

## M25 junction 28 improvement scheme

TR010029

### 9.32 Updated draft Development Consent Order (Tracked Version)

Rule 8 (1)(k)

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

Volume 9

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# Infrastructure Planning

## Planning Act 2008

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

### M25 junction 28 scheme Development Consent Order 202[x ]

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#### 9.32 Updated draft Development Consent Order (Tracked Version)

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<b>Rule Number:</b>	Rule 8(1)(k)
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**202[ ] No. 0000**

**INFRASTRUCTURE PLANNING**

The M25 Junction 28 Development Consent Order 202[ ]

*Made* - - - - 202[ ]

*Coming into force* - - 202[ ]

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

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

The [ ] appointed person(s), having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the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

The Secretary of State, having considered the representations made and not withdrawn, and the report of the [ ] appointed person(s), has decided to make an Order granting development consent for the development described in the application with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

The Secretary of State is satisfied that the special category land (as defined in article 41(3) of this Order), when burdened with any new rights authorised to be compulsorily acquired under this Order, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122 and 123 of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

## PART 1 PRELIMINARY

### **Citation and commencement**

1. This Order may be cited as the M25 Junction 28 Development Consent Order 202[ ] and comes into force on [ ].

### **Interpretation**

2.—(1) In this Order—

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

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

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

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(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524 and S.I. 2017/572.

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1980 c. 66.

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

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

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

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

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

“the 2017 Regulations” means the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017**(f)**;

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

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

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

“the book of reference” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“Cadent” means Cadent Gas Limited (company number 10080864) whose registered office is at Ashbrook Court Prologis Park, Central Boulevard, Coventry CV7 8PE;

“carriageway” has the same meaning as in the 1980 Act;

“CEMP” means the construction environmental management plan;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations which do not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement, consisting of archaeological surveys and evaluations, ecological surveys, installation of amphibian fencing and pre-construction ecological mitigation under licenses, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, site clearance in connection with Work No. 29 and the establishment of construction compounds, and the temporary display of site notices or information, and “commencement” is to be construed accordingly;

“cycle track” has the same meaning as in the 1980 Act**(g)**;

“electronic transmission” means a communication transmitted—

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

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

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003**(h)**;

“the engineering drawings and sections” means the drawings and sections of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the engineering drawings and sections for the purposes of this Order;

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(a) 1981 c. 66.

(b) 1984 c. 27.

(c) 1990 c. 8.

(d) 1991 c. 22.

(e) 2008 c. 29.

(f) S.I. 2017/3.

(g) The definition of “cycle track” (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(h) 2003 c. 21.

“environmental statement” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the environmental statement for the purposes of this Order;

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

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

“the land plans” means the plans of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 7 (limits of deviation);

“maintain” in relation to any part of the authorised development 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 environmental statement, and any derivative of “maintain” is to be construed accordingly;

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

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

“the Outline CEMP” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the Outline CEMP for the purposes of this Order;

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

“permit scheme” means any schemes made under Part 3 of the Traffic Management Act 2004(b) in force at the date in which this Order is made;

“relevant planning authority” means in any given provision of this Order, the planning authority for the area to which the provision relates;

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

“special road” means a highway which is a special road in accordance with section 16 (general provisions as to special roads) of the 1980 Act or by virtue of an order granting development consent;

“the speed limits and traffic regulation plans” means the plans of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the speed limits and traffic regulation plans for the purposes of this Order;

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

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

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“streets, rights of way and access plans” means the plans of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the streets, rights of way and access plans for the purposes of this Order;

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

(b) 2004 c. 18.



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

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

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

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

“UKPN” means Eastern Power Networks Plc (company registration number 02366906) whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;

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

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

“the works plans” means the plans of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the works plans for the purposes of this Order.

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

(3) References in this Order to the creation and acquisition of rights over land includes references to rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the discretion of the undertaker, either—

- (a) to an affected person directly, where that person’s land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in the Order are to be granted for the benefit of the land in which that affected person has an interest at the time of the making of this Order; or
- (b) to any statutory undertaker for the purpose of their undertaking.

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

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

(6) References to any statutory body includes that body’s successor bodies from time to time that have jurisdiction over the authorised development.

(7) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the streets, rights of way and access plans.

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

(9) In this Order, the expression “includes” is to be construed without limitation.

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(a) Section 121A was inserted by section 168(1) of, and paragraph 70 of Part 2 of Schedule 8, to the New Roads and Street Works Act 1991 (c. 22).

(b) Section 10 was amended by section 22(2) of the New Roads and Street Works Act 1991; paragraph 22 of Schedule 2 to the Planning Act 2008; and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

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

## PART 2

### PRINCIPAL POWERS

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

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

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

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

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

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

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

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

#### **Planning permission**

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

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

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

#### **Limits of deviation**

7.—(1) In carrying out and maintaining the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) subject to paragraphs (c) and (d), deviate vertically from the levels of the authorised development shown on the engineering drawings and sections up to a maximum of 1 metre upwards or 1 metre downwards;
- (c) in respect of those parts of Work No. 6 situated between Duck Wood bridge and Grove bridge, deviate vertically from the levels of the authorised development shown on the engineering drawings and sections up to a maximum of 2 metres upwards or 2 metres downwards;

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(a) 1991 c. 59. The definition of “drainage” was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

- (d) in respect of Work No. 18 deviate vertically from the levels of the authorised development shown on the engineering drawings and sections up to a maximum of 1 metre upwards only,

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

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) applies to an application to the Secretary of State for certification under paragraph (1) as though it were an approval required by a requirement under that Schedule.

### **Benefit of Order**

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

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

### **Consent to transfer benefit of Order**

**9.**—(1) Subject to paragraphs (4) and (5), the undertaker may—

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

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

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

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

- (a) Cadent (or a related subsidiary company) for the purposes of Work No. 29;
- (b) UKPN (or a related subsidiary company) for the purposes of Work No. 30; or
- (c) the Environment Agency for the purposes of Work Nos. 23A, 23B, 23C and 23D.

## **PART 3**

### **STREETS**

#### **Application of the 1991 Act**

**10.**—(1) Works constructed or maintained under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the 1980 Act or section 184(b) (vehicle crossings over footways and verges) of that Act.

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

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

- section 56(c) (power to give directions as to timing);
- section 56A(d) (power to give directions as to placing of apparatus);
- section 58(e) (restrictions on works following substantial road works);
- section 58A(f) (restriction on works following substantial street works);
- section 73A(g) (power to require undertaker to re-surface street);
- section 73B(h) (power to specify timing etc. of re-surfacing);
- section 73C(i) (materials, workmanship and standard of re-surfacing);
- section 78A(j) (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A(k) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any alteration, diversion or restriction of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary closure, alteration, diversion and restriction of use of streets), whether or not the alteration, diversion or restriction constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(l) referred to in paragraph (4) are—

- section 54(m) (advance notice of certain works), subject to paragraph (6);
- section 55(n) (notice of starting date of works), subject to paragraph (6);
- section 57(o) (notice of emergency works);
- section 59(p) (general duty of street authority to co-ordinate works);

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- (a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
  - (b) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.
  - (c) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
  - (d) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
  - (e) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.
  - (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
  - (g) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
  - (h) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
  - (i) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
  - (j) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
  - (k) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.
  - (l) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.
  - (m) As also amended by section 49(1) of the Traffic Management Act 2004.
  - (n) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
  - (o) As also amended by section 52(3) of the Traffic Management Act 2004.
  - (p) As amended by section 42 of the Traffic Management Act 2004.

section 60 (general duty of undertakers to co-operate);  
section 68 (facilities to be afforded to street authority);  
section 69 (works likely to affect other apparatus in the street);  
section 75 (inspection fees);  
section 76 (liability for cost of temporary traffic regulation); and  
section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to an alteration, diversion or restriction (as the case may be) required in a case of emergency.

(7) Nothing in article 11 (construction and maintenance of new, altered or diverted streets and other structures)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act and the undertaker is not by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 (street works in England and Wales) of that Act; or
- (b) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 (street works in England and Wales) of the 1991 Act apply.

(8) Subject to paragraphs (3), (9) and (10), permit schemes will apply to the construction and maintenance of the authorised development and will be used by the undertaker in connection with the exercise of any powers conferred by this Part.

(9) For the purposes of this Order a permit under a permit scheme may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions pursuant to the powers conferred by this Order.

(10) Without restricting the undertaker's recourse to any appeal mechanism which may be available under a permit scheme the undertaker may alternatively refer the matter to arbitration under article 54 (arbitration).

(11) Any order which may be made by the Secretary of State under section 74A(2) of the 1991 Act for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012<sup>(a)</sup> will not have effect in relation to the construction or maintenance of the authorised development.

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

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

(2) Where a highway (other than a trunk road or special road) is altered or diverted under this Order, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing between the undertaker and the local highway authority, be maintained by and at the expense of the local highway authority from its completion.

(3) Where a street which is not, and is not intended to be, a highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing,

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(a) S.I. 2012/425.

be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(4) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road or special road) over a trunk road or special road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority unless otherwise agreed in writing between the undertaker and the local highway authority, and the remainder of the bridge, including the waterproofing membrane, and structure below, must be maintained by and at the expense of the undertaker.

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

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

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

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

### **Access to works**

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

### **Temporary closure, alteration, diversion and restriction of use of streets**

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

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

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

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

(4) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily alter, divert or restrict the use of any street without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

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

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

### **Use of private roads**

**14.**—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction and maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

### **Permanent stopping up of streets**

**15.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in column (1) of Parts 1 and 2 of Schedule 3 (permanent stopping up of streets) to the extent specified and described in column (2) of that Schedule.

(2) No street specified in column (1) of Parts 1 and 2 of Schedule 3 is to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, is open for use and 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 is subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

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

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

(5) This article is subject to article 39 (apparatus and rights of statutory undertakers in stopped up streets).

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

**16.—(1)** On the date on which the relevant part of the authorised development is completed and open for traffic—

- (a) the roads described in Part 1 (special roads) of Schedule 4 (classification of roads, etc.) will be—
  - (i) special roads for the purpose of any enactment or instrument which refers to highways classified as special roads;
  - (ii) trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads;
  - (iii) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 to the 1980 Act;and the undertaker will be the highway authority for those roads;
- (b) the roads described in Part 2 (Transport for London network) of Schedule 4 (classification of roads, etc.) will be—
  - (i) GLA Roads as if they had become so by virtue of an order under section 14B (order of the authority changing what are GLA roads) of the 1980 Act specifying that date as the date on which they were to become GLA roads; and
  - (ii) Transport for London will be the highway authority for those roads;
- (c) the roads described in Part 3 (trunk roads) of Schedule 4 (classification of roads, etc.) will be trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads; and
- (d) the public rights of way described in Part 6 (other public rights of way) of Schedule 4 (classification of roads, etc.) will be of the types described in column (1) to the extent described in column (2).

(2) Subject to paragraph (3) the undertaker may vary the classification of the roads, or any part of those roads, provided for in paragraph (1) and such variation may provide for any trunk road comprised in the authorised development and referred to in paragraph (1)(c) to be classified as a special road under paragraph (1)(a).

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

- (a) given not less than 4 weeks' notice in writing of the undertaker's intention to do so to the chief officer of police and to the local highway authority in whose area the road is situated; and
- (b) published a notice, declaring the date on which that road or part of it is to be classified, not less than 7 days before that date, in at least one local newspaper circulating in the area in which the road, or as the case may be, the relevant part of it is situated and in the London Gazette.

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

(5) From the date on which the roads specified in Part 4 (speed limits) of Schedule 4 (classification of roads, etc.) are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(6) The application of paragraph (1) and (5) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

(7) In this article, and in Schedule 4 (classification of roads, etc.)—

“the GLA” means the Greater London Authority;



“GLA Road” has the same meaning as in the 1980 Act; and

“Transport for London” means the body corporate established under section 154 of the 1999 Act, of 5 Endeavour Square, London, E20 1JN.

## Clearways

17.—(1) From the date on which the roads described in column (2) of Part 5 (traffic regulation measures (clearways)) of Schedule 4 (classification of roads, etc.) and identified in the corresponding row of column (3) of that Part as to become a clearway, are open for traffic, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) may apply—

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

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

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

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

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(a) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

(b) 1991 c. 56.

(c) 2000 c. 26.

(d) 2004 c. 18.

## Traffic regulation

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

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

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

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

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

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

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

- (a) given not less than—
  - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
  - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

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

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated, as an order under section 32(a) (power of local authorities to provide parking spaces) of the 1984 Act,and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).

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

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(a) 2004 c. 18.

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

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

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

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

## PART 4 SUPPLEMENTAL POWERS

### Discharge of water

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

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

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

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

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

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

(5) The undertaker must not, in carrying out or maintaining the works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river subject to the works that are authorised under this Order.

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

(7) Subject to article 48(1)(a) (disapplication of legislative provisions), nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

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(a) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154.

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

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

### **Powers in relation to watercourses**

**20.** Subject to Schedule 9 (protective provisions), the undertaker may, for the purpose of or in connection with the carrying out and maintenance of the authorised development, regardless of any interference with any public or private rights—

- (a) temporarily alter, interfere with, occupy and use the banks, bed, waters and walls of a watercourse; and
- (b) construct, place, maintain and remove temporary works and structures within the banks, bed, waters and walls of a watercourse,

in such manner and to such extent as may appear to it to be necessary or convenient.

### **Protective work to buildings**

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

(2) Protective works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage, and place on, leave on, and remove from the building any apparatus and equipment for use in connection with the survey.

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

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it),
- (c) and if it is reasonably required, the undertaker may take possession, or exclusive possession, of the building and any land or part thereof for the purpose of carrying out the protective works.

(5) Before exercising—

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

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(a) 1991 c. 57.

(d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 54 (arbitration).

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

(8) Where—

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

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

(9) Without affecting article 50 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (compulsory acquisition provisions) of the 2008 Act.

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

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

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

### **Authority to survey and investigate the land**

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

- (a) survey or investigate the land (including any watercourses, ground water, static water bodies or vegetation on the land);
- (b) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes, boreholes and other investigations in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and ground water and remove soil and water samples and discharge water from sampling operations onto the land;

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(a) Section 152 was amended by S.I. 2009/1307.

- (c) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes and other investigations as may be necessary to investigate the extent and nature or underground structures, foundations, plant or apparatus;
- (d) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes for such purposes; and
- (e) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and boreholes.

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

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

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

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

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

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

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

that authority will be deemed to have granted consent.

(7) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the entry onto land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

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

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

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

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

(5) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997<sup>(a)</sup> and includes important hedgerows.

(6) Development consent granted by this Order is to be treated as planning permission pursuant to Part 3 of the 1990 Act for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012<sup>(b)</sup>.

### **Trees subject to tree preservation orders**

**24.**—(1) The undertaker may fell or lop any tree described in Schedule 5 (trees subject to tree preservation orders) or cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

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

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

- (a) the undertaker will do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act will not apply.

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

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

## **PART 5**

### **POWERS OF ACQUISITION AND POSSESSION OF LAND**

#### **Compulsory acquisition of land**

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

(2) This article is subject to paragraph (2) of article 28 (compulsory acquisition of rights and imposition of restrictive covenants) and article 35 (temporary use of land for carrying out the authorised development).

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

**26.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981<sup>(c)</sup> are incorporated in this Order subject to the modification that—

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

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(a) S.I. 1997/1160.

(b) S.I. 2012/605.

(c) 1981 c. 67.

(d) for “compulsory purchase order” substitute “this order”.

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

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by this Order; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 35 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights and imposition of restrictive covenants**

**28.**—(1) Subject to paragraphs (2) to (5), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 25 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 6 (land in which new rights only etc. may be acquired) the undertaker’s powers of compulsory acquisition under article 25(1) are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 6.

(4) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 6 for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 6 as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 6 as are required for the benefit of any other statutory undertaker or any other person.

(5) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land, the undertaker is not required to acquire a greater interest in that land.

(6) Schedule 7 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

### **Private rights over land**

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



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

whichever is the earlier.

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

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

whichever is the earlier.

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

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 38 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of the right or the imposition of the restrictive covenant over or affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,
 that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

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

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

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

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(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981, section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and sections 186 (1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

(b) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

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

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

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

(2) In section 4A(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118(c) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 27 (time limit for exercise of authority to acquire land compulsorily) of the M25 Junction 28 Development Consent Order 202[ ](d)”.

(3) In section 11A(e) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 27 (time limit for exercise of authority to acquire land compulsorily) of the M25 Junction 28 Development Consent Order 202[ ]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 33(3) (acquisition of subsoil or airspace only) of the M25 Junction 28 Development Consent Order 202[ ], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29, insert—

## **“PART 4**

### **INTERPRETATION**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under articles 21 (protective work to buildings), 35 (temporary use of land for carrying out the authorised development) or 36 (temporary use of land for maintaining the authorised development) of the M25 Junction 28 Development Consent Order 202[ ].”.

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

**31.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), in subsection (1), omit the words “in themselves”.

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

- 
- (a) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).
  - (b) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.
  - (c) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).
  - (d) S.I. 202[ ]/[ ].
  - (e) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

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

(5) In section 4 (execution of declaration), for subsection (1) substitute—

“(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are authorised to acquire for the benefit of a third party in the third party in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 below is completed).”.

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

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

(8) In section 5B(1)(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008 the five year period mentioned in article 27 (time limit for exercise of authority to acquire land compulsorily) of the M25 Junction 28 Development Consent Order 202[ ]”.

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

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

(11) In section 8 (vesting, and right to enter and take possession), after subsection (3), insert—

“(4) In this section references to the acquiring authority include any third party referred to in section 4(1).”.

(12) In section 10 (acquiring authority’s liability arising on vesting of the land), in subsection (1), after “vested in an acquiring authority” insert “or a third party”.

(13) In section 11 (recovery of compensation overpaid), for subsection (1) substitute—

“(1) This section applies where after the execution of a general vesting declaration a person (“the claimant”) claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.”.

(14) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(15) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 30 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

## **Modification of the 2017 Regulations**

**32.**—(1) Schedule 1 to the 2017 Regulations is modified as follows.

(2) In paragraph (3) of Form 1, after “from the date on which the service of notices required by section 6 of the Act is completed”, insert—

- 
- (a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016.
  - (b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
  - (c) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016.
  - (d) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.
  - (e) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016.
  - (f) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

“(1A) The [insert land or rights or both] described in Part [ ] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan annexed hereto vests in the third parties in question as from the end of the period of [insert period of 3 months or longer] from the date on which the service of notices required by section 6 of the Act is completed.”.

(3) References in Form 2 to “in themselves” is substituted with “in themselves and any identified third parties”.

(4) In paragraph (b) of the notes on use of Form 2—

- (a) after “Insert the name of the authority” insert “and, where the context so requires, a reference to third parties”; and
- (b) omit “Thereafter rely on that definition wherever “(b)” appears in the text.”.

### **Acquisition of subsoil or airspace only**

**33.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 25 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 30 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(a) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

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

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

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, will be

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(a) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

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

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

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

**35.**—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 27 (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (1) of Schedule 8 (land of which temporary possession only may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any electric line, electrical plant, apparatus, buildings, landscaping and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

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

(3) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

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

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of two years beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 8; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of two years beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

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

- (a) replace a building removed under this article;

- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (e) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

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

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

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

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

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

(11) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

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

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

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

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

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

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

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

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(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

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

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker is not required to restore the land to a condition better than the relevant land was in before temporary possession was taken.

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

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

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

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

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

(12) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

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

### **Crown rights**

**37.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.

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

### **Statutory undertakers**

**38.**—(1) Subject to the provisions of Schedule 9 (protective provisions), article 28 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, acquire existing rights, create new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over or within the Order land.

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

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 39 (apparatus and rights of statutory undertakers in stopped up streets) of this Order.

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

**39.**—(1) Where a street is stopped up under article 15 (permanent stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 15 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

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

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

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

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

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

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

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



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

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

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

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

(8) In this article—

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

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

### **Recovery of costs of new connections**

**40.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 38 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 38, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 39 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

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

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

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(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

### **Special category land**

**41.**—(1) So much of the special category land as is required for the purposes of the exercising by the undertaker of the Order rights will be discharged from all rights, trusts and incidents to which it was previously subject but only in so far as their continuance would be inconsistent with the exercising by the undertaker of the Order rights.

(2) So far as the temporary use of land under article 35 (temporary use of land for carrying out the authorised development) is concerned, then the discharge in paragraph (1) is only for such time as the land is being used under that article.

(3) In this article—

“Order rights” means the rights and powers exercisable over the special category land by the undertaker under article 28 (compulsory acquisition of rights and imposition of restrictive covenants) and article 35 (temporary use of land for carrying out the authorised development);

“the special category land” means the land identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the plan entitled “special category land plans”; and

“special category land plans” means the plans of that description listed in Schedule 10 (documents to be certified) and certified as the special category land plans by the Secretary of State for the purposes of this Order.

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

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

**42.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### **Operational land for purposes of the Town and Country Planning Act 1990**

**43.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

## **Defence to proceedings in respect of statutory nuisance**

**44.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(b) of that Act if—

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

(2) For the purposes of paragraph (1), compliance with the controls and measures relating to noise described in the CEMP will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

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

## **Protection of interests**

**45.** Schedule 9 (protective provisions) to the Order has effect.

## **Certification of documents, etc.**

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

(2) Where any plan or document set out in Schedule 10 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

## **Service of notices**

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

- (a) by post;

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(a) 1990 c. 43. There are amendments to this subsection which are not relevant to this Order.

(b) Subsection (2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection which are not relevant to this Order.

(c) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to this subsection which are not relevant to this Order.

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

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

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

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

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

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

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

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

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

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

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

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

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

## Disapplication of legislative provisions

**48.**—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction or maintenance of the authorised development—

- (a) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(a)</sup> in relation to the carrying on of a flood risk activity;
- (b) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991<sup>(b)</sup>;
- (c) section 30 (authorisation of drainage works in connection with a ditch) of the Land Drainage Act 1991;
- (d) section 32 (variation of awards) of the Land Drainage Act 1991;
- (e) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991; and
- (f) the provisions of any byelaws made under, or having effect as if made under, paragraph 5, 6 or 6A of Schedule 25 (bye-law making powers of the appropriate agency) to the Water Resources Act 1991.

(2) In paragraph (1)(a) “flood risk activity” has the meaning given to that term in the Environmental Permitting (England and Wales) Regulations 2016.

(3) The provisions of the Neighbourhood Planning Act 2017<sup>(c)</sup>, insofar as they relate to temporary possession of land under articles 35 (temporary use of land for carrying out the authorised development) and 36 (temporary use of land for maintaining the authorised development) of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 36(13), any maintenance of any part of the authorised development.

(4) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010<sup>(d)</sup> any building comprised in the authorised development is to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

## Amendment of local legislation

**49.**—(1) The following local enactments and local byelaws, and any byelaws or other provisions made under any of those enactments or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order—

- (a) sections 20, 22, 25 of an Act for inclosing and dividing the Commons and Waste Lands in the Parishes of Hornchurch, Romford, and Havering, within the Manor and Liberty of Havering-atte-Bower, in the County of Essex 1811<sup>(e)</sup>;
- (b) section 25 of an Act for inclosing Lands in the Manor of Great Warley in the several Parishes of Great Warley and Shenfield in the County of Essex 1838<sup>(f)</sup>;
- (c) sections 13 and 15 of the South Essex Waterworks Act 1861<sup>(g)</sup>;

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(a) S.I. 2016/1154.

(b) 1991 c. 59.

(c) 2017 c. 20.

(d) S.I. 2010/948.

(e) 1811 c. clxxxvii.

(f) 1838 c. 20.

(g) 1861 c. cxxxvii.

- (d) section 53 of the Brentwood Gas Act 1905(a);
- (e) sections 41 and 44 of the London County Council (General Powers) Act 1907(b);
- (f) section 15 of the British Transport Commission Act 1952(c);
- (g) sections 7 and 11 of the Essex River and South Essex Water Act 1969(d);
- (h) sections 6 and 8 of the Essex Act 1987(e);
- (i) byelaws of the Rural District Council of Romford as to the nuisances in connection with the removal of offensive noxious matters 1899;
- (j) byelaws of the Rural District Council of Romford with respect to the Drainage of Buildings 1908;
- (k) byelaw 4 of the Essex County Council byelaws for the Good Rule and Government 1938;
- (l) byelaws 4, 6 and 7 of the Urban District of Hornchurch byelaws for Nuisances 1938;
- (m) byelaws of the Urban District Council of Hornchurch as to removal through streets of offensive or noxious matter or liquid 1938; and
- (n) byelaws 4, 6, 7, 9, 14, 16 and 17 of the Thames Region Land Drainage Byelaws 1981.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

### **No double recovery**

**50.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract, or any rule of law, or under two or more different provisions of this Order.

### **Disregard of certain improvements etc.**

**51.—**(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or

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(a) 1905 c. lix.  
 (b) 1907 c. clxxv.  
 (c) 1952 c. xxxiv.  
 (d) 1969 c. xlix.  
 (e) 1987 c. xx.

- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

### **Set off for enhancement in value of retained land**

**52.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 28 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

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

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

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority and affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;

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(a) 1974 c. 40.

- (d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

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

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

(5) Any further information required under paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

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

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

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

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

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

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

(12) Except where a direction is given under paragraph (13) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(14) In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Ministry for Housing, Communities and Local Government or such guidance as may from time to time replace it.



**Arbitration**

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

Date

*Name*  
Title  
Department for Transport

# SCHEDULES

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

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

#### **HIGHWAY WORKS – A12 CARRIAGEWAY**

##### **In the London Borough of Havering and the Borough of Brentwood**

**Work No. 1** — Improvements to a stretch of the existing A12 eastbound carriageway, along a length of approximately 1,800 metres, commencing at a location situated approximately 15 metres to the west of Woodstock Avenue and continuing eastwards to a point situated approximately 160 metres to the west of the existing Wigley Bush Lane overbridge, as shown on sheets 1 and 2 of the works plans.

##### **In the London Borough of Havering**

**Work No. 2** — Realignment of the existing A12 eastbound off-slip, along a length of approximately 760 metres, inclusive of the diverge, commencing at a location situated approximately 265 metres west of the existing off-slip, and terminating at the existing circulatory carriageway of the M25 Junction 28 roundabout, as shown on sheet 1 of the works plans. Work No. 2 includes a footway within the verge, a new bridge (Maylands bridge) to carry the realigned A12 eastbound off-slip over Work No. 6 and the extension of the existing Grove culvert not exceeding 80 metres in length, beneath the realigned A12 eastbound off-slip.

##### **In the Borough of Brentwood**

**Work No. 3** — Improvements to a stretch of the existing A12 eastbound on-slip, along a length of approximately 550 metres, commencing at the existing on-slip offside kerb at the circulatory carriageway of the M25 Junction 28 roundabout and terminating at a location situated approximately 160 metres to the west of the existing Wigley Bush Lane Overbridge, as shown on sheets 1 and 2 of the works plans.

##### **In the London Borough of Havering**

**Work No. 4** — Improvements to the existing A12 westbound carriageway, at a location situated approximately 230 metres east of Maylands Way, as shown on sheet 1 of the works plans comprising the installation of new traffic signs either side of the carriageway.

#### **HIGHWAY WORKS - M25 JUNCTION 28 ROUNDABOUT**

##### **In the London Borough of Havering**

**Work No. 5** — Improvements to the existing circulatory carriageway of the M25 Junction 28 roundabout, along a length of approximately 610 metres, at the location shown on sheet 1 of the works plan.

#### **HIGHWAY WORKS – NEW M25 JUNCTION 28 LOOP ROAD**

##### **In the London Borough of Havering**

**Work No. 6** — A new loop road, approximately 1,450 metres in length, inclusive of the diverge and merge, connecting the existing M25 northbound carriageway and the existing A12 eastbound carriageway, commencing at the northern end of the Brook Street Viaduct and terminating at the

western end of Poplars West bridge; running generally northwards, passing over the proposed M25 northbound on-slip (Work No. 8), then looping west of the M25 carriageway, passing over the realigned Weald Brook (Work No. 23C), then looping southwards, passing beneath Work No. 2, passing over the Weald Brook and the Ingrebourne River before tying into the existing A12 eastbound carriageway at the existing Poplar West bridge, as shown on sheet 1 of the works plans. Work No. 6 includes—

- (a) a new bridge, labelled ‘Alder Wood bridge’ on sheet 1 of the works plans, to carry Work No. 6 over the M25 northbound on-slip (Work No. 8);
- (b) a new underpass, labelled ‘Grove Farm Underpass’ on sheet 1 of the works plans, to carry Work No. 6 over a proposed access track (Work No. 14);
- (c) a new bridge, labelled ‘Duck Wood bridge’ on sheet 1 of the works plans, to carry Work No. 6 over the realigned Weald Brook (Work No. 23C); and
- (d) a new bridge, labelled ‘Grove bridge’ on sheet 1 of the works plans, to carry Work No. 6 over the realigned Weald Brook (Work No. 23B) and Ingrebourne River (Work No. 23D).

## **HIGHWAY WORKS – M25 CARRIAGEWAY**

### **In the London Borough of Havering and the Borough of Brentwood**

**Work No. 7** — Improvements to a stretch of the existing M25 northbound carriageway, commencing at the northern end of the Brook Street viaduct on the M25 mainline and continuing north westwards for a length of approximately 1,250 metres as shown on sheets 1 and 3 of the works plans.

### **In the London Borough of Havering**

**Work No. 8** — Realignment of a stretch of the existing M25 northbound on-slip, along a length of approximately 1,230 metres, inclusive of the merge, including the extension of two existing culverts, commencing at the existing circulatory carriageway of the M25 Junction 28 roundabout and terminating at a point approximately 1,180 metres north of the existing Brook Street Viaduct, as shown on sheets 1 and 3 of the works plans.

## **M25 GANTRIES AND SIGNAGE**

### **In the London Borough of Havering**

**Work No. 9** — A new gantry, or similar signage, over the M25 carriageway, at a location situated approximately 215 metres north of the existing Brook Street Viaduct of the M25 junction 28 roundabout, as shown on sheet 1 of the works plans.

**Work No. 10** — A new gantry, or similar signage, over the M25 carriageway, at a location situated approximately 1,272 metres north of the existing Brook Street Viaduct as shown on sheet 3 of the works plans.

**Work No. 11** — A new gantry, or similar signage, over the M25 carriageway, at a location situated approximately 10 metres north of the Brook Street Viaduct, as shown on sheet 1 of the works plans.

## **HIGHWAY WORKS – M25 NORTHBOUND OFF-SLIP**

### **In the London Borough of Havering and the Borough of Brentwood**

**Work No. 12** — Improvements to the existing M25 motorway northbound off-slip, along a length of approximately 166 metres, commencing at a location situated approximately 125 metres north of the Poplar Railway bridge and continuing north westwards until the existing circulatory carriageway of the M25 Junction 28 roundabout, as shown on sheet 1 of the works plans.

## **OTHER HIGHWAYS, PUBLIC RIGHTS OF WAY AND PRIVATE MEANS OF ACCESS**

### **In the London Borough of Havering**

**Work No. 13** — A new private means of access, approximately 600 metres in length, commencing at Work No. 19B and continuing in a north westerly direction, along the outer alignment of Work No. 6 and terminating in a north-eastwards and, separately, north-westwards direction at a location south of Work No. 24A and west of the proposed Duck Wood bridge, as shown on sheet 1 of the works plans.

**Work No. 14** — A new private means of access approximately 519 metres in length, commencing at a point situated approximately 100 metres north of the existing Grove Farm access, passing through the proposed Grove Farm Underpass (Work No. 6) and terminating approximately 125 metres north of the aforementioned Underpass in a westwards and, separately, southwards direction, as shown on sheets 1 and 3 of the works plans. Work No. 14 includes a secondary section of private means of access, approximately 30 metres in length and branching westwards from a location to the northwest of the proposed Grove Farm Underpass (Work No. 6) and terminating in a northwards and, separately, westwards direction as shown on sheet 1 of the works plans.

**Work No. 15** — Alterations to the existing egress from Grove Farm, approximately ~~8750~~ metres in length, commencing at a point situated ~~immediately~~ to the north west of the existing Grove Farm residential property and terminating at Work No. 2, as shown on sheet 1 of the works plans.

**Work No. 16** — Alterations to the existing access and egress serving land situated to the immediate north of the A12, commencing at a new junction with the new private means of access (Work No. 19A), at a point situated 42 metres from the junction of the aforementioned new private means of access and the A12, and continuing northwards for a distance of approximately 35 metres in length as shown on sheet 1 of the works plans.

## **EARTH WORKS**

### **In the London Borough of Havering**

**Work No. 17** — Not used

**Work No. 18** — Construction of an environmental bund over an area of land approximately 25,565 square metres in area, situated alongside the new loop road (Work No. 6) and to the north of Work No. 19B as shown on sheet 1 of the works plans.

## **DRAINAGE WORKS**

### **In the London Borough of Havering**

**Work No. 19A** — A new private means of access, approximately 290 metres in length, commencing at a new junction with the A12 eastbound carriageway situated at a location lying approximately 50 metres to the east of the existing access to Maylands Golf Course and terminating at Work No. 19B, as shown on sheet 1 of the works plans.

**Work No. 19B** — A new attenuation pond, together with associated private means of access and drainage facilities, approximately 2,600 square metres in area, and situated at a location to the north of Work No. 2 and west of Work No. 6, as shown on sheet 1 of the works plans.

**Work No. 20A** — A new private means of access, approximately 65 metres in length, commencing at a location situated approximately 110 metres south west of Duck Wood bridge and terminating at Work No. 20B, as shown on sheet 1 of the works plans.

**Work No. 20B** — A new attenuation pond, together with associated private means of access and drainage facilities, approximately 7,000 square metres in area, and situated at a location to the west of the Weald Brook, as shown on sheet 1 of the works plans.

**Work No. 21A** — A new private means of access, approximately 40 metres in length, commencing at a location situated 30 metres south of Grove Farm Underpass and terminating at Work No. 20B as shown on sheet 1 of the works plans.

**Work No. 21B** — A new attenuation pond, together with associated private means of access and drainage facilities, approximately 4,200 square metres in area, and situated at a location to the north east of the Weald Brook, as shown on sheet 1 of the works plans.

**Work No. 22** — A new drainage outfall pipe, approximately 50 metres in length, between Work No. 21B and Weald Brook, as shown on sheet 1 of the works plans.

## **REALIGNMENT OF WATERCOURSES**

### **In the London Borough of Havering**

**Work No. 23A** — Realignment of a stretch of the Weald Brook, along a length of approximately 85 metres, commencing at a location situated to the immediate east of Work No. 20B as shown on sheet 1 of the works plans.

**Work No. 23B** — Realignment of a stretch of the Weald Brook, along a length of approximately 250 metres, commencing at a location situated within the proposed loop road (Work No. 6), and passing beneath Work No. 2 at the location of the proposed new Maylands bridge and beneath Work No. 6 at the location of the proposed Grove bridge, as shown on sheet 1 of the works plans.

**Work No. 23C** — Realignment of a stretch of the Weald Brook, along a length of approximately 40 metres, at a location situated beneath Work No. 6 at the location of the proposed Duck Wood bridge, as shown on sheet 1 of the works plans.

**Work No. 23D** — Realignment of a stretch of the Ingrebourne River, along a length of approximately 200 metres, commencing at a point situated north of the A12 (Work No. 1), beneath the proposed Grove bridge on Work No. 6, and terminating at the location of the Grove Culvert extension, proposed as part of Work No. 2, as shown on sheet 1 of the works plans.

## **ENVIRONMENTAL MITIGATION AND COMPENSATION**

### **In the London Borough of Havering**

**Work No. 24A** — A new flood compensation area, approximately 2,100 square metres in area, and situated to the immediate northwest of Work No. 6, as shown on sheets 1 and 3 of the works plans.

**Work No. 24B** — A new flood compensation area, approximately 7,800 square metres in area, and situated within the proposed loop road (Work No. 6), to the west of the realigned Weald Brook (Works Nos. 23A and 23B), as shown on sheet 1 of the works plans.

**Work No. 25** — Environmental works, including the construction of ecological compensation areas, approximately 90,000 square metres in area, on land situated to the west and northwest of Work No. 6, as shown respectively on sheets 1 and 3 of the works plans.

**Work No. 26** — A new ecological mitigation area, approximately 3,500 square metres in area, on land situated between Work No. 2 and Work No. 6, as shown on sheet 1 of the works plans.

**Work No. 27** — A new pond, for environmental mitigation purposes, approximately 500 square metres in area, and situated at a location to the north of Work No. 28 as shown on sheet 3 of the works plans.

**Work No. 28** — A new pond, for environmental mitigation purposes, approximately 500 square metres in area, and situated at a location to the south of Work No. 27 and west of Work No. 24A as shown on sheet 3 of the works plans.

## UTILITIES

### In the London Borough of Havering

**Work No. 29** — Diversion of an existing underground Cadent high pressure (33bar) gas pipeline, through installation of a new underground high pressure (33bar) gas pipeline, approximately 860 metres in length, commencing at a point situated west of Weald Brook and south of the A12 (Work No. 1) and terminating north of Work No. 24A as shown on sheets 1 and 3 of the works plans.

**Work No. 30** — Diversion underground of an existing UKPN 11 kV overhead electric line, approximately 890 metres in length, commencing at a point situated at the existing UKPN sub-station north of the existing Grove Farm access as shown on sheet 1 of the works plans and terminating adjacent to the southern proposed culvert extension to the west of the M25 northbound carriageway as shown on sheet 3 of the works plans.

**Work No. 31** — Works associated with the provision of ducting and cabling between the proposed new gantry (Work No. 10) and the existing motorway communications cabinet on the M25 northbound, situated at a location approximately 825 metres northwards of the existing M25 Northbound on-slip at M25 Junction 28, as shown on sheet 3 of the works plans.

## ACCOMMODATION WORKS

**Work No. 32** — Accommodation works to provide replacement facilities for Maylands Golf Course, over an area of land approximately 54,578 square metres in area and situated at a location to the west of Work No. 29 as shown on sheets 1 and 3 of the works plans.

In connection with the construction of any of the works mentioned above, such ancillary development within the Order limits which does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement, consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any kerb, footway, cycle track or verge within the street; and altering the level of any such kerb, footway, cycle track, or verge within the street;
- (b) works required for the strengthening, improvement, protection, repair, maintenance or reconstruction of any street;
- (c) works for the strengthening, alteration or demolition of any existing bridge, building or structure;
- (d) the remediation of any carriageway made redundant by the stopping up of any highway or means of access;
- (e) ramps, means of access (including private means of access), footpaths, footways, cycle tracks, non-motorised links and crossing facilities;
- (f) embankments, cuttings, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, barriers (including road restraint, safety barriers), parapets, wing walls, new and replacement highway lighting, roadside signage, fencing and drainage works (including carrier drains, filter drains, outfalls, pumping stations, culverts headwalls, ditches, attenuation earthwork ditches, soakaways, pollution control devices, and catch pits);
- (g) the erection of highway boundary fencing, including gates, anti-dazzle fencing and the realignment of existing highway fencing;
- (h) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
- (i) works to place, alter, divert, relocate, remove or maintain street furniture, apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, hydrants, cables, ducts and associated cabinets, CCTV, radar and traffic detection equipment and lights;

- (j) works to alter the course of, or otherwise interfere with a watercourse;
- (k) landscaping, noise barriers, works associated with the provision of ecological mitigation, and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (l) works for the benefit or protection of land affected by the authorised development;
- (m) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths), earthworks (including soil stripping and storage and site levelling) and remediation of any contamination;
- (n) the felling of trees and hedgerows;
- (o) the establishment of construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, hoarding and perimeter enclosure, security fencing, construction-related buildings, welfare facilities, temporary worker accommodation facilities for vehicle recovery crew, vehicle recovery, construction lighting, haulage roads; borrow pits and other buildings, machinery, apparatus, works and conveniences;
- (p) the provision of other works including pavement works, carriageway surfacing, kerbing and paved areas works, signing, signals, the modification or demolition of existing gantries, new and replacement highway safety barriers, road markings, traffic management measures including temporary roads, temporary earthworks and construction site accesses and such other works as are associated with the construction of the authorised development; and
- (q) such other works, working sites storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development.

## SCHEDULE 2 REQUIREMENTS

Article 3

### PART 1 REQUIREMENTS

#### **Interpretation**

**1.** In this Schedule—

“completion or completed” means the relevant parts of the authorised development are completed and fully open to traffic;

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

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(b);

“Ground Investigation Report” means the Ground Investigation Report referred to in Schedule 10 (documents to be certified);

“HEMP” means the Handover Environmental Management;

“LEMP” means the Landscape and Ecology Management and Monitoring Plan;

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authority for England or any equivalent replacement published for that document;

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(c);

“Outline Arboricultural Method Statement” means the Outline Arboricultural Method Statement referred to in Schedule 10 (documents to be certified);

“Outline Archaeological Management Plan” means the Outline Archaeological Management Plan referred to in Schedule 10 (documents to be certified);

“Outline LEMP” means the Outline Landscape and Ecology Management and Monitoring Plan annexed to the Environmental Statement referred to in Schedule 10 (documents to be certified);

“Outline Traffic Management Plan” means the Outline Traffic Management Plan referred to in Schedule 10 (documents to be certified);

“Preliminary Environmental Design” means the Preliminary Environmental Design referred to in Schedule 10 (documents to be certified); and

“REAC” means the Register of Environmental Actions and Commitments referred to in Schedule 10 (documents to be certified).

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(a) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 (c. 37).

(b) S.I. 2017/1012.

(c) 1981 c. 69.



## **Time limits**

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

## **Detailed design**

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

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

## **Construction Environmental Management Plan**

4.—(1) No part of the authorised development is to commence until a CEMP, substantially in accordance with the Outline CEMP, for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, relevant highway authority and the Environment Agency to the extent that it relates to matters relevant to its functions.

(2) The CEMP must be written in accordance with ISO14001 and, so far as is relevant to that part of the authorised development, must reflect the relevant mitigation measures set out in the REAC, and must include the following management plans—

- (a) pollution prevention plan;
- (b) dust noise and nuisance management plan;
- (c) ecological habitats and species plan;
- (d) invasive species management plan;
- (e) surface water management plan;
- (f) contaminated land management plan;
- (g) soil handling management plan;
- (h) material management plan;
- (i) site waste management plan;
- (j) material, waste storage and refuelling plan;
- (k) energy and resource use management plan;
- (l) emergency response plan; and
- (m) community engagement plan.

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

(4) A HEMP must be developed and completed by the end of the construction, commissioning and handover stage of the authorised development, in accordance with the process set out in the approved CEMP.

(5) The authorised development must be operated and maintained in accordance with the HEMP.

## **Landscaping**

5.—(1) The authorised development must be landscaped in accordance with a landscaping scheme and LEMP which set out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, relevant highway authority and the Environment Agency on matters related to its functions.

(2) The landscaping scheme and LEMP must reflect the relevant mitigation measures set out in the REAC and be substantially in accordance with the Preliminary Environmental Design and the Outline LEMP.

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels;
- (e) implementation timetables for all landscaping works;
- (f) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged; and
- (g) a permanent visual screening fence to be installed and planting to be undertaken in the interests of the visual amenity of the residents of Grove Farm.

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

## **Contaminated land and groundwater**

6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement or in the Ground Investigation Report, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority, relevant highway authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

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

(3) Remediation must be carried out in accordance with the approved scheme.

## **Protected species**

7.—(1) 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 by that part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;

- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and
- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in sub-paragraph (2) prior to submission to the Secretary of State for approval, except where a suitably qualified and experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation by the undertaker with Natural England, and under any necessary licences.

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

**8.**—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the relevant mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its function.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority on matters related to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

### **Archaeological remains**

**9.**—(1) 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 by the undertaker with the relevant planning authority to the extent that it relates to matters relevant to its functions.

(2) The archaeological management plan must be substantially in accordance with the Outline Archaeological Management Plan and reflect the relevant mitigation measures set out in the REAC.

(3) The authorised development must be carried out in accordance with the approved archaeological management plan referred to in sub-paragraph (1).

### **Traffic management**

**10.**—(1) No part of the authorised development comprising the construction, alteration or improvement of the M25 or A12 is to commence until a traffic management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant highway authority on matters related to its function.

(2) The traffic management plan prepared under sub-paragraph (1) must be substantially in accordance with the Outline Traffic Management Plan and reflect the relevant mitigation measures set out in the REAC.

(3) The authorised development must be constructed in accordance with the traffic management plan referred to in sub-paragraph (1).

## **Trees**

**11.**—(1) No part of the authorised development is to commence until an arboricultural method statement has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority to the extent that it relates to matters relevant to its functions.

(2) The arboricultural method statement must be substantially in accordance with the Outline Arboricultural Method Statement and reflect the relevant mitigation measures set out in the REAC.

(3) The authorised development must be carried out in accordance with the approved arboricultural method statement referred to in sub-paragraph (1).

## **Approvals and amendments to approved details**

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

## **Fencing**

**13.**—(1) Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Manual of Contract Documents for Highway Works maintained by or on behalf of the undertaker except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development, following consultation by the undertaker with the relevant highways authority to the extent that it relates to matters relevant to its function.

(2) 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 any appropriate measures for the control of deer, including deer fencing, identified following consultation with the relevant planning authority and relevant highway authority on matters related to its function has been installed.

## **Operation of M25 Junction 28 Roundabout**

**14.**—(1) No part of the new loop road forming Work No. 6 is to be opened for traffic until a plan for the M25 Junction 28 roundabout containing details of the proposed operation of traffic signal timings or such other related measures as may be reasonably practicable to prevent any increase in delays for traffic on the A1023 Brook Street entering the M25 Junction 28 roundabout arising as a result of the authorised development has been submitted to and approved in writing by the Secretary of State, following consultation with the highway authorities within the Order limits.

(2) The authorised development must be operated in accordance with the approved plan referred to in sub-paragraph (1) or such amended plan following consultation with the highway authorities within the Order limits.

## **Maylands Golf Course accommodation works**

**15.** Accommodation works to provide 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.

## PART 2

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

#### **Applications made under requirements**

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

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 16 (further information); or
- (c) such longer period as may be agreed between the parties.

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

(3) Where—

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

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

#### **Further information**

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

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the Secretary of State does not give such notification within that 21 day business period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 15 (applications made under requirements) and in this paragraph.

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

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(a) 1970 c.80.

### **Register of requirements**

**18.**—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in a form suitable for inspection by members of the public an online register of the documents to be certified under Schedule 10 and those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

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

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

### **Anticipatory steps towards compliance with any requirement**

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

### **Details of consultation**

**20.** In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 28 days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted including copies of any representations made by a consultee about the proposed application and the undertaker's response to those representations.

## SCHEDULE 3

Article 15

### PERMANENT STOPPING UP OF STREETS

#### PART 1

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

<i>(1)</i> <i>Highway to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be provided</i>
A12 Eastbound Off-Slip (including the non-segregated footway in the verge)	Between points 1/18 to 1/19 on sheet 1 of the streets, rights of way and access plans	Work No. 2
M25 Northbound On-Slip	Between points 1/14 on sheet 1 to 3/3 on sheet 3 of the streets, rights of way and access plans	Work No. 8
Non-segregated footway in the verge of the existing A12 Eastbound Carriageway	Between points 1/10 to 1/18 on sheet 1 of the streets, rights of way and access plans	Work No. 2

#### PART 2

#### PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New private means of access to be substituted or provided</i>
Private means of egress from Grove Farm	At point A as shown on Sheet 1 of the streets, rights of way and access plans	Work No. 15
Private means of access to land situated to the immediate north of the A12 Eastbound Carriageway	At point B as shown on Sheet 1 of the streets, rights of way and access plans	Work No. 16

## SCHEDULE 4

Article 16, 17 and 18

### CLASSIFICATION OF ROADS, ETC.

#### PART 1

##### SPECIAL ROADS

<i>(1)</i> <i>Highway</i>	<i>(2)</i> <i>Extent</i>
M25 Northbound	Between points 4/1 on sheet 4 to 3/1 on sheet 3 of the streets, rights of way and access plans
M25 Junction 28 Loop Road	Between points 1/16 on sheet 1 to 1/17 on sheet 1 of the streets, rights of way and access plans
M25 Northbound On-Slip	Between points 1/13 on sheet 1 to 3/1 on sheet 3 of the streets, rights of way and access plans
M25 Northbound Off-Slip	Between points 1/30 on sheet 1 to 1/6 on sheet 1 of the streets, rights of way and access plans
M25 Southbound	Between points 3/5 and 3/6 and between 3/7 and 3/8 on sheet 3 of the streets, rights of way and access plans

#### PART 2

##### TRANSPORT FOR LONDON ROAD NETWORK

<i>(1)</i> <i>Highway</i>	<i>(2)</i> <i>Extent</i>
A12 Eastbound Off-Slip	Between points 1/10 on sheet 1 to 1/11 on sheet 1 of the streets, rights of way and access plans

#### PART 3

##### TRUNK ROADS

<i>(1)</i> <i>Highway</i>	<i>(2)</i> <i>Extent</i>
M25 Junction 28, circulatory carriageway	Entire M25 Junction 28 circulatory carriageway linking points 1/3, 1/6, 1/7, 1/8, 1/11, 1/12 and back to 1/3 on sheet 1 of the streets, rights of way and access plans
A12 Eastbound On-Slip	Between points 1/3 and 1/34 on sheet 1 of the streets, rights of way and access plans
M25 Northbound On-Slip	Between points 1/12 to 1/13 on sheet 1 of the streets, rights of way and access plans
A12 Eastbound	Between points 1/2 on sheet 1 to 2/1 on sheet 2 of the streets, rights of way and access plans



**PART 4**  
**SPEED LIMITS**

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Speed Limit</i>
M25 Junction 28 Circulatory Carriageway	The whole length of the improved M25 Junction 28 circulatory carriageway, for a total distance of 610 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	National speed limit  (70 miles per hour, as existing limit)
M25 Northbound Carriageway	Along the length of the improved M25 northbound carriageway, for a total distance of 3720 metres, as shown on sheets 1, 3 and 4 of the speed limits and traffic regulations plans.	National speed limit  (70 miles per hour, as existing limit)
M25 Junction 28 Diverge to Loop Road	Along the length of the new slip road, from its diverge from the M25 northbound carriageway to point C, for a total distance of 265 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	National speed limit  (70 miles per hour)
M25 Northbound On-Slip and Merge	Along the length of the improved slip road from the M25 Junction 28 circulatory carriageway to its merge with the M25 northbound carriageway, for a total distance of 1234 metres, as shown on sheets 1 and 3 of the speed limits and traffic regulations plans.	National speed limit  (70 miles per hour)
M25 Northbound Off-Slip and Diverge	Along the length of the improved slip road from its diverge from M25 northbound carriageway to M25 Junction 28 circulatory carriageway, for a total distance of 149 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	National speed limit  (70 miles per hour, as existing limit)
A12 Eastbound Carriageway	Along the length of the improved A12 eastbound carriageway from the westernmost Order limits to point A, for a total distance of 330 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	50 miles per hour, as existing limit

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Speed Limit</i>
A12 Eastbound Carriageway	Along the length of the improved A12 eastbound carriageway between point A and B, for a total distance of 908 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	50 miles per hour
A12 Eastbound Carriageway	Along the length of the improved A12 eastbound carriageway from point B, for a total distance of 693 metres, as shown on sheets 1 and 2 of the speed limits and traffic regulations plans.	National speed limit  (70 miles per hour, as existing limit)
A12 Eastbound Off-Slip and Diverge	Along the length of the realigned slip road, from its diverge from the A12 eastbound off-slip to the M25 Junction 28 circulatory carriageway, for a total distance of 773 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	50 miles per hour
A12 Eastbound On-Slip and Merge	Along the length of the improved A12 eastbound on-slip from the M25 Junction 28 circulatory carriageway to its merge with the A12 eastbound carriageway, for a total distance of 546 metres, as shown on sheets 1 and 2 of the speed limits and traffic regulations plans.	National speed limit  (70 miles per hour, as existing limit)
M25 Junction 28 Loop Road and Merge	Along the length of the new loop road from point C to its merge with A12 eastbound carriageway for a total distance of 1176 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	50 miles per hour

## PART 5

### TRAFFIC REGULATION MEASURES (CLEARWAYS)

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent of Regulation</i>	<i>(3)</i> <i>Measures</i>
A12 Eastbound Off-Slip	From the start of A12 eastbound diverge, as shown by point 1/1 on sheet 1 of the speed limits and traffic regulations plans, eastbound for a distance of 773 metres, to the junction with the M25 Junction 28 circulatory carriageway, as shown by point 1/2 on sheet 1 of the speed limits and traffic regulations plans.	Clearway (to include verge and hard strips)
A12 Eastbound Carriageway	From the start of the A12 eastbound diverge, at the location illustrated by point 1/1 on sheet 1 of the speed limits and traffic regulations plans, eastbound for a distance of 918 metres along the mainline carriageway, to point 1/3 on sheet 1 of the speed limits and traffic regulations plans.	Clearway (to include verge and hard strips)

## PART 6

### OTHER PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Highway</i>	<i>(2)</i> <i>Extent</i>
Non-segregated footway in the verge of the A12 Eastbound Off-Slip	Between points 1/10 to 1/11 and between points 1/11 and 1/20 on sheet 1 of the streets, rights of way and access plans

SCHEDULE 5

Article 24

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>	<i>(4)</i> <i>TPO reference</i>
Area TPO Multiple Species	Potential felling of trees or works to trees to permit the gas main diversion	Work No. 29	TPO 2-02 – A1 Land on south side of Colchester Road. London Borough of Havering
Area TPO Multiple Species	Felling of trees or works to trees to permit the construction of the scheme being submitted as part of the DCO	Work Nos. 6 and 23C	TPO 18-06 – A1 Maylands Golf Course, Colchester Road, Romford. London Borough of Havering.
Group TPO Multiple Species woodland	Felling of trees or works to trees to permit the construction of the scheme being submitted as part of the DCO	Work Nos. 6, 14 and 30	TPO 5/1948 Map 16, Alder Wood. Brentwood District Council.
Group TPO Multiple Species woodland	Felling of trees or works to trees to permit the construction of the scheme being submitted as part of the DCO	Work Nos. 2, 15, 18, 23B, 23D and 26	TPO 5/1948 Map 21 Grove Wood. Brentwood District Council.

SCHEDULE 6

Article 28

LAND IN WHICH NEW RIGHTS ONLY ETC. MAY BE ACQUIRED

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Relevant part of the authorised development</i>
<b>Land Plans – Sheet 1 of 4</b>		
1/1a	To construct, protect, operate, access and maintain diversion of an existing underground high pressure gas pipeline.  To construct, access and maintain drainage works.  To construct, operate, access and maintain diversions to existing utilities apparatus.	Work Nos. 6 and 29 and other ancillary development (utilities)
1/3	To construct, operate, access and maintain diversions to existing utilities apparatus.  To construct and maintain a new private means of access.	Work No. 19A and other ancillary development (utilities)
1/6	To construct, access and maintain drainage works from the new loop road.	Work No. 6
1/8	To construct, protect, operate, access and maintain diversion of an existing underground high pressure gas pipeline.	Work No. 29
1/20	To construct, access and maintain a new drainage outfall pipe.	Work No. 22
1/21	To construct, access and maintain a new drainage outfall pipe.	Work No. 22
1/22	To construct, access and maintain a new drainage outfall pipe.	Work No. 22
1/25	To install, access, monitor and maintain bird boxes.	Other ancillary development (bird boxes)
<u>1/25a</u>	<u>To install, access, monitor and maintain bird boxes.</u>	<u>Work Nos. 2, 6, 23B, 23D and 26 and other ancillary development (bird boxes and utilities)</u>
1/27	To install, access, monitor and maintain bird boxes.  To construct, access and maintain— (a) improvements to the A12 eastbound off-slip (including Maylands Bridge and Grove culvert); (b) Grove Bridge; and (c) realigned stretches of Weald Brook and Ingrebourne River.	Work Nos. 2, 6, 23B, 23D and 26 and other ancillary development (bird boxes and utilities)

<i>(1)</i> <i>Plot Reference Number</i> <i>shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which rights over land may be</i> <i>acquired</i>	<i>(3)</i> <i>Relevant part of the</i> <i>authorised</i> <i>development</i>
	To construct, operate, access and maintain diversions to existing utilities apparatus.	
<b>Land Plans – Sheet 3 of 4</b>		
3/15	To install, access, monitor and maintain bird boxes.	Other ancillary development (bird boxes)
3/17	To install, access, monitor and maintain bird boxes.	Other ancillary development (bird boxes)

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

*Compensation enactments*

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

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

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

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights) to the M25 Junction 28 Development Consent Order 202[ ] (“the 202[ ] Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the 202[ ] Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

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

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

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

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

*Application of the 1965 Act*

**4.** Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 30 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 25 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 28 (compulsory acquisition of rights and imposition of restrictive covenants)—

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(a) 1973 c. 26.

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

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

(2) References in the 1964 Act to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

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

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

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

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

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

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

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 22 (authority to survey and investigate the land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(b) (powers of entry; further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

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(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1), section 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning act 2016 (c. 22) and S.I. 2009/1307.

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

(c) Section 11B was inserted by section 187(2) of the Housing and Planning act 2016 (c. 22).

(d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.



(if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(4) (compulsory acquisition of rights and imposition of restrictive covenants) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

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

## “SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

### *Introduction*

**1.**—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 31 (application of the 1981 Act) of the M25 Junction 28 Development Consent Order 202[ ] in respect of the land to which the notice to treat relates.

(2) But see article 33(3) (acquisition of subsoil and airspace only) of the M25 Junction 28 Development Consent Order 202[ ] which excludes the acquisition of subsoil or airspace only from this Schedule.

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

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

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

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

### *Response to counter-notice*

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

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

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

**7.** If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

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

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

*Determination by Upper Tribunal*

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

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

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

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the proposed use of the right or the imposition of the covenant, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

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

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

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

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

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

*Application of the 2017 Regulations*

**6.** References in Schedule 1 to the 2017 Regulations to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

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

SCHEDULE 8

Article 35

LAND OF WHICH TEMPORARY POSSESSION ONLY MAY BE TAKEN

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
<b>Land Plans – Sheet 1 of 4</b>		
1/1	Construction works relating to improvements to the A12 eastbound carriageway.	Work No. 1
1/1b	Construction works relating to improvements to the A12 westbound carriageway.	Work No. 4
1/1c	Construction works relating to improvements to the A12 westbound carriageway and to the diversion of an existing underground high pressure gas pipeline.	Work Nos. 4 and 29
1/1d	Construction works relating to improvements to the A12 westbound carriageway and to the diversion of an existing underground high pressure gas pipeline.	Work Nos. 4 and 29
1/2	Construction works relating to improvements to the A12 eastbound carriageway.	Work No. 1
1/7	Construction works relating to improvements to the A12 westbound carriageway and to the diversion of an existing underground high pressure gas pipeline.	Work Nos. 4 and 29
1/8a	Construction works relating to the diversion of an existing underground high pressure gas pipeline.	Work No. 29
1/11	To establish an environmental bund and construction compound and to undertake associated construction activities.	Work No. 18 and, in respect of the construction compound, all works
1/14	Construction works relating to the provision of accommodation works for Maylands Golf Course.	Work No. 32
1/15	Construction works relating to the establishment of a new attenuation pond with associated drainage works and the realignment of a stretch of Weald Brook.	Work Nos. 21B, 22 and 23C
1/16	Construction works relating to the realignment of stretches of Weald Brook.	Work Nos. 23A and 23B
1/17	Construction works relating to the new loop road.	Work No. 6
1/21a	Construction works relating to the realignment of stretches of Weald Brook.	Work Nos. 23A and 23B
<u>1/26</u>	<u>Construction working area for alterations to the existing egress from Grove Farm.</u>	<u>Work No. 15</u>
<u>1/28a</u>	<u>Construction working area for alterations to the existing egress from Grove Farm.</u>	<u>Work No. 15</u>

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
<b>Land Plans – Sheet 3 of 4</b>		
3/2	Construction working area for improvements to the M25 northbound carriageway, the realignment of the existing northbound on-slip and a new gantry.	Work Nos. 7, 8 and 10
3/3	Construction working area for improvements to the M25 northbound carriageway, the realignment of the existing northbound on-slip and a new gantry.	Work Nos. 7, 8 and 10
3/6	Construction working area for a new gantry.	Work No.10
3/7	Construction working area for a new gantry.	Work No.10
3/16	Construction working area for improvements to the M25 northbound carriageway, the realignment of the existing northbound on-slip, and a new private means of access.	Work Nos. 8 and 14
3/18	To establish an ecological mitigation area.	Work No. 25
3/19	Construction working area for improvements to the M25 northbound carriageway, the realignment of the existing northbound on-slip, and a new private means of access.	Work Nos. 8 and 14
3/21	Construction works relating to the provision of accommodation works for Maylands Golf Course and to establish an ecological mitigation area.	Work Nos. 25 and 32
3/23	Construction works relating to the provision of accommodation works for Maylands Golf Course.	Work No. 32

## PROTECTIVE PROVISIONS

## PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE  
UNDERTAKERS*Application*

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

*Interpretation*

2. In this Part of this Schedule—

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

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(b)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(c) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(d); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

“functions” includes powers and duties;

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

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(a) 1991 c. 22.

(b) 1989 c. 29.

(c) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(d) 1991 c. 56.

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

#### *On street apparatus*

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

#### *Apparatus in stopped up streets*

4.—(1) Where any street is stopped up under article 15 (permanent stopping up of streets), any utility undertaker has the same powers and rights in respect of any apparatus in the street as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary alteration, diversion or restriction of a street under the powers conferred by article 13 (temporary closure, alteration, diversion and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

#### *Protective works to buildings*

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

#### *Acquisition of land*

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

#### *Removal of apparatus*

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker 28 days’ written notice of that

requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker and the undertaker or in default of agreement settled by arbitration in accordance with article 54 (arbitration).

(5) The utility undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 54, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

(7) If the utility undertaker fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved.

(8) For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

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

**8.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction, maintenance of the utility undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker or in default of agreement settled by arbitration in accordance with article 54 (arbitration).

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

### *Retained apparatus*

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

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

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

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

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

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

### *Expenses and costs*

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

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

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 54 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess

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



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

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

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

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

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless a utility undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

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

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

#### *Co-operation*

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

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

## PART 2

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

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

**15.** In this Part of this Schedule—

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

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“electronic communications code network” means—

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

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

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

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

**16.** The exercise of the powers conferred by article 38 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

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

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

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

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

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

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(a) 2003 c. 21.

(b) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 54 (arbitration).

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

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

## PART 3

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

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

(2) In this part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” will be construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

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

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

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

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

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

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

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

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

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

- (a) must not be unreasonably withheld or delayed;

- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal;
- (c) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval and
- (d) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

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

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

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

by reason of any specified work.

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

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

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

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

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

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

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

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

**22.—**(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from

obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5), if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing will be recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these Protective Provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 28.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person, including the highway authority, is liable to maintain and is not proscribed by the powers of the Order from doing so;
- (b) or any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

**23.** If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in so doing from the undertaker.

**24.** If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

**25.—**(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be

reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing will be recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any reasonable expenditure reasonably incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**26.** The undertaker must repay to the Agency all reasonable costs, charges and expenses which the Agency may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**27.—**(1) The undertaker must make reasonable compensation for costs and losses which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction of any specified works comprised within the authorised works; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads;
- (c) legal costs;
- (d) “losses” includes physical damage.

(3) The undertaker must make reasonable compensation for liabilities, claims and demands arising out of or in connection with the authorised works or otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
- (b) any interest element of sums claimed or demanded; and

“liabilities” includes—

- (a) contractual liabilities;
- (b) tortious liabilities (including liabilities for negligence or nuisance);
- (c) liabilities to pay statutory compensation or for breach of statutory duty; and
- (d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand.

(6) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(7) The Agency must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(8) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(9) The Agency must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

(10) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, will not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

**28.** Any dispute arising between the undertaker and the Agency under this part of this Schedule will, if the parties agree, be determined by arbitration under article 54 (arbitration), but will otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

## PART 4

### FOR THE PROTECTION OF DRAINAGE AUTHORITIES

**29.** The following provisions of this Part of this Schedule apply for the protection of the drainage authority unless otherwise agreed between the undertaker and the drainage authority.

**30.** In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are to be construed accordingly;

“drainage authority” means in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(a);

“drainage work” means in relation to any key watercourse and includes any land which is expected to provide flood storage capacity for a key watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with a key watercourse;

“key watercourse” means any of the following ordinary watercourses—

<i>Ordinary watercourse to be regarded as a key watercourse</i>	<i>Ordnance Survey coordinates of ordinary watercourse to be regarded as a key watercourse</i>
existing ditch 1	TQ 56608 92369 to TQ 56429 92244
existing ditch 2	TQ 56427 92408 to TQ 56438 92260
existing ditch 3	TQ 56593 92504 to TQ 56444 92744
existing ditch 4	TQ 56442 92747 to TQ 56255 92665
existing ditch 5	TQ 56339 92531 to TQ 56289 92673
existing ditch 6	TQ 56243 92551 to TQ 56273 92556
existing ditch 7	TQ 56202 92680 to TQ 56255 92558
existing ditch 8	TQ 56216 92637 to TQ 56229 92642
existing ditch 9	TQ 56192 93002 to TQ 56284 92682
existing ditch 10	TQ 56264 93010 to TQ 56193 93002

(a) 1991 c. 59.

<i>Ordinary watercourse to be regarded as a key watercourse</i>	<i>Ordnance Survey coordinates of ordinary watercourse to be regarded as a key watercourse</i>
existing ditch 11	TQ 56192 93140 to TQ 56174 93104
existing ditch 12	TQ 56078 93264 to TQ 56098 93223

and in each case includes any land or area which is being used or is expected to be used to provide temporary or permanent flood storage capacity or relief for the watercourse and any bank, wall, embankment or other structure, or any appliance constructed or used for land drainage or flood defence in connection with the watercourse;

“ordinary watercourse” has the same meaning as given in section 72 (interpretation) of the Land Drainage Act 1991(a);

“plans” includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements; and

“specified work” means any of the following works carried out in relation to any ordinary watercourse—

- (a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;
- (b) the construction or alteration of a bridge or other structure;
- (c) erecting a culvert in the watercourse; or
- (d) altering a culvert in a manner that would be likely to affect the flow of the watercourse.

**31.**—(1) Before beginning to construct any specified work in relation to a key watercourse, the undertaker must submit to the drainage authority plans of the work, and such further particulars available to the undertaker as the drainage authority may within 14 days of the first submission of the plans reasonably require.

(2) On receipt of the plans submitted under sub-paragraph (1) the drainage authority may within 14 days of the first submission of the plans—

- (a) request such further particulars as the drainage authority may reasonably require; or
- (b) request up to a further 14 days in which to review the plans to identify if any further particulars are required.

(3) Any such specified work in relation to a key watercourse must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 35.

(4) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is to be deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval or submission of further particulars (where required by the drainage authority under sub-paragraph (1), whichever is the later; and
- (c) may be given subject to such reasonable requirements or conditions as the drainage authority may make for the protection of any key watercourse or for the prevention of flooding.

(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

**32.** The requirements or conditions which the drainage authority may make under paragraph 31 include conditions requiring the undertaker at its own expense to construct such protective works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or) as are reasonably necessary—

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(a) 1951 c. 59.



- (a) to safeguard any key watercourse against damage, or
- (b) to secure that the efficiency of any key watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of the specified work in relation to a key watercourse.

**33.**—(1) Any specified work in relation to a key watercourse, and all protective works required by the drainage authority under paragraph 32, must be constructed to the reasonable satisfaction of the drainage authority and an officer of the drainage authority is entitled on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The undertaker must give to the drainage authority not less than 14 days' notice of its intention to commence construction of any specified work in relation to a key watercourse and the undertaker must give to the drainage authority notice of completion of a specified work in relation to a key watercourse not later than 7 days after the date on which it is brought into use.

(3) If any part of the works comprising a structure in, over or under a key watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice require the undertaker at its own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 14 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 36.

**34.**—(1) Subject to sub-paragraph (6), from the commencement of the construction of any specified work until the date falling 12 months from the date of completion of the specified work ("the maintenance period"), the undertaker must maintain in good repair and condition and free from obstruction the drainage work which is situated within the limits of deviation for that specified work and on land held by the undertaker for the purposes or in connection with the specified work, whether the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) If any such drainage work is not maintained to the reasonable satisfaction of the drainage authority it may by notice require the person liable for maintenance of the drainage work to maintain the drainage work, or any part of it, to such extent as the drainage authority reasonably requires.

(4) If, within a reasonable period being not less than 14 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (3) on the person liable for maintenance, that person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the person liable for maintenance.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3), the drainage authority must not except in a case of emergency exercise

the powers of sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 36.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

(7) Subject to paragraphs 34(6)(b) and 36, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the drainage authority and if the undertaker fails to do so, the drainage authority may make good the same and recover from the undertaker the expense reasonably incurred by it in doing so.

**35.—**(1) The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur in—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection of the construction of a specified work in respect of a key watercourse or any protective works required by the drainage authority under this Part of this Schedule.

(2) The maximum amount payable to the drainage authority under sub-paragraph (1)(a) or (b) is to be the same as would have been payable to the drainage authority in accordance with the scale of charges for pre-application advice and land drainage consent applications published on the drainage authority's website from time to time.

**36.** Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule is to be determined in accordance with article 54 (arbitration).

## PART 5

### FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

#### *Application*

**37.—**(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 9 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 48(3)(b)).

#### *Interpretation*

**38.** In this Part of this Schedule—

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

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid or any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by National Grid for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“commence” and “commencement” in paragraph 45 and 46 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

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

“National Grid ” means National Grid Electricity Transmission Plc or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989 and National Grid Gas Plc or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986 as the context requires;

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

“specified works” means any of the authorised development or activities undertaken in association with the authorised development (including maintenance) which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 43(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 43(2) or otherwise.

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(a) 1989 c. 29.

**39.** Except for paragraphs 40 (apparatus of National Grid in stopped up streets), 45 (retained apparatus: protection of electricity undertaker), 46 (retained apparatus: protection of gas undertaker), 47 (expenses), and 48 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provision of Part 3 of the 1991 Act.

*Apparatus of National Grid in stopped up streets*

**40.**—(1) Where any street is stopped up under article 15 (permanent stopping up of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 43 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 45 or 46.

(2) (Notwithstanding the temporary closure, alteration, diversion or restriction of use of any street under the powers of article 13 (temporary closure, alteration, diversion and restriction of use of streets), National Grid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure, alteration, diversion or restriction of use was in that street.

*Protective works to buildings*

**41.** The undertaker must exercise the powers conferred by article 21 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld).

*Acquisition of land*

**42.**—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 45 or 46 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

#### *Removal of apparatus*

**43.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 44(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or secured by, the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

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

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

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

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

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

(2) If the facilities and rights to be afforded by the undertaker under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 52 (arbitration) of this Part of this Schedule and the arbitrator must

make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

*Retained apparatus: protection of electricity undertaker*

**45.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

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

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works

or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 37 to 39 and 42 to 44 apply as if the removal of the apparatus had been required by the undertaker under paragraph 43(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) "emergency works" means works whose execution at the time when they are executed is required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

*Retained apparatus: protection of gas undertaker*

**46.—**(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

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

(3) The undertaker must not commence any specified works until National Grid has given written approval of the plan so submitted.

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

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

(5) National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and National Grid; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 37 to 39 and 42 to 44 apply as if the removal of the apparatus had been required by the undertaker under paragraph 43(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development or its maintenance—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 47.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11), “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

#### *Expenses*

**47.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development or its maintenance including without limitation—



- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 43(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 52 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

### *Indemnity*

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

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

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised development (including maintenance) carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 9 (consent to transfer benefit of Order).

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

### *Enactments and agreements*

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

### *Co-operation*

**50.**—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 43(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 45 or 46, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker’s or National Grid’s consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

### *Access*

**51.** If in consequence of the agreement reached in accordance with paragraph 42(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### *Arbitration*

**52.** Save for differences or disputes arising under paragraphs 43(2), 43(4) and 44(1) any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 54 (arbitration).

### *Notices*

**53.** Notwithstanding article 47 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 45 or 46 must be sent to National Grid Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 6**

### **FOR THE PROTECTION OF CADENT GAS LIMITED**

### *Application*

**54.** For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

### *Interpretation*

**55.** In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of

Cadent’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995(b));

“commence” and “commencement” include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;

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

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 60(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 60(2) or otherwise.

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(a) 1986 c. 44.

(b) 1995 c. 45.

*On street apparatus*

**56.**—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 57, 62, 63 and 64; and
- (b) where sub-paragraph (2) applies, paragraphs 60 and 61.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) [Paragraph 63 does not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

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

**Note:** *Highways England considers that sub-paragraph (3) should be included in the Order, Cadent does not.*

*Apparatus of Cadent in stopped up streets*

**57.**—(1) Where any street is stopped up under article 15 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph affects any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 60.

(2) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 13 (temporary closure, alteration, diversion and restriction of use of streets), Cadent will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction of use in respect of any apparatus which at the time of the stopping up or diversion was in that street.

*Protective works to buildings*

**58.**—(1) The undertaker must exercise the powers conferred by article 21 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed).

*Acquisition of land*

**59.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the

relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 62 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 60 do not apply, the undertaker must, unless Cadent agrees otherwise—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

#### *Removal of apparatus*

**60.**—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 59, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 61(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be

constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

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

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

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 68 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### *Retained apparatus: protection of Cadent*

**62.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

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

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 54 to 56 and 59 to 61 apply as if the removal of the apparatus had been required by the undertaker under paragraph 60(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan (and ground monitoring scheme if required), instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan (and ground monitoring scheme if required).

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 63.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

#### *Expenses*

**63.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus



including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent—

- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 60(3) if it elects to do so; or
  - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
  - (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
  - (d) the approval of plans;
  - (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
  - (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
  - (g) any watching brief pursuant to sub-paragraph 62(6).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 68 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

**Note: *Highways England considers that sub-paragraphs (2) to (5) should be included in the Order, Cadent does not.***

### *Indemnity*

**64.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 21 (protective work to buildings)) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 9 (consent to transfer benefit of the Order);
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1) [save that the undertaker's indemnity under sub-paragraph (1)(b) extends to any contractual liability Cadent has in respect of the indirect or consequential loss of a landowner in whose land apparatus is, or pursuant to the works will be, located].

***Note: Cadent considers the proviso in 64(3)(c) in square brackets should be included in the Order, Highways England does not.***

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### *Enactments and agreements*

**65.** Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### *Co-operation*

**66.**—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 60(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 62, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent’s undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent’s consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

### *Access*

**67.** If in consequence of any agreement reached in accordance with paragraph 59(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

### *Arbitration*

**68.** Save for differences or disputes arising under sub-paragraphs 60(2) and 60(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 54 (arbitration).

### *Notices*

**69.** Notwithstanding article 47 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 62(1) must be sent via email to Cadent Gas Limited Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) as well as via post to Plant Protection, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA, or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## SCHEDULE 10

Article 46

### DOCUMENTS TO BE CERTIFIED

The reference to a document in the table with a numbered regulation is a reference to the regulation as numbered in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

(1) <i>Document</i>	(2) <i>Document Reference</i>	(3) <i>Revision</i>
Book of Reference – Regulation 5(2)(d)	TR010029/APP/4.3	<del>43</del>
Engineering drawings and sections – Regulation 5(2)(o), 5(4) and 6(2)	TR010029/APP/2.8	<del>24</del>
Environmental Statement – Main Report – Regulation 5(2)(a)	TR010029/APP/6.1	1
Environmental Statement – figures – Regulation 5(2)(a)	TR010029/APP/6.2	1
Environmental Statement – appendices – Regulation 5(2)(a)	TR010029/APP/6.3	1
Ground Investigation Report – Regulation 5(2)(q)	TR010029/EXAM/9.25	0
Habitats Regulation Assessment Report – Regulation 5(2)(g)	TR010029/APP/6.9	2
Land plans – Regulation 5(2)(i)	TR010029/APP/2.2	<del>32</del>
Location plan – Regulation 5(2)(o)	TR010029/APP/2.1	<del>10</del>
Outline Arboricultural Method Statement	TR010029/EXAM/9.64	<del>10</del>
Outline Archaeological Management Plan – Regulation 5(2)(q)	TR010029/EXAM/9.45	<del>24</del>
Outline Construction Environmental Management Plan – Regulation 5(2)(q)	TR010029/APP/7.2	<del>43</del>
Outline Traffic Management Plan	TR010029/EXAM/9.52	1
Register of Environmental Actions and Commitments – Regulation 5(2)(q)	TR010029/APP/7.3	<del>43</del>
Scheme layout plans – Regulation 5(2)(o)	TR010029/APP/2.7	<del>24</del>
Special category land plans – Regulation 5(2)(i)(iv)	TR010029/APP/2.11	<del>24</del>
Speed limits and traffic regulation plans – Regulation 5(2)(o)	TR010029/APP/2.6	<del>32</del>
Statutory Nuisance Statement – Regulation 5(2)(f)	TR010029/APP/6.5	<del>24</del>
Streets, rights of way and access plans – Regulation 5(2)(k)	TR010029/APP/2.4	<del>24</del>
Water Framework Directive Assessment Compliance Report – Regulation 5(2)(a) and 5(2)(l)(iii)	TR010029/APP/6.7	1
Works plans – Regulation 5(2)(j)	TR010029/APP/2.3	<del>32</del>

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Highways England to undertake works to alter junction 28 of the M25 near Brentwood in Essex and carry out all associated works.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the book of reference, plans, engineering drawings and sections, the environmental statement, the habitats regulations assessment report, the statutory nuisance statement, the register of environmental actions and commitments, the Outline CEMP, the preliminary environmental design, the register of environmental actions and commitments, the statutory nuisance statement and the Water Framework Directive Assessment Compliance Report mentioned in this Order and certified in accordance with article 46 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.

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STATUTORY INSTRUMENTS

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**202[ ] No. 0000**

**INFRASTRUCTURE PLANNING**

The M25 Junction 28 Development Consent Order 202[ ]

**BDB Pitmans LLP**  
**One Bartholomew Close, London EC1A 7BL**  
**Solicitors and Parliamentary Agents**  
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