persons or vehicles, for the purposes of maintenance of the authorised development, without the need for Highways England to take temporary possession of the land under article 36 of the Order. This article therefore creates a power to "use" a private road for a temporary period that is proportionate to the limited nature of the use, rather than extinguishing, suspending or permanently interfering with the private rights of a landowner (through the acquisition of a permanent right). This is akin to the powers for temporary use under article 36 (temporary use of land for carrying out the authorised development) of the Order; however, it is distinguished because Highways England does not require the exclusive use and possession of the private roads while exercising this power. The article is necessary because Highways England may need to use private roads inside the Order limits for maintenance.

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27.	Article 15(4)	Part 1 ( <b>determination of questions of disputed compensation</b> ) of the 1961 Act.	Revised for consistency
28.	Article 16(1)(c)	the roads described in Part 3 (trunk roads) of Schedule <del>{5}</del> <b>4</b> (classification of roads, etc.) will be trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads; and	Correction
29.	Article 16(3)(a)	given not less than 4 weeks' notice in writing <b>of the undertaker's intention</b> <del>se</del> <b>to do so</b> to the chief officer of police and to the local highway authority in whose area the road is situated; and	Revised for clarity. This amend does not change the meaning of the article but is clearer to the reader.
30.	Article 23(3)	Part 1 ( <b>determination of questions of disputed compensation</b> ) of the 1961 Act.	Revised for consistency
31.	Article 23(6)	There was an extra <b>(6)</b> to be deleted.	Correction
32.	Article 24(4)	Part 1 ( <b>determination of questions of disputed compensation</b> ) of the 1961 Act.	Revised for consistency
33.	Article 28(3)(b)	must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same <b>land</b> in accordance with Schedule 6 as are required for the benefit of any other statutory undertaker or any other person.	Correction
34.	Article 28(4)	Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights <b>and imposition of restrictive covenants</b> ), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land, the undertaker is not required to acquire a greater interest in that land.	Correction
35.	Article 29(5)	Part 1 ( <b>determination of questions of disputed compensation</b> ) of the 1961 Act.	Revised for consistency



No	Provision	Suggested amendment	Explanation for change
36.	Article 32(2)	In paragraph (3) of Form 1, after “from the date on which the service of notices required by section 6 of the Act is completed”, insert—  “(1A) The [insert land or rights or both] described in Part [ ] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan annexed hereto shall vest in the third parties in question as from the end of the period of [insert period of 3 months or longer] from the date on which the service of notices required by section 6 of the Act is completed.”	Correction
37.	Article 32(3)	Insert new paragraph (3) <b>References in Form 2 to “in themselves” shall be substituted with “in themselves and any identified third parties”.</b>	This subparagraph is needed to make it clear what amendments to Form 2 are also needed to ensure that the interests and rights in land which are intended to benefit a third party, such as a statutory undertaker whose apparatus may be re-located in order to construct the authorised development, will vest in that third party instead of Highways England. It is not a substantive change to the rights or land sought for permanent acquisition.
38.	Article 32(4)	In paragraph (b) of the notes on use of Form 2—	Correction
39.	Article 34(4)	Part 1 ( <b>determination of questions of disputed compensation</b> ) of the 1961 Act.	Revised for consistency
40.	Article 35(7)	Part 1 ( <b>determination of questions of disputed compensation</b> ) of the 1961 Act.	Revised for consistency
41.	Article 36(9)	Part 1 ( <b>determination of questions of disputed compensation</b> ) of the 1961 Act.	Revised for consistency
42.	Article 38(1)(a)	Amend to read: “acquire compulsorily, <b>acquire existing rights</b> , <del>or acquire</del> <b>create</b> new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and	Revised for clarity as the wording before, whilst well precedented was potentially confusing in its suggestion that one could ‘acquire new rights’. The proposed new wording is clearer.
43.	Article 39(7)	Part 3 ( <b>street works in England and Wales</b> ) of the 1991 Act	Revised for consistency

No	Provision	Suggested amendment	Explanation for change
44.	Article 44	Insert new paragraph (2) <b>For the purposes of paragraph (1), compliance with the controls and measures relating to noise described in the CEMP will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.</b>	This paragraph is necessary to ensure Highways England does not need to defend a claim, which would be against the public interest in terms of cost, where the controls and measures in the CEMP relating to noise have been adhered too. These controls and measures have been identified as appropriate for the Scheme in the environmental statement.
45.	Article 48(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 <b>or maintenance</b> of the authorised development	Reference to 'maintenance' has been added in line with recently made DCOs including the A303 (Amesbury to Berwick Down) DCO 2020 and A38 Derby Junctions DCO 2021.
46.	Article 49(1)(a)	<del>sections 20, 22, 25 of the Hornchurch, Romford and Havering Inclosures an Act for inclosing and dividing the Commons and Waste Lands in the Parishes of Hornchurch, Romford, and Havering, within the Manor and Liberty of Havering-atte-Bower, in the County of Essex 1811;</del>	Correction to full titles in accordance with drafting precedent.
47.	Article 49(1)(b)	<del>section 25 of the an Act for inclosing Lands in the Manor of Great Warley in the several Parishes of Great Warley and Shenfield (Essex) Inclosure Act in the County of Essex 1838;</del>	Correction to full titles in accordance with drafting precedent.
48.	Article 49(1)(e)	Inserted new sub-paragraph (e): <del>Add:</del> <b>sections 41 and 44 of the London County Council (General Powers ) Act 1907;</b>  <b>Inserted footnote "(a) 1907 c. clxxv."</b>	The disapplication of these sections is appropriate as this local legislation addresses matters relating to the provision of notice of the intention to execute flood works and the requirements of the council in relation to these flood works.  These matters will already have been sufficiently considered and resolved if the DCO is made. Such matters should therefore not be the subject of further regulatory consideration or control, which could cause unnecessary uncertainty and unjustifiably delay the implementation of the Scheme.
49.	Article 49(1)(m)	Added "and"	Amended due to sub-paragraph (n) being deleted.
50.	Article 49(1)(n)	<del>Byelaws 1 and 3 of the London Borough of Havering byelaws for the Good Rule of Government 1983.</del>	These have been deleted as disapplication of byelaws not required as vehicles are permitted 'with lawful authority' which the DCO would provide.

No	Provision	Suggested amendment	Explanation for change
		Deleted “; and” and inserted full-stop.	Amended due to sub-paragraph (n) being deleted.
51.	Schedule 2(1)	<del>“CEMP” means the Construction Environmental Management Plan;</del>	Correction of erroneous duplication. This term is defined in Article 2(1).
52.	Schedule 2(1)	<del>“HEMP” means the Handover Environmental Management referred to in Schedule 10 (documents to be certified);”</del>	Correction of erroneous reference
53.	Schedule 2(1)	<del>“Outline CEMP” means the Outline Construction Environmental Management Plan referred to in Schedule 10 (documents to be certified);</del>	Correction of erroneous duplication. This term is defined in Article 2(1).
54.	Schedule 2, Requirement 4(1)	(1) No part of the authorised development is to commence until a CEMP, substantially in accordance with the <b>O</b> utline CEMP, for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority <b>and local highway authority</b> to the extent that it relates to matters relevant to its functions.	Correction relating to use of defined term. Amended to address to comments raised by TfL in its Relevant Representation.
55.	Schedule 2, Requirement 4(2)	(2) The CEMP must be written in accordance with ISO14001 and, so far as is relevant to that part of the authorised development, must reflect the mitigation measures set out in the REAC, <b>and must include the following management plans—</b> <b>(a) Pollution Prevention Plan;</b> <b>(b) Dust Noise and Nuisance Management Plan;</b> <b>(c) Ecological Habitats and Species Plan;</b> <b>(d) Invasive Species Management Plan;</b> <b>(e) Surface Water Management Plan;</b> <b>(f) Archaeological Management Plan;</b> <b>(g) Soil Handling Management Plan;</b> <b>(h) Material Management Plan;</b> <b>(i) Site Waste Management Plan;</b> <b>(j) Material, Waste Storage and Refuelling Plan;</b>	Added to address comments raised by the ExA in WQ1.

No	Provision	Suggested amendment	Explanation for change
		<p><b>(k) Energy and Resource Use Management Plan;</b>  <b>(l) Emergency Response Plan;</b>  <b>(m) Arboricultural Method Statement; and</b>  <b>(n) Community Engagement Plan.</b></p>	
56.	Schedule 2, Requirement 15	<p>(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in <del>an electric a</del> form suitable for inspection by members of the public <b>an online</b> register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.</p>	Revised to address ExA comments in WQ1 DCO 1.30.
57.	Schedule 2, Requirement 17	Amend time from '10 business days' to ' <b>21 days</b> '.	Added to address comments raised by TfL in its Relevant Representation. Amended time period in line with other recently made DCOs, namely, A63 (Castle Street Improvement, Hull) DCO 2020 and London to Southampton Pipeline DCO 2020.
58.	Schedule 6	<p>The description in column (2) for plots 1/1, 1/8, 1/17, 1/20, 1/21, 3/15 and 3/19 to be amended to:</p> <p>'To construct, <b>protect, operate</b>, access...'</p>	Inserted to address comments raised by Cadent Gas Limited.
59.	Schedule 6	<p>The description in column (2) for plot 1/27 to be amended to:</p> <p>'To access, monitor and maintain bird boxes.</p> <p><b>To access and maintain—</b></p> <p><b>(a) improvements to the A12 eastbound off-slip (including Maylands Bridge and Grove culvert);</b></p> <p><b>(b) Grove Bridge;</b></p> <p><b>(c) realigned stretches of Weald Brook and Ingrebourne River; and</b></p>	Correction of unintended omission.

No	Provision	Suggested amendment	Explanation for change
		<p><b>(d) apparatus of statutory undertakers.”</b></p> <p>and</p> <p>The description in column (3) for plot 1/27 to be amended to:</p> <p><b>‘Works Nos. 2, 6, 23B, 24D and 26 and Other ancillary development.’</b></p>	
60.	Schedule 7	Amend title to ‘MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS <b>AND IMPOSITION OF RESTRICTIVE COVENANTS</b> ’	Correction to reflect the wording of the Schedule and now consistent with recently made M42 Junction 6 DCO 2020 and A38 Derby Junctions DCO 2021.
61.	Schedule 9, Part 1, paragraph 4(2)	article 13 (temporary <b>closure</b> , alteration, diversion and restriction of use of streets)	Correction to reflect heading of article 13
62.	Schedule 9, Part 3,	Paragraph 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 <b>reasonably</b> incurred by the Agency in so doing from the undertaker.	Correction of unintended omission.
63.	Schedule 10	Remove from the table: <del>‘Preliminary Environmental Design Regulation 5(2)(a). TR010029/APP/6.2’</del>	Correction in response to ExA WQ1 DCO 1.32. This is contained within the environmental statement which is already listed in Schedule 10 table.
64.	Explanatory Note	In third paragraph, “the <b>O</b> utline CEMP”	Correction relating to use of defined term
65.	Explanatory Note	In third paragraph after “article 46 (certification of documents, etc.)” deleted “]”.	Deletion of superfluous closed square bracket.

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