

M25 junction 28 improvement scheme TR010029

3.2 Explanatory memorandum

APFP Regulation 5(2)(c)
Planning Act 2008

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



Infrastructure Planning

Planning Act 2008

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

M25 junction 28 scheme Development Consent Order 202[x]

3.2 EXPLANATORY MEMORANDUM

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1 Summary

- 1.1 This memorandum explains the purpose and effect of each article of, and the schedules to, the draft M25 Junction 28 Development Consent Order (“the Order”), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹.
- 1.2 Regulation 5(2)(c) requires explanatory memoranda to explain “*the purpose and effect of provisions in the draft order*”.

2 Purpose of the Order

- 2.1 The M25 junction 28 is on a section of the motorway network that is of national and strategic importance. The M25 is a critical route around London and a key link between the Channel ports and much of the mainland UK, as well as providing the main access route for Heathrow Airport. The A12, which intersects the M25 at junction 28, is a major road that runs north-east /south-west between London and Lowestoft in Suffolk. The M25 junction 28 plays a vital role, connecting the M25 with the A12, providing access to the Port of Felixstowe, as well as providing local access to Brentwood via the A1023 (Brook Street). It is a heavily-used junction which includes a roundabout controlled by traffic lights. The M25 junction 28 requires alteration as it is already operating at capacity, with motorists regularly experiencing congestion and delays. The need for the Scheme is comprehensively set out in the Case for the Scheme (document reference TR010029/APP/7.1), the Addendum to the Case for the Scheme (document reference TR010029/EXAM/9.95), the Statement of reasons (document reference TR010029/APP/4.1) and the Addendum to the Statement of reasons (document reference TR010029/EXAM/9.83).
- 2.2 The scheme (“the Scheme”) comprises the following key works elements:

Highways Works:

- (a) the creation of a new two lane loop road (Work No.6) with hard shoulder, for traffic travelling from the M25 northbound carriageway onto the A12 eastbound carriageway, including the provision of three new bridges (Alder Wood bridge, Duck Wood bridge and Grove bridge) and an underpass (Grove Farm underpass) to carry the new loop road over a proposed access track (Work No. 14);
- (b) realignment of the existing A12 eastbound exit (off-slip) road (Work No. 2) to accommodate the new loop road including the provision of a new bridge (Maylands bridge) and the extension of the existing Grove culvert;
- (c) improvements to the existing A12 eastbound and westbound carriageways and A12 eastbound entry (on-slip) road (Work Nos. 1, 3 and 4);

¹ S.I. 2009/2264

- (d) realignment of the existing M25 northbound on-slip (Work No. 8);
- (e) improvements to the existing Junction 28 roundabout, the existing M25 northbound carriageway and the M25 northbound off-slip (Work Nos. 5, 7 and 12);
- (f) new gantries, or similar signage, over the M25 carriageway (Work Nos. 9, 10 and 11);
- (g) alterations of existing private access and egresses and the provision of new private means of access to accommodate the new loop road (Work Nos. 13, 14, 15 and 16);

Earth and drainage works:

- (h) earthworks including an environmental bund (Work No.18);
- (i) three new attenuation ponds and associated drainage and access roads (Works Nos. 19A, 19B, 20A, 20B, 21A and 21B) and a new drainage outfall pipe (Work No. 22);

Realignment of watercourses:

- (j) realignment of the Weald Brook and the Ingrebourne River (Work Nos. 23A, 23B, 23C and 23D);

Environmental mitigation:

- (k) two new flood compensation areas (Work Nos. 24A and 24B) and the provisions of new ecological compensation and mitigation areas (Work Nos. 25 and 26) and two new environmental ponds (Works Nos. 27 and 28);

Utilities:

- (l) diversion of an already underground high pressure gas pipeline and diversion underground of an existing overhead electric line (Work Nos. 29 and 30); and

Accommodation Works:

- (m) accommodation works to provide replacement facilities for Maylands Golf Course (Work No. 32).

- 2.3 A detailed description of the Scheme is included in chapter 2 of the Environmental Statement (“ES”) (document reference TR010029/APP/6.1) and the Introduction to the application (document reference TR010029/APP/1.1).

Nationally Significant Infrastructure Project – Highway-related development

- 2.4 Section 22 of the Planning Act 2008² (“the Act”) makes a distinction between three different types of highway-related development capable of being a nationally significant

² c.29

infrastructure project (“NSIP”) within section 14(1)(h) of the Act. The three types of highway related development are set out in subsections (2), (3) and (5) of section 22. Sub-section (2) is concerned with the construction of a highway. Sub-section (3) is concerned with the alteration of a highway. Sub-section (5) is concerned with the improvement of a highway.

- 2.5 The Scheme comprises the alteration of a highway, the M25 motorway and related works to the A12. Sub-section 22(3) provides that the alteration of a highway is an NSIP if the three criteria set out in the sub-section are met. The three criteria are met for the proposed works to the M25 motorway in that the highway is wholly in England (thereby meeting the requirement in sub-section 22(3)(a)); a strategic highways company, namely Highways England, is the highway authority for that highway (thereby meeting the requirement in sub-section 22(3)(b)); and the area of development comprising the alteration (the term “area of development” being defined in sub-section 22(9)) is greater than the limits prescribed in sub-section 22(4) (thereby meeting the requirement in sub-section 22(3)(c)).
- 2.6 The relevant limits for the area of development are prescribed in sub-section 22(4)(a) as regards the alteration of motorways. The area of development in respect of the alteration to the M25 exceeds the limit prescribed in sub-section 22(4)(a), which is 15 hectares.
- 2.7 As the Scheme comprises an NSIP, development consent must be obtained from the Secretary of State to authorise it in accordance with section 31 of the Act. The Order authorises the NSIP, with the works involved being set out in Schedule 1 (authorised development) to the Order.

3 Associated Development

- 3.1 The Order also seeks consent for development which is associated with the NSIP, and which is included in the “authorised development” listed in Schedule 1. The Secretary of State may, under the provisions of section 115 of the Act, grant consent for development that is associated with an NSIP.
- 3.2 Guidance³ on associated development was issued by the Secretary of State for Communities and Local Government. In this guidance associated development is described as being “*typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project*” (paragraph 6) and “*requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development*” (paragraph 5).
- 3.3 Annex B of the above-mentioned guidance lists the following as examples of associated development for highway NSIP schemes:

³ Guidance on associated development applications for major infrastructure projects; DCLG (2013)

- (a) replacement roadside facilities where this becomes necessary due to the elimination of an existing facility by highway improvement;
 - (b) infrastructure associated with cycle/pedestrian access;
 - (c) offsite landscaping, habitat creation and other environmental works;
 - (d) offsite drainage works;
 - (e) alteration/diversion/stopping up of local roads, accesses and other rights of way; and
 - (f) offsite diversion of statutory undertakers' equipment.
- 3.4 In some cases there may be some overlap or the absence of a clear boundary between associated development and works which form part of the NSIP. There is a danger that separating the two out in the Order could potentially lead to an error in defining them one way or another, given this potential for overlap between the two categories.
- 3.5 For this reason, and as there is no requirement for a development consent order (“DCO”) to distinguish between these two categories, Highways England has chosen not to differentiate the NSIP and the associated development works in Schedule 1 to the Order. Ultimately, all elements of the Scheme either constitute part of the NSIP or are “associated development” to the NSIP within the meaning of section 115(2) of the Act and so can properly be authorised by the Order.
- 3.6 For the avoidance of doubt, the diversions of statutory undertakers' equipment and apparatus required for the Scheme do not constitute an NSIP in their own right.
- 3.7 In order to ensure that the authorised development and the associated development are constructed efficiently and without impediment, the Order contains the powers to carry out the works listed (a) to (q) in Schedule 1. This is a widely precedented approach and has been approved by the Secretary of State in other made highways DCOs, such as The A1 Birtley to Coal House Development Consent Order 2021, The A303 (Amesbury to Berwick Down) Development Consent Order 2020 and the M42 Junction 6 Development Consent Order 2020..

4 Ancillary Matters

- 4.1 The Order also provides for several ancillary matters, i.e. provisions not consisting of development. Under section 120(3) of the Act “an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted” (emphasis added).
- 4.2 The main ancillary matter is a power to acquire land or rights over land compulsorily or by agreement, in accordance with section 120(4) of the Act, required for or to facilitate, the authorised development, or that are incidental to the authorised development under section 122 of the Act. Justification for these powers is set out in the Statement of Reasons that accompanies the application (document reference TR010029/APP/4.1).

- 4.3 Further to providing these powers, the Order seeks to apply and modify statutory provisions that relate to the compulsory acquisition of land. Under sections 117 and 120(5) of the Act, an order containing provisions of this nature must be made by statutory instrument. The Order is therefore presented in that form.
- 4.4 Other ancillary matters include the stopping up of lengths of existing highways and private means of access in the vicinity of the junction, the classification of highways, the application of speed limits, the creation of new private means of access, and the application and disapplication of legislative provisions.

5 Draft Order

- 5.1 The purpose and effect of the provisions of the draft Order are now explained in sequence. Although the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265) (the "Model Provisions") has been repealed, the draft Order draws on the Model Provisions (general and railway), as well as precedent set by DCOs that have been made and particularly those relating to highways NSIPs.

Part 1 – Preliminary

Article 1 – Citation and commencement

- 5.2 Article 1 sets out the name of the Order, establishing how it may be cited in subsequent legislation. It also states the date on which the Order comes into force.

Article 2 – Interpretation

- 5.3 The purpose of article 2(1) is to define terms used in the remainder of the Order.
- 5.4 The following definitions are used in articles in the remainder of the Order and are typical of highway schemes:
- (a) "carriageway";
 - (b) "cycle track";
 - (c) "footway" and "footpath";
 - (d) "special road";
 - (e) "street";
 - (f) "street authority";
 - (g) "traffic authority"; and
 - (h) "trunk road".
- 5.5 Other definitions to note include:

- (a) “commence” which provides that the carrying out of a limited number of works that would constitute a “material operation” under the Town and Country Planning Act 1990 is not to be taken to mean that the development has “commenced”. This enables Highways England to undertake certain preparatory works prior to the submission of relevant details for approval under the Requirements. The works that are excluded from the definition do not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement being either *de minimis* or have minimal potential for adverse effects, in line with the Inspectorate’s Advice Note 15. Further, the surveys and investigations which are excluded from the definition (“archaeological surveys and evaluations”; “ecological surveys”; and “investigations for the purpose of assessing and monitoring ground conditions and levels”) are required as they will inform the plans, schemes and strategies to be submitted for approval under the Requirements thereby helping to minimise the construction timetable. This is a widely precedented approach in other made DCOs (see for example The A1 Birtley to Coal House Development Consent Order 2021, The A303 (Amesbury to Berwick Down) Development Consent Order 2020 and the M42 Junction 6 Development Consent Order 2020).
- (b) “maintain” which includes to inspect, repair, adjust, alter, improve, landscape, preserve, remove, decommission, reconstruct, refurbish or replace, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the ES, and any derivative of maintain is to be construed accordingly (see paragraph 5.12 below). The definition includes a proviso that any works to maintain the authorised development must not give rise to any materially new or materially different environmental effects to those identified in the ES. This approach has been taken by Highways England on various other DCO schemes including The A303 (Amesbury to Berwick Down) Development Consent Order 2020, The A30 Chiverton Cross Development Consent Order 2020 and the M42 Junction 6 Development Consent Order 2020.)and by other DCO promoters (see, for example, The National Grid (Hinkley Point C Connection Project) Order 2016). In the context of the Scheme it is important for Highways England to be able to undertake all the elements of maintenance that are included within this definition which is discussed further at paragraph 5.13.
- (c) "the Order land", which comprises all of the land to be acquired or used permanently or temporarily as shown on the Land plans (document reference TR010029/APP/2.2);
- (d) "the Order limits", which means the limits of the land that may be acquired or used permanently or temporarily within which the authorised development may be carried out as shown on the Land plans (document reference TR010029/APP/2.2) and the Works plans (document reference TR010029/APP/2.3).

5.6 Articles 2(2)-(3) provides that a broad definition of ‘rights over land’ applies to the Order.

- 5.7 Article 2(4) provides that measurements are approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those mentioned in the Order, there is no issue over whether the works are permitted by the Order. Thus this provision allows for a small tolerance with respect to any distances and points, although works will take place within the limits of deviation. It is commonplace to include such provision in an Act or instrument authorising linear infrastructure works.
- 5.8 Article 2(5) provides that areas given in the Book of reference (document reference TR010029/APP/4.3) are approximate as these are not covered by article 2(4). This is intended to clarify the position of the areas in the Book of reference, the purpose and effect is the same as set out in the previous paragraph.
- 5.9 Article 2(6) clarifies that references to any statutory body includes that body's successors from time to time.
- 5.10 Article 2(7) and 2(8) tie references to lettered / numbered points and numbered works in the Order to the streets, rights of way and access plans (document reference TR010029/APP/2.4) and Schedule 1 of the Order, respectively.
- 5.11 Article 2(9) confirms that the expression "includes", when used in the Order, is to be construed without limitation.

Part 2 – Principal Powers

Article 3 – Development consent etc. granted by the Order

- 5.12 Article 3(1) grants the development consent by giving Highways England the power to construct the authorised development, which is comprised of the works listed in Schedule 1 (authorised development). This article makes the consent subject to the requirements that are listed in Schedule 2 (requirements).

Article 3(2) states that any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of the Order. Highways England has undertaken a proportionate search of existing enactments, including private Acts of Parliament and byelaws, which apply to land within or in close proximity to the Order limits of the Scheme and has set out in article 49 of the Order specific enactments which contain provisions that are to be excluded and disapplied insofar as those provisions are inconsistent with a provision or power conferred by the Order. However, there are necessarily limits upon the extent to which such a search is capable of identifying conclusively all enactments which may be inconsistent with provisions or powers conferred by the Order. Article 3(2) has been included to address this issue, ensuring that the delivery of this NSIP is not comprised by unknown enactments, despite Highways England's best efforts to identify those enactments in advance of the application for development consent. There is precedent for such a provision, in the same terms in The A1 Birtley to Coal House Development Consent Order 2020, The A30 Chiverton to Carland Cross Development Consent Order 2020 and The A303 (Amesbury to Berwick Down) Development Consent Order 2020.

Article 4 – Maintenance of the authorised development

- 5.13 This article authorises Highways England to maintain the development. “Maintain” is defined in article 2(1) as including "inspect, repair, adjust, alter, improve, landscape, preserve, remove, decommission, reconstruct, refurbish or replace", with these terms bearing their common-sense meanings.
- 5.14 This definition is broader than the equivalent in section 329 of the Highways Act 1980, which simply states that maintenance “includes repair”. Article 4 therefore supplements the maintenance powers under the Highways Act 1980 and ensures that Highways England has the necessary powers to maintain the Scheme. The proper maintenance of the highway is an essential part of ensuring the safety of road users. It is therefore appropriate for 'maintain' to have a reasonably broad definition. Paragraph 5.5(b) above provides further justification for the use of this definition.
- 5.15 The powers of maintenance are subject to other provisions in the Order, in particular article 11 which makes provision in relation to maintenance by highway authorities.

Article 5 – Maintenance of drainage works

- 5.16 The purpose of this article is to make it clear that any realignment of drainage works or other works to them that are carried out as part of the authorised development do not affect the existing allocation of responsibility for maintenance of those drainage works, unless this is agreed between Highways England and the responsible party. Responsibility for maintenance of drainage works may sit with the Environment Agency, an internal drainage board, a lead local flood authority or a landowner.
- 5.17 The provision is well precedented (see for example article 5 of The A1 Birtley to Coal House Development Consent Order 2020 and article 3 of The A30 Chiverton to Carland Cross Development Consent Order 2020) .

Article 6 – Planning Permission

- 5.18 Insofar as Highways England needs to obtain any other planning permission for anything related to the proposed development (i.e. to facilitate its completion, construction, use or operation), this article seeks to avoid any question as to the interface between that planning permission and this Order (i.e. the carrying out of development under the terms of a planning permission will not constitute a breach of the terms of this Order for the purposes of section 161 of the Act). This article is precedented, for example see article 8 of The Tees Combined Cycle Power Plant Order 2019 and article 7 of The A30 Chiverton to Carland Cross Development Consent Order 2020.

Article 7 - Limits of deviation

- 5.19 Since the authorised development involves linear works, this article provides for limits of deviation to allow for a lateral deviation from the lines and situations of the authorised development within the limits of deviation shown on the Works plans (document reference TR010029/APP/2.3), and vertical deviation of the linear works subject to a maximum deviation of one metre upwards or one metre downwards, save in respect of those parts of Work No. 6 situated between Duck Wood bridge and Grove bridge where

a maximum deviation of two metres upwards or downwards is authorised and Work No. 18 where a maximum deviation of one metre upwards is authorised.

- 5.20 The ability to deviate within the prescribed limits of deviation is important to ensure that, if the precise 'as-built' alignments or elevations are slightly different to those indicatively shown on the Works plans (document reference TR010029/APP/2.3), no question arises as to whether or not the Works are permitted by the Order. The detailed design of the Scheme will follow the grant of the Order (see requirement 3) and the limits of deviation therefore ensure that Highways England and its contractor(s) have sufficient flexibility to design and construct the authorised development. The limits of deviation referred to in paragraph (1) and shown on the Works plans (document reference TR010029/APP/2.3) have been taken into account in the preparation of the ES (document reference TR010029/APP/6.1) and the potential impacts of a deviation within the permit limits have been assessed.
- 5.21 The maximum limits of vertical deviation can be exceeded where it is demonstrated to the Secretary of State's satisfaction (and the Secretary of State has certified accordingly following consultation with the relevant planning authority) that such deviation would not give rise to any materially new or materially different environmental effects in comparison with those reported in the ES (document reference TR010029/APP/6.1).
- 5.22 The purpose of this provision is to provide Highways England with a proportionate degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for unforeseen reasons but at the same time ensuring that any flexibility will not give rise to any materially new or materially different environmental effects.
- 5.23 The provision is well precedented in recent highways DCOs – see, for example, article 6 of The M42 Junction 6 Development Consent Order 2020 and article 8 of The A30 Chiverton to Carland Cross Development Consent Order 2020.
- 5.24 Paragraph (2) of article 7 clarifies that the process set out in Part 2 of Schedule 2 to the Order, which applies in relation to applications to discharge any of the requirements in Part 1 of Schedule 2, will also apply to any application to the Secretary of State for certification under paragraph (1) of article 7, as though it were an application for approval under the requirements. This ensures there is a clear, defined process in place for applications to the Secretary of State under article 7(1).

Article 8 – Benefit of the Order

- 5.25 Paragraph (1) of this article overrides section 156(1) of the Act (as permitted by section 156(2)) to give the benefit of the Order to Highways England rather than anyone with an interest in the land the subject of the Order. It would be impracticable and inappropriate for the authorised development to be carried out by all of those that have an interest in the land required for the Scheme.
- 5.26 The purpose of paragraph (2) is to clarify the exceptions where the Order will self-evidently benefit others, e.g. rights for statutory undertakers in Work Nos. 29 and 30. Absent this provision, there would be a contradiction since strictly speaking only

Highways England could benefit from these works. Substantially the same wording was accepted and approved by the Secretary of State in article 8 of The A1 Birtley to Coal House Development Consent Order 2020, article 9 of The A30 Chiverton to Carland Cross Development Consent Order 2020 and article 7 of The M42 Junction 6 Development Consent Order 2020.

- 5.27 Paragraph (1) is based on article 4 of the Model Provisions, amended to clarify that it is subject to paragraph (2) and that it is Highways England that benefits from the provisions of the Order, rather than particular articles applying for the benefit of other specified parties, as per the Model Provisions.

Article 9 – Consent to transfer benefit of Order

- 5.28 This article allows the benefit of the Order to be transferred or leased to others by Highways England. The exercise of any transferred benefits or rights is subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were executed by Highways England. The consent of the Secretary of State is required for a transfer or grant, except where it is made to specified companies in relation to certain utility diversion works in accordance with paragraph (4). There are three named parties to whom a transfer or grant of rights under the Order may take place without the consent of the Secretary of State:

- (a) Cadent Gas Limited for the purposes of Work No, 29;
- (b) Eastern Power Networks Plc for the purposes of Work No. 30; and
- (c) the Environment Agency for the purposes of Works Nos. 23A–D (inclusive).

- 5.29 The removal of the need for later consent by the Secretary of State under paragraph (4) is justified by the fact that such consent is sought for the purposes of this application for development consent and so interested parties, the Examining Authority and ultimately the Secretary of State will have an opportunity to consider the appropriateness of this power as part of this application.

- 5.30 This article is based on article 5 of the Model Provisions. It differs in that it allows as noted a transfer or grant to certain specified companies to take place without the Secretary of State's consent, on the basis that it is appropriate for those companies to be able to carry out those works without the Secretary of State needing to consider later on whether or not consent for them to do so should be given.

Part 3 – Streets

Article 10 – Application of the 1991 Act

- 5.31 Article 10 modifies the application of the New Roads and Street Works Act 1991⁴ ('the 1991 Act') to works carried out under the powers of the Order, including any equivalent or modified provisions in any permit scheme under the Traffic Management Act 2004 in force at the date in which the Order is made..

⁴ c.22

- 5.32 Paragraph (1) provides that works carried out under the powers of the Order which match the description of "major highway works" in the 1991 Act will be treated as major highways works for the purposes of the 1991 Act. The effect of this is to clarify that the provisions for sharing the burden of dealing with apparatus in the street (under sections 84 and 85 of the 1991 Act), which would normally apply only to major works carried out by the highway authority, will apply in respect of the works authorised by the Order irrespective of who carries them out.
- 5.33 "Major Highways Works" are defined at section 86 of the 1991 Act. The definition includes, at sub-sections 86(3)(b) and (f), works undertaken under powers conferred by sections 64 and 184 the Highways Act 1980. As that would not be relevant in this context (where the works will be undertaken under the powers of the Order), these sub-sections are omitted from paragraph (1)(a). Works equivalent to works undertaken under those sections of the Highways Act 1980, but carried out under powers conferred by the Order, are included through paragraph 1(b). The effect is that any works which would be "major highway works" under the 1991 Act if carried out by a highway authority in relation to one of its streets are also "major highway works" if carried out under the powers of the Order regardless of who carries them out.
- 5.34 Paragraph (3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order, and the provisions in the Order (including the requirements) which would regulate the carrying out of the Order works. These dis-applications are very common for highways DCOs – see for example article 7 of The Lake Lothing (Lowestoft) Third Crossing Order 2020.
- 5.35 Paragraphs (4) to (6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to any streets which are temporarily altered, diverted or restricted under the Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporarily altered, diverted or restricted street are "street works" for the purposes of the 1991 Act and, second, it simplifies the implementation of the works by providing for a single process in respect of streets which are temporarily altered, diverted or restricted and those which are not.
- 5.36 Paragraph (7)(a) provides that nothing in article 11 shall affect the ability of the local highway authority (under section 87 of the 1991 Act) to declare a street in its area a maintainable highway, which would make maintenance of the street (once completed) the responsibility of the local highway authority, and would mean that the 1991 Act would apply to street works carried out in that street.
- 5.37 Paragraph (7)(a) also provides that Highways England will not be under the duties that apply to a "street authority" for the purposes of the 1991 Act by virtue of being responsible for the maintenance of a street under article 11.
- 5.38 Paragraph (7)(b) makes it clear that the maintenance obligations imposed by article 11 do not override the provisions of the 1991 Act that govern procedures for street works, i.e. works in streets involving the placing of or alteration to apparatus in the street. After the implementation of the Order it is appropriate that the 1991 Act should govern such

works as it is specifically designed to ensure a fair and efficient procedure for the various parties affected by such works.

- 5.39 Paragraph (8) provides that subject to paragraphs (3)(9) and (10) permit schemes will apply to the construction and maintenance of the authorised development. Paragraph (9) goes on to clarify that a permit under a permit scheme may not be granted subject to conditions where compliance with it would be a breach of the Order or where the undertaker would be unable to comply with the conditions pursuant to the powers in the Order.
- 5.40 Paragraph (11) provides that any order made under the 1991 Act for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012 will not have effect in relation to construction or maintenance of the authorised development.
- 5.41 These modifications reflect those made in other highway DCOs, for example the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016, the A19/A1058 Coast Road (Junction Improvement) Order 2016, the A19/A184 Testo's Junction Alteration Order 2018 and The Lake Lothing (Lowestoft) Third Crossing Order 2020.

Article 11 – Construction and maintenance of new, altered or diverted streets and other structures

- 5.42 The standard position in respect of maintenance of streets is that Highways England is responsible for maintaining special roads and trunk roads. Highways other than special and trunk roads are to be maintained by the local highway authority in respect of highways maintainable at the public expense, or whichever body is responsible for the maintenance of the street in respect of streets which are not maintainable at the public expense. This is reflected in paragraphs (1), (2) and (3). These provisions are subject to any agreement to the contrary between Highways England and the relevant street or highway authority.
- 5.43 Paragraph (4) makes specific maintenance provision in relation to any new bridges carrying public rights of way over a special road or trunk road. For these, Highways England is responsible for the maintenance of the bridge structure while the local highway authority is responsible for the maintenance of the highway surface.
- 5.44 The effect of paragraphs (5) and (6) is that in any action for damages against Highways England alleging failure to maintain a street or other structure, Highways England will have the defence that it had taken such care as was reasonably required in the circumstances to secure that the street or structure was not dangerous for traffic. This extends the provision in section 58 of the Highways Act 1980 to Highways England and draws on the approach taken in article 21 of The A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and repeated in article 9 of The A19/A1058 Coast Road (Junction Improvement) Order 2016, article 12 of The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 and article 10 of The A19/A184 Testo's Junction Alteration Order 2018.
- 5.45 While Highways England would benefit from the equivalent defence in the Highways Act 1980 in respect of trunk roads or special roads, for which it is the highway authority, the proposed development includes roads which are not trunk roads or special roads

and so this article is needed to ensure Highways England is covered by this defence in respect of all the roads that comprise the authorised development.

Article 12 – Access to works

- 5.46 This article allows works accesses to public highways to be created within the Order limits. It provides Highways England with a general power to form means of access in addition to the accesses specifically provided for by the Order, to provide an appropriate degree of flexibility in case the need for an access only becomes apparent at a later stage in the implementation of the Scheme. These powers are equivalent to those available to Highways England when implementing schemes under the Highways Act 1980.

Article 13 – Temporary closure, alteration, diversion and restriction of use of streets

- 5.47 This article allows for the temporary closure, alteration, diversion or restriction of streets for the purposes of the Scheme.
- 5.48 The power is drafted widely due to the early design stage which the Scheme is at – maximum construction flexibility is required. This is particularly the case with the diversion of statutory undertakers' apparatus, for which the powers in this article would most frequently be used, as on-going negotiations with statutory undertakers may mean that streets out with the Order limits are required for the relocation of apparatus. This provision is appropriately moderated by the duties to consult and in some cases seek further approval from the street authority prior to the exercise of the power (see paragraph (4)).
- 5.49 Paragraph (2) differs from the Model Provisions and confers a power on Highways England where the use of a street has been temporarily altered, diverted or restricted under this article to use it as a temporary working site. This provision has precedent in a number of DCOs including the A19/A184 Testo's Junction Alteration Order 2018 and The A30 Chiverton to Carland Cross Development Consent Order 2020.
- 5.50 Paragraph (3) states that reasonable access for pedestrians going to or from premises abutting a street must be provided if there would otherwise be no such access.
- 5.51 Paragraph (4) confirms that, save in respect of streets for which it is the street authority, Highways England must not alter or divert any street, without the consent of the street authority (such consent not to be unreasonably withheld or delayed).
- 5.52 Paragraph (5) provides a right to compensation for any person suffering loss due to the suspension of a private rights of way under this article.
- 5.53 Paragraph (6) provides that where a street authority which fails to notify Highways England of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent. This is necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by Highways England in a timely fashion. The article is a standard provision in highways DCOs (see for example, article 12 of The A19/A184 Testo's Junction Alteration Order 2018 and article 15 of The A30 Chiverton to Carland Cross Development Consent Order 2020).

Article 14 – Use of private roads

- 5.54 This article authorises the temporary passage – in common with other authorised users – of private roads within the Order limits by persons or vehicles, for the purposes of, or in connection with, the construction and maintenance of the authorised development, without the need for Highways England to take temporary possession of the land under article 34 of the Order. There is precedent for this article, for example, in The Silvertown Tunnel Order 2018 (article 13).
- 5.55 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 35 (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 whilst exercising this power.
- 5.56 Paragraph (2) provides that Highways England will be liable to compensate any person who has suffered loss or damage as a result of the exercise of this power. Paragraph (3) is included to clarify that any dispute as to a person’s entitlement to compensation, or as to the amount of such compensation, is to be determined under Part 1 of the Land Compensation Act 1961.

Article 15 – Permanent stopping up of streets

- 5.57 This article allows streets named in Parts 1 and 2 of Schedule 3 (permanent stopping up of streets) to be stopped up (i.e. the legal right of way along them to be extinguished) to the extent described. In each case, a new street is to be provided as a substitute for the street to be permanently stopped up, as set out in Parts 1 and 2 of Schedule 3. This power is necessary to facilitate the construction, operation and maintenance of the Scheme. It is precededented in many highways DCOs, such as The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, The A30 Chiverton to Carland Cross Development Consent Order 2020 and The A1 Birtley to Coal House Development Consent Order 2021.
- 5.58 Paragraph (2) provides that the power in paragraph (1) is not to be exercised unless:
- (a) the new street to be substituted is open for use and has been completed to the reasonable satisfaction of the street authority; or
 - (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by Highways England, to the reasonable satisfaction of the street authority, between the commencement and termination points for the permanent stopping up, until the completion and opening of the new street (for which see paragraph 5.57 above).
- 5.59 Paragraph (2) therefore ensures that access continues to be maintained for traffic along streets to be stopped up, before that permanent stopping up under paragraph (1) takes effect.

- 5.60 Paragraph (3) provides that all rights of way over or along a street are extinguished where a street has been stopped up under this article.
- 5.61 Paragraph (4) provides a right to compensation for any person who suffers loss due to the suspension or extinguishment of a private right of way under this article.

Article 16 – Classification of roads, etc.

- 5.62 The designation of highways, the specification of the classes of traffic authorised to use a highway and speed limits are ancillary matters which may be included in a DCO. These and other related matters are addressed by this article. These matters are integral to the implementation of the authorised development and it is therefore appropriate to include them in the Order as ancillary matters under section 120(3) of the Act.
- 5.63 Paragraph (1)(a) provides for the roads described in Part 1 of Schedule 4 (classification of roads, etc.) to become special roads. Under paragraph (1) they will be classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads, and will be provided for the use of traffic of Classes I and II as set out in the Highways Act 1980.
- 5.64 Paragraph (1)(b) provides for the roads in Part 2 of Schedule 4 to be classified as GLA Roads.
- 5.65 Paragraph (1)(c) provides for the roads in Part 3 of Schedule 4 to be classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads from the date on which they are complete and open for through traffic.
- 5.66 Paragraph (1)(d) provides that the public rights of way in Part 6 of Schedule 4 will be of the types described in that Part.
- 5.67 Paragraph (2) enables Highways England, subject to the conditions requiring notification and consultation in paragraphs (3) and (4), to provide for the classification of any trunk road comprised in the authorised development to be varied to a special road.
- 5.68 Paragraph (5) imposes speed limits on certain sections of the authorised development as described in Part 4 of Schedule 4.
- 5.69 The purpose of paragraph (6) is to provide that the matters covered in paragraphs (1) and (5) may be varied or revoked in the future without the need to apply under the Act for an amendment to the Order, including where appropriate through the making of a traffic regulation order.
- 5.70 Article 16 is based on similar provisions approved in a number of DCOs for highway schemes – see for example article 14 of The A30 Chiverton to Carland Cross Development Consent Order 2020.
- 5.71 In so far as Part 1 of the Land Compensation Act 1973 applies to the authorised development, Highways England will be the ‘appropriate highway authority’ for any

works its constructs under the Order and 'public works' will mean those works forming the authorised development. This means that Highways England will remain responsible for compensation claims under Part 1 of the Land Compensation Act 1973 even when part of the authorised development is to become a GLA road on completion.

Article 17 – Clearways

- 5.72 This article makes it unlawful for road users to stop on the roads specified in column (2) of Part 5 of Schedule 4 that are to become clearways except upon the direction of or with the permission of a constable or a traffic officer in uniform, or for emergency and other unavoidable reasons. The purpose of this provision is to ensure safe and proper operation of the authorised development. It is therefore appropriate to be included in the Order as an ancillary matter under section 120(3) of the Act.
- 5.73 Such traffic regulation measures are normally made by order under the Road Traffic Regulation Act 1984, with such orders subject to consultation and publicity requirements. Inclusion within the Order is appropriate as the consultation, publicity and examination processes within the Order procedure provide a more than adequate substitute for the consultation and publicity requirements of traffic regulation orders.
- 5.74 The proposed restrictions sought under this article are similar to those which would apply to a clearway established under section 2 of the Road Traffic Regulations Act 1984 ('the 1984 Act'). This provides that a traffic regulation order may make provision prohibiting, restricting or regulating the use of a road, or any part of the width of a road, by vehicular traffic, or by vehicular traffic of any class specified in the Order either generally or subject to exceptions specified in the Order or determined in a manner provided for it or with reference to periods of time.
- 5.75 Paragraph (4) also clarifies that paragraphs (1), (2) and (3) have effect as if made by an order under the 1984 Act, and can be varied or revoked by an order made under that act or other enactment which provides for the variation or revocation of such orders, without the need to apply under that Act for an amendment to the Order.
- 5.76 The wording in this article has been approved and the principle of inclusion of traffic regulation measures accepted in The A19/A1058 Coast Road (Junction Improvement) Order 2016 (see article 14), The A19/A184 Testo's Junction Alteration Order 2018 (see article 15) and The A30 Chiverton to Carland Cross Development Consent Order 2020 (see article 18).

Article 18 – Traffic regulation

- 5.77 The purpose of this article is to provide Highways England with powers to make traffic regulation orders in relation to roads for which it is not the highway authority, so that it can implement traffic management measures (e.g. restrictions on the use of roads) necessary to construct the authorised development. This draws on the approach in a number of recent development consent orders including recently The A1 Birtley to Coal House Development Consent Order 2021 (article 19), The M42 Junction 6 Development Consent Order 2020 (article 20) and The A30 Chiverton to Carland Cross Development Consent order 2020 (article 19).

- 5.78 This article would, at any time prior to 12 months following the opening of the authorised development for public use, allow Highways England, in so far as it is necessary or expedient for the purposes of the construction, maintenance or operation of the authorised development, to:
- (a) revoke, amend or suspend in whole or in part any order made under the 1984 Act;
 - (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
 - (c) make provision as to the direction or priority of vehicular traffic on any road; and
 - (d) permit or prohibit vehicular access to any road.
- 5.79 Implementation of any of the measures is subject to the prior approval of the traffic authority in whose area the roads are situated. Requirement is also made for the chief officer of police and the relevant traffic authority to be notified in advance. This provision mirrors the consultation and publicity requirements for traffic regulation orders under the Traffic Orders (Procedure) (England and Wales) Regulations 1990/1656.
- 5.80 Any restrictions etc. may be suspended, varied or revoked by Highways England within a period of 24 months from the opening of the authorised development (paragraph (7)).

Part 4 – Supplemental powers

Article 19 – Discharge of water

- 5.81 This article establishes statutory authority for Highways England to discharge water into a sewer, watercourse or drain in connection with the carrying out or maintenance of the authorised development.
- 5.82 This statutory authority is subject to Highways England obtaining the consent of the owner of the sewer, watercourse or drain, but that consent cannot be withheld unreasonably (paragraph (3)).
- 5.83 Paragraph (6) requires the undertaker to take reasonably practicable steps to ensure that any water that is discharged is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- 5.84 Paragraph (7) provides that this article does not override the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) the Environmental Permitting (England and Wales) Regulations 2016.
- 5.85 Paragraph (9) states that a person who fails to notify the undertaker of their decision in respect of an application for consent/approval within 28 days of the application being made is deemed to have granted consent/approval. This time limit is necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered in a timely fashion.

- 5.86 This article has been included in previous Highways England orders (see for example article 20(7) of The A30 Chiverton to Carland Cross Development Consent Order 2020) and is required for this Scheme in order to establish and regulate Highways England's authority to discharge water.

Article 20 – Powers in relation to watercourses

- 5.87 This article permits Highways England to carry out specified activities relating to watercourses. It provides Highways England with a general power to carry out works in watercourses in addition to those works specifically provided for by the Order, to provide an appropriate degree of flexibility in case the need for works only becomes apparent at a later stage in the implementation of the Scheme.
- 5.88 This article is preceded (see article 16 of The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016).

Article 21 – Protective work to buildings

- 5.89 The purpose of this article is to allow Highways England to undertake protective works to buildings affected by the authorised development, such as underpinning, and to set out the procedure that will apply in these circumstances.
- 5.90 Paragraph (10) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.
- 5.91 The wording has broad precedent including in a number of recent orders including The A303 (Amesbury to Berwick Down) Development Consent Order 2020 (article 14), The A30 Chiverton to Carland Cross Development Consent Order 2020 (article 21) and The M42 Junction 6 Development Consent Order 2020 (article 22). It was also included in the Model Provisions as article 15.
- 5.92 The article is necessary to make appropriate provision to carry out protective works in the unlikely event that such a need arises.

Article 22 – Authority to survey and investigate the land

- 5.93 This article gives Highways England the power to enter land shown within the Order limits or which may be affected by the authorised development for the purpose of surveying and investigating the land. The article provides that Highways England must give 14 days' notice before exercising the powers of entry, and that compensation is payable for any loss or damage.
- 5.94 Paragraphs (1) to (5) are based on the Model Provisions and have precedent in a number of made DCOs to date. Paragraphs (6) and (7) have precedent in The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016.
- 5.95 The drafting in paragraph (1) departs from the Model Provisions by authorising surveys, where reasonably necessary, on land outside but adjacent to the Order limits. This extension beyond the Order limits has precedent in the Silvertown Tunnel Order 2018. Powers to make excavations and boreholes, to investigate groundwater and discharge

water onto land are also included, to ensure that Highways England is able to undertake all necessary activities in connection with surveying the land.

- 5.96 The ability to survey land adjacent to the Order limits where reasonably necessary is required so that Highways England can be confident that the surveys can be conducted to assess the effects of the Scheme, or on the Scheme, from outside its limits. It imposes a lesser burden than seeking compulsory acquisition / temporary possession of such land.
- 5.97 Paragraph (7) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.

Article 23 – Felling or lopping of trees and removal of hedgerows

- 5.98 This article allows any tree or shrub that is near the Scheme to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the proposed development or endanger anyone using it. Compensation is payable for any loss or damage caused. This article also allows for the removal of hedgerows as defined in the Hedgerow Regulations 1997, including important hedgerows.
- 5.99 Paragraph (6) clarifies that development consent granted by the Order is to be treated as a specific planning permission for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation) (England) Order 2012 (“the 2012 Order”). The effect of this is to ensure that the exception in regulation 14(1)(a)(vii) of the 2012 Order to the carrying out of prohibited activities in respect of TPO trees in regulation 13 of the 2012 Order, applies to activities undertaken under article 23 of the Order, thus ensuring that there is parity of treatment as between any conventional planning permission and this Order.
- 5.100 This wording is necessary to ensure that the undertaker is also able to carry out works to trees which may be designated as TPO trees in future (and therefore do not currently fall within the power in article 24), without being subject to an obligation to obtain the consent of the local planning authority under regulation 13 of the 2012 Order before carrying out those works. Without the provision, there is a risk that the undertaker’s ability to carry out works to those trees, and therefore to deliver the authorised development, could be frustrated. The wording has been approved by the Secretary of State in previous Orders (see for example article 40(4) of The National Grid (Richborough Connection Project) Development Consent Order 2017).
- 5.101 This article has been included in numerous orders (see, for example, article 17 of The A303 (Amesbury to Berwick Down) Development Consent Order 2020).

Article 24 – Trees subject to tree preservation orders

- 5.102 This allows Highways England to fell or lop any trees subject to tree preservation orders described in Schedule 5 (trees subject to tree preservation orders). This is based on a Model Provision which has been used in numerous DCOs (see for example article 40 of The A30 Chiverton to Carland Cross Development Consent Order 2020).

Part 5 – Powers of acquisition and possession of land

Article 25 – Compulsory acquisition of land

- 5.103 This article authorises the acquisition of certain land by compulsory purchase. It grants the power to acquire such of that land as is required for the authorised development, or to facilitate it, or is incidental to it. The power of acquisition over the Order land is qualified and restricted by sub-paragraph (2) of this article, in the case of parcels of land specified in the Order where only rights and restrictive covenants can be acquired (article 28), or where possession of land parcels as specified in the Order may be taken temporarily only (article 35).
- 5.104 The provision is necessary to secure the delivery of the Scheme as explained in more detail in the Statement of reasons accompanying the application (document reference TR010029/APP/4.1).

Article 26 – Compulsory acquisition of land – incorporation of the mineral code

- 5.105 This article incorporates Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (with the exception of paragraph 8(3)). This means that where Highways England acquires land under the powers of the Order, it will not acquire any mineral deposits present in the land (other than those necessarily extracted or used in constructing the authorised development) unless they are expressly included in the conveyance. The article is based on article 19 of the Model Provisions.

Article 27 – Time limit for exercise of authority to acquire land compulsorily

- 5.106 This article gives Highways England five years to issue notices to treat or to execute a general vesting declaration to acquire the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of acquiring land compulsorily may be undertaken should the Order be made.
- 5.107 The article also sets a five year time limit on Highways England's power to take temporary possession of land under article 35 of the Order, although it does not prevent Highways England from remaining in possession of land after that time if it took possession within the 5 year limit (this has consistently been approved by the Secretary of State, including in various recent orders. See for example article 25 of The A30 Chiverton to Carland Cross Development Consent Order 2020), article 26 of The M42 Junction 6 Development Consent Order 2020 and article 25 of The A1 Birtley to Coal House Development Consent Order 2020.

Article 28 – Compulsory acquisition of rights and imposition of restrictive covenants

- 5.108 This article allows for existing rights in land to be acquired compulsorily, and also for the acquisition of new rights and the imposition of restrictive covenants over land.
- 5.109 This article provides for such rights and restrictive covenants as may be required to be acquired or imposed by Highways England over land which it is authorised to acquire under article 25. The public benefit of this is that it would allow Highways England, where circumstances allow, to reduce the area of outright acquisition and rely on rights or restrictive covenants instead. A provision of this kind is usual in Transport and Works

Act orders and hybrid bills, and has been followed in a number of DCOs including recently article 26 of The Chiverton to Carland Cross development Consent Order 2020, article 27 of the M42 Junction 6 Development Consent Order 2020 and article 26 of The A1 Birtley to Coal House Development Consent Order 2021.

- 5.110 Paragraph (2) provides that for the land described in Schedule 6 (land in which new rights only, etc. may be acquired), Highways England's powers of compulsory acquisition are limited to the acquisition of such rights or the imposition of such restrictive covenants as may be required for the purposes set out in the Schedule (to the extent that the purpose relates specifically to such part of the Scheme as is specified in column (2) of Schedule 6).
- 5.111 Paragraph (3) restricts the power to impose restrictive covenants under paragraph (1) to those plots specified in column (1) of Schedule 6.
- 5.112 Paragraph (4) provides that where powers under paragraph (1) to acquire the rights and to impose the restrictive covenants for the benefit of statutory undertakers or for the benefit of any other person does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land required for the benefit of any other statutory undertaker or any other person.
- 5.113 Paragraph (5) provides that where Highways England needs only to acquire rights or impose restrictive covenants over land, it shall not be obliged to acquire any greater interest in that land.
- 5.114 Paragraph (6) applies Schedule 7 (modifications of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) which imposes modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order, in particular the creation of new rights and the imposition of restrictive covenants. This is a consequence of the extension of land acquisition powers to these categories (which have been included to allow lesser land interests to be acquired).
- 5.115 For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled. Furthermore, the provisions have been amended so that the time limits are consistent with the Order (five years as opposed to three years) and the appropriate references to the Act.
- 5.116 Paragraphs (2) to (6) ensure that the relevant compulsory purchase and compensation provisions apply to acquisition of rights/restrictive covenants (and not just land).
- 5.117 The modifications are applicable generically to orders of this kind and are based on changes made consistently in most orders made under the Act (see, for example, Schedule 6 of The M20 Junction 10a Development Consent Order 2017 by way of example).

Article 29 – Private rights over land

- 5.118 In order for it to be possible to implement the Scheme, provision is needed for the extinguishment of private rights in the Order land that would be incompatible with that implementation. Article 29 supplies that provision. The drafting is based on article 22 of the Model Provisions and has been consistently approved in highways DCOs (see for a recent example article 28 of The A30 Chiverton to Carland Cross Development Consent Order 2020).
- 5.119 Paragraph (1) provides for the extinguishment of private rights over Order land subject to compulsory acquisition under the Order, from the moment of acquisition or occupation of that land.
- 5.120 Paragraph (2) provides for the extinguishment of existing private rights over land that is subject to the compulsory acquisition of new rights or imposition of restrictive covenants (but where the underlying land is not subject to powers of compulsory acquisition), if the exercise of those existing rights is inconsistent with the implementation of the Scheme, from the date of acquisition of the right, imposition of the restrictive covenant or occupation of the underlying land.
- 5.121 Paragraph (3) provides that rights over Order land that is already owned by Highways England are also extinguished, at the point that any activity authorised by the Order interferes with or breaches those rights.
- 5.122 Paragraph (4) provides for the temporary suspension of private rights over Order land that is not acquired but is occupied temporarily by Highways England in order to construct the proposed development. The suspension is for the duration of the occupation.
- 5.123 Paragraphs (5) to (8) of article 29 make provision for compensation and for circumstances where rights are preserved.
- 5.124 Paragraph (9) sets out a list of matters deemed to be private rights to provide certainty as to the scope of the article. The list of deemed private rights is broad in order to ensure that any right which could potentially interfere with the implementation of the proposed development can be extinguished. A similar list appears in the equivalent article in The A1 Birtley to Coal House Development Consent Order 2020, The A303 (Amesbury to Berwick Down) Development Consent Order 2020 and The A30 Chiverton to Carland Cross Development Consent Order 2020..

Article 30 – Modification of Part 1 of the 1965 Act

- 5.125 The purpose of this article is to ensure consistency between the standard terms of highways DCOs and the Compulsory Purchase Act 1965 (as more recently amended by the Housing and Planning Act 2016) as applied by section 125 of the Act. These modifications have broad precedent – see for example The A1 Birtley to Coal House Development Consent Order 2020 and The A30 Chiverton to Carland Cross Development Consent Order 2020.

Article 31 – Application of the 1981 Act

- 5.126 This article applies (with minor modifications to make the provisions appropriate to the context of acquisition under powers in a DCO) the provisions of the Compulsory Purchase (Vesting Declarations) 1981 Act to compulsory acquisition under the Order so that Highways England has the option of acquiring Order land that is subject to the powers of compulsory acquisition by vesting declaration.
- 5.127 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase. The other method involves serving a notice to treat on the land owner to commence the process of establishing the acquisition price, after which title in the land is transferred. The date on which title will transfer is uncertain under the notice to treat method.
- 5.128 A vesting declaration, in contrast, sets the date on which title in the land is transferred to the acquiring authority. Compensation is negotiated or determined and paid later. Vesting declarations, therefore, allow title in the land to pass to the acquiring authority more quickly than using the notice to treat method, and also allow several parcels to be acquired at once. Their use is subject to serving notices and observing time limits as required by the 1981 Act.
- 5.129 Paragraph (5) modifies the provisions of the Compulsory Purchase (Vesting Declarations) 1981 Act to enable Highways England to acquire rights on behalf of another statutory undertaker.
- 5.130 The modifications ensure consistency with the standard five year period sought under the Order for acquisition rights. It further ensures that the appropriate references are made to the Act. The modifications are based in large part on previous highways NSIPs, and following amendments to the 1981 Act in the Housing and Planning Act 2016, The High Speed Rail (London - West Midlands) Act 2017.

Article 32 – Modification of the 2017 Regulations

- 5.131 This article modifies the Compulsory Purchase of Land (Vesting Declaration) (England) Regulations 2017 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, who would otherwise be the acquiring authority in respect of those interests and rights.

Article 33 - Acquisition of subsoil or airspace only

- 5.132 This article allows Highways England to acquire the subsoil or airspace below or above land, rather than having to acquire all of the land.
- 5.133 The purpose of this article is to give Highways England the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on affected landowners, and lower payments of compensation, both of which are in the public interest.

- 5.134 Any subsoil or airspace acquired under this provision can only be used for the same purposes for which Highways England could have acquired all of the land. This provision allows acquisition of the minimum interest needed to deliver the Scheme.
- 5.135 This too is a standard provision used in many highways DCOs (see for example article 31 of The A30 Chiverton to Carland Cross Development Consent Order 2020, article 30 of the A1 Birtley to Coal House Development Consent Order 2020 and article 31 of The M42 Junction 6 Development Consent Order 2020).

Article 34 - Rights under or over streets

- 5.136 The purpose of this article is to allow Highways England to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without full acquisition, is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place (paragraphs (4) and (5)).
- 5.137 This article was in the Model Provisions and has been included in the majority of DCOs made to date (see for example article 32 of The A30 Chiverton to Carland Cross Development Consent Order 2020).

Article 35 – Temporary use of land for carrying out the authorised development

- 5.138 The purpose of this article is to allow the land set out in Schedule 8 (land of which temporary possession may be taken) to be occupied temporarily for the purpose specified in column 2 of the table in Schedule 8. This is land which is required during construction of the Scheme but is not required permanently. The authorisation of temporary possession prevents Highways England having to permanently acquire land which is required to construct the Scheme but which is not needed permanently and therefore assists in minimising the interference with landowners' rights. The article is based on many recent highways DCOs, such as article 32 of The A1 Birtley to Coal House Development Consent Order 2021.
- 5.139 The land in respect of which Highways England may take temporary possession falls into two categories, as follows:
- (a) paragraph 1(a)(i) allows the land set out in Schedule 8 to be occupied temporarily for the purpose specified in column 2 of the table in Schedule 8. This is land which is required during construction of the Scheme but which is not required permanently. Some land taken temporarily will have permanent works undertaken to it, e.g. accommodation works (see further sub-paragraph (5)(b), and Schedule 8); and
 - (b) paragraph 1(a)(ii) allows for the temporary occupation of any of the land that is subject to the powers of permanent acquisition, but in respect of which no process for acquisition has yet been commenced. The rationale for this is that it reduces the amount of land that is required to be subject to outright acquisition. Thus article 25 with article 35(1)(a)(ii) makes it possible for Highways England to occupy land temporarily initially and only proceed to acquire permanently that part which is necessary for the Scheme as

constructed. The benefits of this are lesser impacts on landowners and lower costs to Highways England, which is in the public interest. In line with this, paragraph (1)(d) provides that works comprised within the Scheme can be undertaken on land that has been temporarily occupied.

- 5.140 The inclusion of this article is important to ensure that the authorised development can be carried out efficiently and expeditiously following the making of the Order. Highways England is entitled to either occupy and use land pending its permanent acquisition, or to temporarily occupy and use land that is not to be permanently acquired, with provision made for the restoration of the land and the payment of compensation to the affected landowners and occupiers for any loss or damage arising.

Article 36 – Temporary use of land for maintaining the authorised development

- 5.141 This article provides that Highways England may take temporary possession of land within the Order limits as required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first opened for use (see paragraph (13)).
- 5.142 This power does not apply with respect to houses, gardens or any other buildings for the time being occupied (paragraph (2)).
- 5.143 Under paragraph (6), all temporary works must be removed before Highways England gives up possession under this article and the land must be restored to the reasonable satisfaction of the owners.
- 5.144 Provision is made for giving notice and compensation (paragraphs (3), (4) and (8)).
- 5.145 This article is substantially based on the wording used in various other orders including The A1 Birtley to Coal House Development Consent Order 2021 (article 33), The M42 Junction 6 Development Consent Order 2020 (article 34) and the A30 Chiverton to Carland Cross Development Consent Order 2020 (article 34).
- 5.146 This article is required to enable Highways England to carry out maintenance during the maintenance period and is appropriate as it would impose a lesser burden than permanently acquiring rights to achieve the same purpose.

Article 37 – Crown rights

- 5.147 This article makes clear the position regarding the acquisition of interests in Crown land. No interest in Crown land may be acquired pursuant to the Order without the appropriate Crown authority consenting to any such acquisition.
- 5.148 The drafting is based on recent highway DCO precedent – see for example article 57 of The Lake Lothing (Lowestoft) Third Crossing Order 2020.

Article 38 – Statutory undertakers

- 5.149 This article provides Highways England with statutory authority to acquire rights over land owned by statutory undertakers (i.e. utilities such as electricity and gas companies).
- 5.150 It also allows Highways England to extinguish rights that statutory undertakers have over the Order land and to remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the Land plans (document reference TR010029/APP/2.2) and described in the Book of reference (document reference TR010029/APP/4.3). In practice, it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any Order land is required.
- 5.151 As the land over which this power may be exercised is shown on the Land plans (document reference TR010029/APP/2.2) for the purpose specified in column 2 of the table in Schedule 6 (land in which new rights only etc. may be acquired), and the beneficiaries of such rights are described in the Book of reference, the requirements of regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 5.152 Paragraph (2) restricts Highways England's power to extinguish rights or move apparatus by excluding apparatus in streets. It applies alternative provisions more appropriate to balancing the interests of the various affected parties where the apparatus in question is in a street (article 34).
- 5.153 This article is subject to Schedule 9 (protective provisions) which contains provisions for the protection of certain statutory undertakers to ensure their continued ability to carry out their functions despite the interference with their rights / apparatus required to facilitate the Scheme.
- 5.154 This too is an article with broad precedent (see for example article 34 of The A1 Birtley to Coal House Development Consent Order 2021, article 35 of The M42 Junction 6 Development Consent Order 2020 and article 35 of The A30 Chiverton to Carland Cross Development Consent Order 2020 (see article 35).

Article 39 – Apparatus and rights of statutory undertakers in stopped-up streets

- 5.155 This article concerns statutory undertakers' apparatus (pipes, cables etc.) under streets that are stopped up by the Order. Without the article, the statutory undertaker would not have access to the apparatus, since there will no longer be a right of way along the street.
- 5.156 Under paragraph (2), the statutory undertaker may remove, relocate or replace any affected apparatus of its own volition, or must do so if it is reasonably requested by Highways England.
- 5.157 The statutory undertaker would receive compensation from Highways England for any relocation works and associated costs (paragraph (3)). Paragraphs (4)-(5) discount from this compensation the cost associated with a higher specification in the

replacement apparatus. Paragraph (6) discounts from this compensation the increase in value to the statutory undertaker for having new rather than old (i.e. older than 7 years and 6 months) apparatus.

- 5.158 Paragraph (7) provides that where statutory undertakers are affected by a stopping up in relation to those parts of the project that constitute “major bridge works”, “major transport works” or “major highway works”, as defined in the New Roads and Street Works Act 1991, the cost sharing provisions under that Act will apply instead of the compensation provision in this article.
- 5.159 This article is standard for highways DCOs (see, for example, article 36 of The M42 Junction 6 Development Consent Order 2020 and article 36 of The A30 Chiverton to Carland Cross Development Consent Order 2020).

Article 40 – Recovery of costs of new connections

- 5.160 This article provides that if any statutory undertaker's apparatus is removed and this cuts a service to anyone such that they have to seek a connection to other apparatus, then the reasonable cost of establishing a new service can be claimed from Highways England.

Article 41 – Special category land

- 5.161 The Order seeks to authorise the compulsory acquisition over rights over special category land in order to construct and maintain the Scheme.
- 5.162 Under section 132 of the 2008 Act, an order granting development consent is subject to special parliamentary procedure where it authorises the compulsory acquisition of a right over land to which section 132 applies (i.e. a common, open space or fuel or field garden allotments as set out in Part 5 of the Book of reference (document reference TR010029/APP/4.3). There is an exception to this position if the Secretary of State is satisfied that certain conditions under section 132(2) are met, including where the Secretary of State is satisfied that, when burdened with the Order rights, the land will be no less advantageous to the persons in whom it is vested, other persons (if any) entitled to exercise rights of common over it and the public. Highways England considers that this test is met, for the reasons set out in the Statement of reasons (document reference TR010029/APP/4.1). This position is also recorded in the preamble to the Order, further to the requirement in section 132(2)(b) of the Act.
- 5.163 Article 41 of the Order therefore confirms that any special category land required by Highways England for the purposes of exercising the Order rights will be permanently or, in the case of land to be used on a temporary basis, temporarily discharged from all rights, trusts and incidents to which it was previously subject.
- 5.164 The drafting of this provision reflects that approved by the Secretary of State in The National Grid (Richborough Connection Project) Development Consent Order 2017.

Part 6 – Miscellaneous and General

Article 42 – Application of landlord and tenant law

- 5.165 This article governs the leasing of the Scheme or any part of it by Highways England to any other person. Essentially it allows the terms of the lease to override any statutory provisions relating to landlord and tenant law.

Article 43 - Operational land for purposes of the Town and Country Planning Act 1990

- 5.166 This article means that the land within the Order limits in which Highways England holds an interest shall be treated as “operational land of a statutory undertaker” for the purposes of the Town and Country Planning Act 1990.
- 5.167 The effect of the Order land being treated as operational land is that the person responsible for operating and maintaining the proposed development (Highways England or any transferee of its powers) will benefit from certain permitted development rights as regards that land.
- 5.168 This provision has been approved in made highways DCOs – see for example article 42 of The A30 Chiverton to Carland Cross Development Consent Order 2020.

Article 44 – Defence to proceedings in respect of statutory nuisance

- 5.169 Section 158 of the Act confers statutory authority for the purposes of a defence in statutory nuisance generally, subject to any contrary provision made by a particular DCO. This article is such a contrary provision, amending the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by s158).
- 5.170 The defence is available if the noise relates to:
- (a) the construction or maintenance of the Scheme, and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974, or cannot reasonably be avoided; or
 - (b) the use of the Scheme and cannot reasonably be avoided.
- 5.171 Section 61(9) of the Control of Pollution Act 1974 does not apply if the consent relates to the use of premises by Highways England for the purposes of or in connection with the construction or maintenance of the authorised development.
- 5.172 This article has precedent in recent highway DCOs made, for example article 42 of The M42 Junction 6 Development Consent Order 2020 and article 43 of The A30 Chiverton to Carland Cross Development Consent Order 2020 and is necessary to clarify the scope of the defence of statutory authority arising from the grant of the Order.

Article 45 – Protection of interests

- 5.173 This article gives effect to Schedule 9 (protective provisions), which contains provisions protecting the interests of third parties.
- 5.174 Schedule 9 contains protective provisions for the benefit of electricity, gas, water and sewerage undertakers; electronic communications code network operators and the Environment Agency.
- 5.175 These provisions are based on the standard protective provisions approved by the Secretary of State on other schemes including The M42 Junction 6 Development Consent Order 2020 and The A1 Birtley to Coal House Development Consent Order 2021.
- 5.176 Highways England has sought the views of the undertakers who have interests which may be affected by the Scheme and continues to negotiate with the undertakers to ensure any concerns are dealt with appropriately.

Article 46 – Certification of documents, etc.

- 5.177 This article provides for various plans and other documents (being those listed in Schedule 10 (Documents to be Certified)) to be certified by the Secretary of State.

Article 47 – Service of notices

- 5.178 This article governs how any notices that may be served under the Order shall be deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner.
- 5.179 It is common to have such an article in an order authorising development such as this. The article has precedent in a number of DCOs including The A1 Birtley to Coal House development Consent Order 2021 (article 45) and The M42 Junction 6 Development Consent Order 2020 (article 45)
- 5.180 The provision is useful because it provides clarity on the issue. It is noted that the service of notice provisions under sections 229 and 230 of the Act apply to notices served under that Act rather than notices served under a DCO made under that Act.

Article 48 – Disapplication of legislative provisions

- 5.181 This article provides (in reliance on section 120(5)(a) of the 2008 Act) for the disapplication in relation to the construction or maintenance of the authorised development of certain requirements which would otherwise apply under general legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.
- 5.182 Highways England considers that, in the context of the Scheme being of national significance, the Order should be the predominant authorising instrument for the works. The purpose of the regime created by the 2008 Act is to ensure that DCOs provide a

unified consent for nationally significant infrastructure projects and the undertaker considers that disapplying and modifying certain legislative provisions, as set out in the Order, is proportionate in this context..

- 5.183 A disapplication is sought in respect of the temporary possession provisions of the Neighbourhood Planning Act 2017. This is required as the relevant sections of the Neighbourhood Planning Act 2017 have not been brought into force and subsidiary regulations to that Act have not yet been made, and there is therefore no certainty as to the requirements of the new temporary possession regime. As such, this enables the temporary possession regime created by this Order to be applied.
- 5.184 Highways England has produced a Consents and agreements position statement (document reference TR010029/APP/3.3) as part of this application. This sets out in greater detail Highways England's proposed approach to obtaining the other consents required for the Scheme.

Article 49 – Amendment of local legislation

- 5.185 This article provides (in reliance on section 120(5)(a) of the 2008 Act) (what may be included in order granting development consent) for the disapplication of certain requirements which would otherwise apply under local legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.
- 5.186 Highways England considers that, in the context of the Scheme being of national significance, the Order should be the predominant authorising instrument for the works. The purpose of the regime created by the Act is to ensure that DCOs provide a unified consent for nationally significant infrastructure projects and the undertaker considers that disapplying and amending certain legislative provisions, as set out in the Order, is proportionate in this context

Article 50 – No double recovery

- 5.187 This article makes it clear that compensation is not payable both under this Order and any other enactment, contract or other rule of law. It follows the well-established principle of equivalence that a claimant is compensated for no more and no less than their loss. It has been included in numerous made Orders, see for example article 46 of The M42 Junction 6 Development Consent Order 2020..

Article 51 – Disregard of certain improvements etc.

- 5.188 This article provides for the Lands Chamber of the Upper Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.
- 5.189 It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The article has precedent in The Thames Water Utilities Limited

(Thames Tideway Tunnel) Order 2014, The River Humber Gas Pipeline Replacement Order 2016 and The Lake Lothing (Lowestoft) Third Crossing Order 2020, and TWAOs such as The London Underground (Northern Line Extension) Order 2014 and The Midland Metro (Wolverhampton City Centre Extension) Order 2016.

- 5.190 The wording of this article mirrors section 4 (assessment of compensation) of the Acquisition of Land Act 1981 (in this paragraph "the 1981 Act"). It is necessary to specifically apply the effect of section 4 of the 1981 Act in the Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and the 2008 Act (nor standard Order provisions) does not apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 52 – Set off for enhancement in value of retained land

- 5.191 This article provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.
- 5.192 This article complies with section 126(2) of the 2008 Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The article has precedent in The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and The Lake Lothing (Lowestoft) Third Crossing Order 2020, and TWAOs such as The London Underground (Northern Line Extension) Order 2014 and The Midland Metro (Wolverhampton City Centre Extension) Order 2016.
- 5.193 The principle in this article is established in section 7 of the Land Compensation Act 1961 (effect of certain actual or prospective development of adjacent land in same ownership), which needs to be applied. Sections 120(3) and 120(5)(a) of and Schedule 5 (by virtue of section 120(3)) to the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 53 – Appeals relating to the Control of Pollution Act 1974

- 5.194 This article establishes an appeal process in circumstances where a local authority issues a notice under section 60, or does not grant consent or grants conditional consent under section 61, of the Control of Pollution Act 1974. Its aim is to streamline the appeal process, thereby minimising the potential for unnecessary delay to the scheme.
- 5.195 This was not included in the model provisions but was included in The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order as article 44. It has also been included in other non-highways orders (See for example paragraph 4 of Schedule 17 to The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014).

Article 54 – Arbitration

5.196 This article governs what happens when two or more parties disagree in the implementation of any provision of the Order. The matter is to be settled by arbitration and if the parties cannot agree on who the arbitrator should be, this is decided by the President of the Institution of Civil Engineers.

6 Schedule 1 – Authorised Development

6.1 Schedule 1 sets out the authorised development, which is described in detail in Chapter 2 of the Introduction to the application (document reference TR010029/APP/1.1) and the ES (document reference TR010029/APP/6.1).

7 Schedule 2 - Requirements

7.1 The requirements in Schedule 2 are the equivalents of planning conditions. They reflect the processes and procedures usually employed by Highways England when implementing a scheme such as this. Approvals are to be sought from the Secretary of State, following consultation in some cases with the local planning authority and / or other relevant third party. Again, this is consistent with the processes and procedures employed by Highways England when implementing a scheme such as this.

7.2 The requirements in Schedule 2 provide that the various schemes, details and plans to be approved must reflect the mitigation measures set out in the Register of Environmental Actions and Commitments ("REAC", document reference TR010029/APP/7.3) which contains mitigation commitments made in the ES. This is the mechanism to ensure that environmental mitigation is secured by the Order, and the approach here is consistent with other DCOs which have been made in relation to nationally significant infrastructure projects promoted by Highways England. Further, the requirements provide that the approved schemes, details and plans must be implemented as approved, unless the Secretary of State approves further amendments to them.

7.3 Requirement 1 (*Interpretation*) contains a number of definitions used in Schedule 2.

7.4 Requirement 2 (*Time limits*) provides that the authorised development must not commence later than 5 years from the date of the Order coming into force.

7.5 Requirement 3 (*Detailed Design*) provides that the authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the Engineering drawings and sections (document reference TR010029/APP/2.8 unless otherwise agreed in writing by the Secretary of State, following consultation with the relevant planning authority and relevant highway authority.

7.6 Requirement 4 (*Construction environmental management plan*) requires the preparation of a construction environmental management plan ("CEMP") in consultation with the relevant planning authority, relevant highway authority and Environment Agency and for its approval by the Secretary of State (sub-paragraph (4)).

The CEMP must be based substantially on the outline CEMP prepared as part of the application. The CEMP will fulfil the construction-related objectives and measures as outlined in the REAC and must be written in accordance with ISO14001. The CEMP must also include the 13 management plans set out within the requirement. Following the construction of the authorised development, the CEMP will be replaced by a handover environmental management plan (“HEMP”), which will address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development.

- 7.7 Requirement 5 (*Landscaping*) provides for the preparation of a landscaping scheme covering all hard and soft landscaping works and a landscape and ecology management and monitoring plan (“LEMP”) for approval by the Secretary of State, following consultation with the relevant planning authority, relevant highway authority and Environment Agency. There is a requirement that the proposed landscaping scheme and LEMP must reflect the relevant mitigation measures in the REAC and must be substantially in accordance with the Preliminary Environmental Design (figure 2.2 to the ES document reference TR010029/APP/6.2) and the outline LEMP (appendix 7.16 to the ES document reference TR010029/APP/6.3). Further details of what must be contained in the landscaping scheme are set out in sub-paragraph (3) which includes a visual screening fence to be installed and planting to be undertaken in the interests of visual amenity of the residents of Grove Farm.
- 7.8 Requirement 6 (*Contaminated land and groundwater*) provides that no part of the authorised development is to commence until for that part a contamination risk assessment has been submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency and the relevant planning authority. The assessment must include a number of measures as set out in sub-paragraph (2). The requirement also makes provision for dealing with any contaminated land discovered during construction of the works, in consultation with the relevant planning authority and the Environment Agency.
- 7.9 Requirement 7 (*Protected species*) provides that no part of the authorised development is to commence until for that part, final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected. Provision is made for the submission of a scheme of protection and mitigation measures to be approved by the Secretary of State, where protected species are shown to be present and the application of relevant assessment methods used in the ES show that a significant effect is likely to occur which was not previously identified in the ES.
- 7.10 Requirement 8 (*Surface and foul water drainage*) provides that no part of the authorised development is to commence until written details of a surface and foul water drainage system, reflecting the relevant mitigation measures in the REAC and including means of pollution control, have been prepared in consultation with the relevant planning authority and relevant highway authority and approved in writing by the Secretary of State.
- 7.11 Requirement 9 (*Archaeological remains*) provides that no part of the authorised development is to commence until an archaeological management plan has been submitted to and approved in writing by the Secretary of State following consultation

with the relevant planning authority. The archaeological management plan must be substantially in accordance with the Outline Archaeological Management Plan and reflect the relevant mitigation measures in the REAC..

- 7.12 Requirement 10 (*Traffic management*) provides that no authorised development is to commence until a traffic management plan has been prepared and approved by the Secretary of State following consultation with the relevant highway authority. The plan must be in substantial accordance with the Outline Traffic Management Plan
- 7.13 Requirement 11 (*Trees*) provides that no part of the authorised development is to commence until an arboricultural method statement reflecting the relevant mitigation measures in the REAC and being substantially in accordance with the Outline Arboricultural Method Statement has been submitted and approved but the Secretary of State following consultation with the relevant planning authority.
- 7.14 Requirement 12 (*Approvals and amendments to approved details*) provides that with respect to any requirement that stipulates the authorised development must be carried out in accordance with the approved details, the approved details are taken to include any amendments that may subsequently be approved or otherwise agreed in writing by the Secretary of State.
- 7.15 Requirement 13 (*Fencing*) provides at paragraph (1) that permanent and temporary fencing must be constructed and installed in accordance with the Applicant's Manual of Contract Documents for Highway Works except where agreed otherwise by the Secretary of State following consultation with the relevant highways authority.
- 7.16 Paragraph (2) provides that no part of the new loop road forming Work No. 6 or the new A12 eastbound off-slip forming Work No. 2 is to be opened for traffic until appropriate measures for the control of deer has been installed (following consultation with the relevant planning authority and relevant highway authority).
- 7.17 Requirement 14 (*Operation of M25 Junction 28 Roundabout*) provides that a plan for the proposed operation of traffic signal timings and other related measures, as may be reasonably practicable to prevent any increase in delays on A1023 Brook Street entering the M25 Junction 28 roundabout, arising as a result of the authorised development be prepared and submitted to Secretary of State for approval following consultation with the relevant highway authorities.
- 7.18 Requirement 15 (*Maylands Golf Course accommodation works*) provides that the replacement facilities for Maylands Golf Course forming Work No.32 must be undertaken and available for use prior to the opening to traffic of the new loop road forming Work No.6.
- 7.19 Part 2 of Schedule 2 (Requirements 16-20) provides a procedure for the discharge of requirements by the Secretary of State. It sets out time limits for decisions to be made and makes provision for circumstances where the Secretary of State requires further information to be provided in relation to an application for the discharge of a requirement and includes provision for the maintenance of a register of the documents certified under Schedule 10 and requirements under Part 1 of Schedule 2 to aid

members' of the public understanding of the progress made by Highways England towards discharging requirements.

- 7.20 Paragraph 19 of Schedule 2 provides that any anticipatory steps which Highways England takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps.
- 7.21 Paragraph 20 sets out what is required of Highways England where consultation with a third party is to be undertaken prior to the submission of details to the Secretary of State for approval under the requirements. It provides that Highways England must give the third party in question 28 business days to respond to such consultation and must submit a report to the Secretary of State setting out the consultation undertaken, including copies of any representation made by a consultee about the proposed application (and Highways England's response to it) to inform the details submitted to the Secretary of State for approval.

END

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