

A1 Birtley to Coal House

Scheme Number: TR010031

3.1 Draft Development Consent Order

APFP Regulation 5(2)(b)

Planning Act 2008

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



Infrastructure Planning

Planning Act 2008

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

**A1 Birtley to Coal House
Development Consent Order 20[xx]**

DRAFT DEVELOPMENT CONSENT ORDER

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20[**] No. [****]

INFRASTRUCTURE PLANNING

DEVELOPMENT CONSENT ORDER 20[]**

**THE A1 BIRTLEY TO COAL HOUSE DEVELOPMENT CONSENT ORDER
20[**]**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

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

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

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

(a) 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 and S.I. 2013/755.

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

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

The Secretary of State is satisfied in terms of section 131(4B) of the 2008 Act that (a) the order land forms part of an open space; (b) none of the order land is of any of the other descriptions in section 131(1) of the 2008 Act; and (c) the order land is being acquired for a temporary (although possibly long-lived) purpose.

The Secretary of State is further satisfied in terms of section 131(5) of the 2008 Act that (a) the order land is required in connection with the widening or drainage of an existing highway; and (b) the giving of other land in exchange for the order land is unnecessary.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application with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, in exercise of the powers conferred by sections 114, 115, 117, 120, 122, 131 and 132 of, and paragraphs 1 to 3, 10 to 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 A1 Birtley to Coal House Development Consent Order 20[*] and shall come into force on [****] 20[*].

Interpretation

2.—(1) In this Order—

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

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

“the 1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979(c);

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

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- (a) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government Planning and Land Act 1990 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (b) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (c) 1979 c.46
- (d) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1984 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way

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

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

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

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

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

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

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

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

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

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

CEMP” means the construction environmental management plan approved pursuant to the requirements;

“commence”, unless otherwise provided, means beginning to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” shall be construed accordingly;

“cycle track” has the same meaning as in the 1980 Act and includes part of a cycle track(f)();

“electronic transmission” means a communication transmitted—

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

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

“engineering drawings and sections” means the drawings and sections listed in Schedule 12 (documents to be certified) and certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.

- (a) 1981 c. 66
- (b) 1984 c. 27
- (c) 1990 c. 8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act (c. 21), and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17 to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.
- (d) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Part 3 of the 1991 Act was amended by Part 4 of the Traffic Management Act 2004 (c. 18). Section 74 was amended, and sections 74A and 74B inserted, by sections 255 and 256 of the Transport Act 2000 (c. 38). There are other amendments to the 1991 Act but they are not relevant to this Order.
- (e) 2008 c. 29.
- (f) 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)

“environmental statement” means the document of that description submitted with the application for this Order and certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footway” and “footpath” have the same meaning as in the 1980 Act and include part of a footway or footpath;

“the general arrangement drawings” means the drawings listed in Schedule 12 (documents to be certified) and certified as the general arrangement drawings by the Secretary of State for the purposes of this Order;

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

“the land plans” means the plans listed in Schedule 12 (documents to be certified) and certified as the land plans by the Secretary of State 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 the authorised development includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, improve, landscape, remove, reconstruct, refurbish or replace and any derivative of “maintain” is to be construed accordingly;

“Northern Gas Networks Limited” means the company registered in England and Wales, company number 05167070, whose registered address is 1100 Century Way, Thorpe Park Business Park, Colton, Leeds LS15 8TU;

“Northumbrian Water Limited” means the company registered in England and Wales, company number 2366703, whose registered office address is Northumbria House, Abbey Road, Pity Me, Durham DH1 5FJ;

“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;

“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;

“outline CEMP” means the document of that description submitted with the application for this Order and certified as the outline CEMP by the Secretary of State for the purposes of this Order;

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

“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;

“the special category land plans” means the plans certified by the Secretary of State listed in Schedule 12 (documents to be certified) for the purposes of this Order,

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

“street” means a street within the meaning of section 48 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 listed in Schedule 12 (documents to be certified) and certified as the streets, rights of way and access plans by the Secretary of State for the purposes of this Order;

“structures engineering drawings and sections” means the drawings and sections listed in Schedule 12 (documents to be certified) and certified as the structures engineering drawings and sections by the Secretary of State for the purposes of this Order;

“traffic authority” has the same meaning as in the 1984 Act;

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to the Order.

“the tribunal” means the Lands Chamber of the Upper Tribunal;
“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10 or 19(1) of the 1980 Act;
- (b) an order or direction under section 10 of that Act; or
- (c) an order granting development consent; or
- (d) any other enactment;

“undertaker” means Highways England Company Limited (Company No. 09346363) of 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 listed in Schedule 12 (documents to be certified) and certified as the works plans by the Secretary of State for the purposes of this Order.

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

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

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

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

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

(7) The provisions of the Neighbourhood Planning Act 2017(a), insofar as they relate to temporary possession of land under articles 32 and 33 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 33(11), any maintenance of any part of the authorised development.

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 to be carried out and operated within the Order limits.

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

Maintenance of authorised development

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.

(a) 2017 c. 20.

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 authorised development,

the carrying out of such development, under the terms of the planning permission does not breach the terms of this Order.

Limits of deviation

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

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 1 metres upwards or 1 metres downwards,

except that these maximum limits of lateral and 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 worse adverse environmental effects from those reported in the environmental statement.

Benefit of the 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 the 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 the Order

9.—(1) Subject to paragraph (4), the undertaker may—

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

(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).

(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 lessee.

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

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

- (a) Northumbrian Water Limited for the purposes of undertaking Work No. 22;
- (b) Northern Gas Networks Limited for the purposes of undertaking Work Nos. 9, 10, 12, 13, 14, 15 and 16.

PART 3 STREETS

Application of the 1991 Act

10.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) 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) of that Act (which defines what highway authority works are major highway works); 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 (dual carriageways and roundabouts)(a) of the 1980 Act or section 184 (vehicle crossings over footways and verges)(b) 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 Part 3 the 1991 Act do not apply in relation to any works executed under the powers of this Order—

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

-
- (a) Section 64 was amended by Schedule 17 to the Local Government Act 1965 (c. 51) and Schedule 9 to the 1991 Act.
 - (b) Section 184 was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and Schedule 8 to the New Roads and Street Works Act 1991 (c. 22) and sections 35 and 46 of the Criminal Justice Act 1982 (c. 48).
 - (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 (c. 18).
 - (e) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (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.

Schedule 3A (restriction on works following substantial street works)(a).

(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 stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

- (5) The provisions of the 1991 Act(b) referred to in paragraph (4) are—
- section 54 (advance notice of certain works)(c), subject to paragraph (6);
 - section 55 (notice of starting date of works)(d), subject to paragraph (6);
 - section 57 (notice of emergency works)(e);
 - section 59 (general duty of street authority to co-ordinate works)(f);
 - 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 a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

- (7) Nothing in article 13 (construction and maintenance of new, altered or diverted streets)—
- (a) affects the operation of section 87 of the 1991 Act (prospectively maintainable highways);
 - (b) means that the undertaker is by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
 - (c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

Power to alter layout etc. of streets

11.—(1) Subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain passing places.

(a) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004 (c. 18).

(b) 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 (c. 18).

(c) As also amended by section 49(1) of the Traffic Management Act 2004 (c. 18).

(d) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 (c. 18).

(e) As also amended by section 52(3) of the Traffic Management Act 2004 (c. 18).

(f) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

(2) The undertaker must restore any street that has been temporarily altered under this Article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1)—

- (a) are exercisable on the giving of not less than 42 days' notice to the street authority; and
- (b) are not to be exercised without the consent of the street authority where that authority is a public authority.

(4) If a street authority which received an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of 6 weeks beginning with the date on which the application is made, it is deemed to have gained consent.

(5) Paragraphs (2), (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are to be carried out.

Street works

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

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

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

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Construction and maintenance of new, altered or diverted streets

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

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

(3) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road) over a trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of 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.

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

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;

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

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

Classification of roads etc.

14.—(1) From the date on which the roads described in Part 1 (trunk roads) of Schedule 3 (classification of roads, etc) are complete and open for traffic, they are to become 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.

(2) From the date that the public rights of way described in Part 2 (other public rights of way) of Schedule 3 (classification of roads, etc.) are completed and open to for use they will be of the types described in column (1) to the extent described in column (2).

(3) The application of paragraphs (1) to (2) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Temporary stopping up and restriction of use of streets

15.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street 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 stopped up or restricted under the powers conferred by this article and which is within the Order limits as a temporary working site.

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

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 5 (Public rights of way to be temporarily stopped up and for which a substitute is to be provided) to the extent specified in column (2) of that Schedule

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

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

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

Permanent stopping up and restriction of use of streets, public rights of way and private means of access

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

(2) No street, public right of way or private means of access specified in column (1) of Parts 1, 2 and 3 of Schedule 4 (being a street, public right of way or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street, public right of way or private means of access to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street, public right of way or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street, public right of way or private means of access in accordance with sub-paragraph (a).

(3) Where a street, public right of way or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street, public right of way or private means of access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street, public right of way or private means of access 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 of the 1961 Act.

(5) This article is subject to article 35 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

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

Modification of Road Traffic Regulation Orders

18.—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic—

- (a) Paragraph 2 of The A1 Trunk Road (Birtley Interchange to Scottish Border) (24-Hour Clearway) Order 2004(a) shall be amended so that the definition of "the trunk road"

(a) S.I. 2004/197

includes the length of the A1 Trunk Road as realigned by this Order in terms of works 1a, 1b, 6a and 6b;

- (b) Paragraph 2 of The A1 Trunk Road (Gateshead/Newcastle Western Bypass) (Width Restriction) Order 2016(a) shall be amended as follows :-
- (i) The definition of "the A1" shall include the length of the A1 Trunk Road as realigned by this Order comprised in works 1a, 1b, 6a and 6b;
 - (ii) The definition of "the northbound carriageway" shall include the A1 northbound carriageway as realigned by this Order comprised in works 1b and 6b;
 - (iii) The definition of "the southbound carriageway" shall include the A1 southbound carriageway as realigned by this Order comprised in works 1a and 6a;
- (c) Paragraph 2 of The A1 Trunk Road (Birtley to North Brunton) (Prohibition of Slow Moving Vehicles) Order 2001(b) shall be amended as follows:
- (i) The definition of "the trunk road" shall include the length of the A1 Trunk Road as realigned by this Order comprised in works 1a, 1b, 6a and 6b;
 - (ii) The definition of "the northbound carriageway" shall include the A1 northbound carriageway as realigned by this Order comprised in works 1b and 6b;
 - (iii) The definition of "the southbound carriageway" shall include the A1 southbound carriageway as realigned by this Order comprised in works 1a and 6a; and
- (d) The Schedule to The A1 Trunk Road (Gateshead/Newcastle Western Bypass) (Birtley Interchange to Blaydon Viaduct) (50 Miles Per Hour Speed Restriction) Order 2010(c) shall be amended as follows:
- (i) Paragraph (i) shall include the A1 northbound carriageway as realigned by this Order in terms of works 1b and 6b;
 - (ii) Paragraph (xiii) shall include the A1 southbound carriageway as realigned by this Order in terms of works 1a and 6a;

(2) Paragraph (1) shall have effect so as to give effect to the orders named in that paragraph as if the same had been imposed upon the works listed in that provision 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.

(3) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic, they shall cease to be restricted roads for the purpose of section 81 of the 1984 Act.

(4) Paragraph (3) has effect as if made by direction under section 82 of the 1984 Act.

Traffic regulation

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

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

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

(a) S.I. 2016/1013

(b) S.I.2001/2230

(c) S.I. 2010/2820 as amended by S.I. 2016/1015

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 (4) 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 its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

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

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

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces)(a) 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(b).

(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.

(8) Before exercising the powers of 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 shall 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.

(a) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) 2004 c. 18

PART 4

SUPPLEMENTAL POWERS

Discharge of water

20.—(1) Subject to paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out 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 of the Water Industry Act 1991 (right to communicate with public sewers).

(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 works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

(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.

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

(a) S.I. 2016/1154.

(b) 1991 c. 57.

(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.

(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).

(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
- (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 46 (arbitration).

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

(8) Where—

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

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

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

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

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

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

Authority to survey and investigate the land

22.—(1) The undertaker may for the purposes of this Order 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;
- (b) without limitation to the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(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 surveyor investigation or to make the trial holes.

(4) No trial holes 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 authority 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.

PART 5

POWERS OF ACQUISITION AND POSSESSION

Compulsory acquisition of land

23.—(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 26 (compulsory acquisition of rights and restrictive covenants) and paragraph (8) of article 32 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

24. Part 2 of Schedule 2 to the Acquisition of Land Act 1981(a) (minerals) is incorporated in this Order subject to the modification that for the acquiring authority substitute the undertaker.

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 29 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 32 (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 restrictive covenants

26.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

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

(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) Subject to section 8 of the 1965 Act (other provisions as to divided land), as modified by 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 under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) 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

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

- (a) as 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) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of the 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) 1981 c. 67.

- (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 on 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 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 34 (statutory undertakers) applies.

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

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

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

- (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,
- it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

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

Application of Part 1 of the 1965 Act

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

- (a) in section 4A(1) (extension of time limit during challenge)(a)—
 - (i) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(a) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

- (ii) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the A1 Birtley to Coal House Development Consent Order 20[]”.

(2) 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 25 (time limit for exercise of authority to acquire land compulsorily) of the A1 Birtley to Coal House Development Consent Order 20[]”.

(3) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) at the end insert—

PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 21 (protective work to buildings), 32 (temporary use of land for carrying out the authorised development) or 33 (temporary use of land for maintaining the authorised development) of the A1 Birtley to Coal House Development Consent Order 20[]”.

Application of the 1981 Act

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

(2) The 1981 Act, as so applied, has effect with the modifications set out in this article.

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

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

(4) Omit section 5 (earliest date for execution of declaration).(a)

(5) Omit section 5A (which provides a time limit for the execution of a general vesting declaration).(b)

(6) In section 5B(1) (extension of time limit during challenge)(c)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the A1 Birtley to Coal House Development Consent Order 20[]”.

(7) In section 6 (notices after execution of declaration) for subsection (1)(b)(d) there is substituted—

“(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008,”.

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

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

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

(a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(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 (c. 22).

(d) Section 6 was amended by paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(e) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(f) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

Acquisition of subsoil or airspace only

30.—(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 23 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2)) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over 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 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 28 (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) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

Rights under or over streets

31.—(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 entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) 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

32.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (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 buildings and vegetation from that land;

- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land as are mentioned in Schedule 1 (authorised development), or any mitigation works in connection with the 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.

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

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the 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) restore the land to a condition better than the relevant land was in before temporary possession;
- (d) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (e) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) 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.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

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

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

- (a) acquiring new rights over any part of that land under article 26 (compulsory acquisition of rights and restrictive covenants); or
- (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 30 (acquisition of subsoil or airspace only).

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

(11) Section 13 (refusal to give possession to acquiring authority)(a) 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 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining the authorised development

33.—(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; and
- (b) 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 service notice under paragraph (3) 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 practicable 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) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

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

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

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

(11) Section 13 (refusal to give possession to 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.

(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).

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

Statutory undertakers

34.—(1) Subject to the provisions of Schedule 11 (protective provisions), article 26 (compulsory acquisition of rights and restrictive covenants) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over any Order land belonging to statutory undertakers;
- (b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over 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 of the 1991 Act; and
- (b) article 35 of this Order (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

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

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

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

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

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

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

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

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

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

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

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) 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) 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.

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

“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

36.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (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 34, 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 35 (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(b); and

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

(a) There are amendments to this Act which are not relevant to this Order.
(b) There are amendments to this Act which are not relevant to this Order.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

37.—(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 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^(a) and includes important hedgerows.

Trees subject to tree preservation orders

38.—(1) The undertaker may fell or lop any tree described in Schedule 9 (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 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 passengers or other persons using the authorised development.

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

- (a) the undertaker shall 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 shall not apply.

(3) The authority given by paragraph (1) shall constitute 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, shall be determined under Part 1 of the 1961 Act.

Scheduled Monuments

39. The undertaker is authorised to carry out the works specified in column 2 of Schedule 10 in relation to the scheduled monuments specified in column 1 of Schedule 10.

^(a) S.I. 1997/1160.

PART 7
MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

40.—(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) Accordingly, 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

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

Defence to proceedings in respect of statutory nuisance

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

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

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

(b) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to this Order.

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

Protection of interests

43. Schedule 11 (protective provisions) to the Order has effect.

Certification of documents, etc.

44.—(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 12 (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 12 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

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

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

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

(3) For the purposes of section 7 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) 1978 c. 30. 29.

- (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) 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.

Arbitration

46. 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.

signed by authority of the Secretary of State for Transport

[Address]
Date: 20[**]

{name}
Parliamentary Under Secretary of State
Department of Transport

SCHEDULES

SCHEDULE 1

Articles 2 and 3

Authorised development

In the Metropolitan Borough of Gateshead

A nationally significant infrastructure project as defined in section 22(a) of the 2008 Act, and associated development as defined in section 115(2)(b) (development for which development consent may be granted) of the 2008 Act, comprising:

Work No. 1a – The widening, alteration and realignment of the southbound carriageway of the A1 dual carriageway on the approach to Junction 67 (Coal House) commencing at 424371E; 558644N and terminating at grid reference 425284E; 558511N;

Work No. 1b – The widening, alteration and realignment of the northbound carriageway of the A1 dual carriageway on the approach to Junction 67 (Coal House) commencing at grid reference 424366E; 558629N and terminating at grid reference 425277E; 558492N

with Works No.1a and 1b including -

- i. The widening, alteration and realignment of the existing highway with construction of new pavements, embankments, retaining walls, ground improvements (to increase bearing capacity of proposed retaining walls) and landscaping to create 3 no. lanes in each direction;
- ii. The provision of a hardened central reserve with a rigid concrete barrier or steel step barrier dividing the southbound and northbound carriageways;
- iii. Removal of existing road lighting and installation of new lighting columns within the highway verge of each carriageway;
- iv. Associated drainage works and underground storage drainage facilities within the Coal House roundabout to collect and store water and works to associated existing outfalls to the River Team;
- v. Treatment of underground historical mine workings to reduce the risk of ground instability to include drilling and grouting, mine shaft stabilisation and/or installation of other protection measures;
- vi. The construction of advanced directional gantry signs, including sign foundations and sign structures;
- vii. Installation of road signs including sign foundations, sign structure, signs, signals, sign illumination, control cabinets, power and communication cable connections; and
- viii. Associated utility works and diversions within the highway verge of each carriageway;
- ix. Removal of Vehicle Activated Sign and motorway signals; and
Installation of CCTV, MIDAS and traffic counting equipment with associated ducting.

(a) Section 22 was substituted by article 3 of S.I. 2013/1883

(b) Section 115(2) was amended by section 160(1) and (3) of the Housing and Planning Act 2016 (c. 22). There are other amendments to section 115(2) but none are relevant.

Work No. 2 - The widening of the existing Kingsway Viaduct bridge over Coal House Roundabout at Junction 67 (Coal House) to accommodate the widened highway associated with Work No. 1b including substructure and superstructure elements and removal of existing road lighting and installation of new lighting columns on the bridge deck;

Work No. 3a - The widening, alteration and realignment of the southbound off slip with associated embankment, retaining walls, ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions and landscaping, commencing at grid reference 424691E; 558594N and terminating at grid reference 424877E; 558582N;

Work No. 3b - The widening, alteration and realignment of the southbound on slip with associated embankment, retaining walls, ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions and landscaping, commencing at grid reference 425012E; 558584N and terminating at grid reference 425255E; 558533N;

Work No. 3c - The widening, alteration and realignment of the northbound off slip with associated embankment, retaining walls, ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions and landscaping, commencing at grid reference 425232E; 558497N and terminating at grid reference 425009E; 558512N;

Work No. 3d - The widening, alteration and realignment of the northbound on slip with associated embankments, cuttings, retaining walls and associated ground improvements (to increase bearing capacity), drainage, road signs, communications ducting, road lighting, utility diversions, realignment of existing noise barrier and landscaping commencing at grid reference 424895E; 558519N and terminating at grid reference 424636E; 558569N;

Work No. 4a – The construction of a new offline section of the A1 southbound carriageway between Junction 67 (Coal House) and Smithy Lane Overbridge commencing at grid reference 425284E; 558511N and terminating at grid reference 425772E; 558281N;

Work No. 4b – The construction of a new offline section of the A1 dual carriageway to create 4 no. lanes northbound between Junction 67 (Coal House) and Smithy Lane Overbridge commencing at grid reference 425277E; 558492N and terminating at grid reference 425755E; 558265N

Such works including-

- i. Construction of new highway with associated embankments, ground improvements, drainage facilities and roadside furniture;
- ii. The provision of a hardened central reserve with a rigid concrete barrier or steel step barrier dividing the southbound and northbound carriageways;
- iii. Installation of lighting columns in the verge;
- iv. The construction of advanced directional gantry signs, including sign foundations and sign structures;
- v. Demolition of existing verge mounted road signs and installation of replacement new road signs including sign foundations, sign structure, signs, signals, sign illumination, control cabinets, power and communication cable connections;
- vi. Treatment of underground historical mine workings to reduce the risk of ground instability to include drilling and grouting and/or installation of other protection measures;
- vii. Landscaping;
- viii. Relocation of existing internally illuminated tactical variable message sign within verge with associated ducting and reinstallation of existing CCTV in its current position; and
- ix. Associated utility works and diversions within the highway verge of each carriageway;

Work No. 5a – Construction of a new offline structure to cross the East Coast Main Line, accommodating the widened highway comprised in Works No. 4a and 4b including substructure and superstructure elements and removal of existing/installation of new road lighting, safety barriers, drainage, pavement and advance directional sign gantries

comprising one of:

- (i) single span bridge structure supported by embankments with ground improvements in the form of rigid inclusions extending into subsoil beneath the embankments; or
- (ii) a viaduct structure with up to seven spans supported on rigid piled foundations and associated superstructure, substructure and earthwork elements;

Work No 5b - The demolition of the existing Allerdene Railway bridge and its associated embankments in the area shown on the works plans;

Work No. 6a – The widening, alteration and realignment of the southbound carriageway of the A1 dual carriageway between Smithy Lane Overbridge and Junction 65 (Birtley) commencing at grid reference 425772E; 558281N and terminating at grid reference 428181E; 556704N;

Work No. 6b – The widening, alteration and realignment of the northbound carriageway of the A1 dual carriageway between Smithy Lane Overbridge and Junction 65 (Birtley) commencing at grid reference 425755E; 558265N and terminating at grid reference 428196E; 556627N

with Works No.6a and 6b including:

- i. The widening, alteration and realignment of the existing highway with construction of new pavements, embankments, retaining walls, ground improvements (to increase bearing capacity), drainage and landscaping to create 4 no. lanes in each direction, except through Junction 66 (Eighton Lodge) on the northbound carriageway, which will comprise of 3 no. lanes;
- ii. The provision of a hardened central reserve with a rigid concrete barrier or steel step barrier dividing the southbound and northbound carriageways;
- iii. Removal of existing lighting and installation of new lighting columns within the highway verge of each carriageway;
- iv. Widening of the existing Eighton Lodge Slip Road Underbridge highway structure with associated embankment, substructure and superstructure elements;
- v. Widening of the existing Eighton Lodge North Underbridge highway structure with associated embankment, substructure and superstructure elements;
- vi. Widening of the existing Eighton Lodge South Underbridge highway structure with associated embankment, substructure and superstructure elements;
- vii. Treatment of underground historical mine workings to reduce the risk of ground instability to include drilling and grouting, mine shaft stabilisation and/or installation of other protection measures;
- viii. The construction of advanced directional gantry signs, including sign foundations and sign structures;
- ix. Installation of road signs including sign foundations, sign structure, signs, signals, sign illumination, control cabinets, power and communication cable connections.
- x. Removal of Vehicle Activated Sign and motorway signals;
- xi. Installation of CCTV, MIDAS and traffic counting equipment with associated ducting.
- xii. Associated drainage works and works to associated existing outfalls; and
- xiii. Associated utility works and diversions within the highway verge;

Work No. 7a - The widening, alteration and realignment of the southbound off slip at Junction 66 (Eighton Lodge) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road signs, communications ducting, road lighting, drainage, utility diversions and

landscaping commencing at grid reference 426300E; 557750N and terminating at grid reference 426436E; 557693N;

Work No. 7b - The widening, alteration and realignment of the southbound on slip at Junction 66 (Eighton Lodge) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road signs, communications ducting, road lighting, drainage, utility diversions and landscaping commencing at grid ref. 426846E; 557487N and terminating at grid reference 427105E; 557361N;

Work No. 7c - The widening, alteration and realignment of the northbound off slip at Junction 66 (Eighton Lodge) with associated embankment, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road lighting and landscaping commencing at grid reference 427092E; 557322N and terminating at grid reference 426817E; 557418N;

Work No. 7d - The widening, alteration and realignment of the northbound on slip at Junction 66 (Eighton Lodge) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), road lighting and landscaping commencing at grid reference 426518E; 557514N and terminating at grid reference 426329E; 557677N;

Work No. 8a - The widening, alteration and realignment of the southbound off slip at Junction 65 (Birtley) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), verge ducting, road signs, communications ducting, road lighting, drainage, and landscaping commencing at grid reference 427878E; 556918N and terminating at grid reference 428173E; 556883N;

Work No. 8b - The widening, alteration and realignment of the northbound on slip at Junction 65 (Birtley) with associated embankment, cuttings, retaining walls, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), drainage, underground storage drainage facility, verge ducting, road signs, communications ducting, road lighting, and landscaping commencing at grid reference 428076E; 556499N with local access from the B1288 at grid reference 428151E; 556456N and terminating at grid reference 428150E; 556684N;

Work No. 9 – Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Lamesley Road that runs to the south of Work No. 10 commencing at grid reference 425100E, 558405N and terminating at grid reference 425176E, 558400N;

Work No. 10 – Construction of a gas transfer station building for the benefit of Northern Gas Networks Ltd with associated connections to Work Nos. 9, 13, 14 and 15;

Work No. 11 - Construction of a private maintenance access road from Lamesley Road for maintenance of gas, rail and highway structures;

Work No. 12 - Construction of a replacement gas transfer station building for the benefit of Northern Gas Networks Ltd with associated connections to Work Nos. 15 and 16;

Work No. 13 – Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Lamesley Road commencing at grid reference 425104E; 558478N and terminating at grid reference 425122E; 558409N;

Work No. 14 - Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Lamesley Road commencing at grid reference 425110E; 558482N and terminating at grid reference 425161E; 558455N;

Work No. 15 - Diversion of existing Northern Gas Networks Gas Pipeline extending under A1 highway between land adjacent to Lamesley Road and land adjacent to Chowdene Bank commencing at grid reference 425183E; 558448N and terminating at grid reference 425311E; 558568N;

Work No. 16 - Diversion of existing Northern Gas Networks Gas Pipeline on land adjacent to Chowdene Bank commencing at grid reference 425315E; 558601N and terminating at grid ref. 425393E; 558655N;

Work No. 17 – Construction of an access road from the main A1 southbound carriageway that connects to a drainage attenuation pond and pipe outfall to Allerdene Culvert referred to in Work No. 20;

Work No. 18 – Demolition of existing North Dene Footbridge and construction of a new foot/cycle bridge in place of the existing with associated approach ramps over the A1 carriageway at a point approximately 900m south of Junction 66 (Eighton Lodge) and grid reference 427468E; 557101N including associated substructure and superstructure elements, treatment of underground historical mine workings (to include drilling and grouting and/or installation of other protection measures), embankments, retaining walls, utility diversions and hardstanding;

Work No. 19 – Extension of the north side of the Longbank Bridleway Underpass and its associated embankments and other substructure and superstructure elements and provision of lighting, in order to accommodate the highway widening above proposed under Work Nos. 6a and 7b and associated fencing, drainage and footpath improvements on approach to Underpass adjacent to the northbound and southbound carriageways at grid reference 427184E; 557331N; with realignment of the existing footpath and associated improvements commencing west of the Underpass at grid reference 427102E; 557500N and terminating east of the Underpass at grid reference 427364E; 557402N;

Work No. 20 – Alteration and realignment of existing culverted watercourse under the A1 carriageway in the vicinity of Allerdene Bridge,

such works including:

- (i) Removal of existing culvert and creation of new culverted sections; and/or,
- (ii) Removal of existing culvert structure and creation of an open ditch with associated substructures, embankments, and landscaping.

Work No. 21 – Temporary construction access required between Woodford and Allerdene Bridge to carry out the demolition of the existing Allerdene Bridge;

Work No. 22 – Diversion of Northumbrian Water main under the A1 carriageway between Junction 67 (Coal House) and Smithy Lane Overbridge associated with Work No. 4a and 4b, commencing at grid reference 425672E; 558288N and terminating at grid reference 425983E; 558273N;

Work No. 23 – Removal of existing Overhead Line Equipment structures on the East Coast Main Line, including those attached to the underside of the existing Allerdene Bridge structure, and installation of replacement Overhead Line Equipment (with associated foundations and utility diversions) and drainage, signalling and power supply works to tie in with existing rail infrastructure commencing at grid reference 425620E; 558165N and terminating at grid reference 425435E; 558638N;

and in connection with the construction of any of those works, and to the extent that they do not otherwise form part of any such work, and whether or not shown on the plans referred to in the requirements further development within the order limits consisting of –

- a) The provision of up to two construction compounds and two working compounds in the areas shown on the works plans;

- b) alteration of the layout of any street permanently or temporarily, including but not limited to realignment of carriageways and increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- c) ramps, means of access, footpaths, bridleways, cycle tracks, embankments, aprons, abutments, shafts, foundations, retaining walls, wing walls, bunds, embankment swales, fencing, boundary treatments and highway lighting and culverts;
- d) street works including breaking up or opening a street, or any sewer, drain or tunnel under it, tunnelling or boring under a street, work to place or maintain apparatus in a street, works to alter the position of apparatus, including mains, sewers, drains and cables;
- e) the provision of thin surface course and carriageway markings;
- f) temporary and permanent diversion of utilities apparatus, including gas and water pipelines and electric and telecommunication cables;
- g) earthworks, including the extension of earthworks;
- h) retaining structures;
- i) barriers, including safety barriers;
- j) fencing;
- k) refurbishment works to any existing bridge or gantry;
- l) works to alter or remove road furniture;
- m) works to alter the course of, or otherwise interfere with a watercourse, including without limitation works to the River Team including temporary culverting;
- n) 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;
- o) works for the benefit or protection of land affected by the authorised development;
- p) works to place, alter, remove or maintain road furniture;
- q) signage and road marking;
- r) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping, storage, and site levelling);
- s) the felling of trees and hedgerows;
- t) the establishment of site construction compounds, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery apparatus, works and conveniences;
- u) the provision of other works including pavements works, kerbing and paved areas works, signing, signals gantries, road markings, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- v) 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 which do not give rise to any materially new or materially different environment effects to those associated in the environmental statement.

SCHEDULE 2

Article 3

Requirements

PART 1

Requirements

Interpretation

1. In this Schedule —

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

“European protected species” has the same meaning as in regulation 40 (European protected species of animals) and 44 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2010(b);

“HEMP” means the handover environmental management plan, to be developed and completed by the end of the construction, commissioning and handover stage of the authorised development which is to contain—

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

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authorities for England, Scotland, Wales and Northern Ireland, or any equivalent replacement published for that document;

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

“outline CEMP” means the document of that description submitted with the application for this order and certified as the outline CEMP by the Secretary of State for the purposes of this Order;

“REAC” means the register of environmental actions and commitments contained in the Outline CEMP.

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.

(a) 1990 c. 43 as amended by section 86(2) of the Water Act 2003 c. 37.

(b) S.I. 2010/490 to which there are amendments not relevant to this Order.

(c) 1981 c. 69.

Detailed design

3.—(1) The authorised development must be designed in detail and carried out in accordance with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning 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 worse adverse environmental effects in comparison with those reported in the environmental statement.

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

Construction and handover environmental management plans

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 with the relevant planning authority to the extent that it relates to matters relevant to its function.

(2) The CEMP must be written in accordance with ISO14001 and must—

- (a) reflect the mitigation measures set out in the REAC;
- (b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) require adherence to working hours of 07:00–19:00 Mondays to Fridays and 07:30–13:00 on Saturday except for—
 - (i) night-time closures for bridge demolition and installation;
 - (ii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (iii) junction tie-in works;
 - (iv) works required in relation to the east coast main line;
 - (v) overnight traffic management measures;
 - (vi) cases of emergency; and
 - (vii) as otherwise agreed by the local authority in advance;
- (d) include the following management plans—
 - (i) Communications Plan;
 - (ii) Construction Traffic Management Plan;
 - (iii) Archaeological Mitigation Strategy;
 - (iv) Invasive Non-Native Species Management Plan;
 - (v) Materials Management Plan;
 - (vi) Site Waste Management Plan; and
 - (vii) Temporary Surface Water Drainage Strategy.

(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 HEMP must address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development, and must contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
 - (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
 - (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.
- (6) 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 which sets 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 with the relevant planning authority on matters related to its function.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan and landscape mitigation design annexed to the environmental statement.

(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; and
- (e) implementation timetables for all landscaping works.

(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.

(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.

(6) Planting will be undertaken at Longacre Wood to replace any trees that were intended to be retained which are felled or die as a result of construction works. The size, species and location of replacement trees will be included in the landscaping scheme required by sub-paragraph (1).

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, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning 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 with the relevant planning authority on matters related to its function and the Environment Agency.

(3) A suitable capping layer, comprising either 400mm layer of 'clean' soil or a shower thickness with a geotextile marker layer, will be constructed in any areas of soft landscape planting located over areas of made ground contaminated with asbestos. The details of any such capping layers shall be included within any remedial measures required in terms of sub-paragraph (2).

(4) 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 confirm whether European or nationally protected species are present on any of the land affected or likely to be affected by any 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 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 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 with the relevant planning authority on matters related to its function.

(2) The written details required by sub-paragraph (1) shall include culvert design. Where possible, culverts will be designed to include natural beds (between 100mm and 200mm) to maintain and assist fish passage. To mitigate for potential downstream impacts and maintain passage along watercourses, baffles or similar strictures shall be included within existing culverts.

(3) 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 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 worse adverse 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 for that part a written scheme for the investigation of areas of archaeological interest, reflecting the relevant mitigation measures

set out in the REAC, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in sub-paragraph (1) must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme referred to in sub-paragraph (1).

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority, and to Historic England in the case of the scheduled monument area, as soon as reasonably practicable from the date they are identified.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date of any notice served under sub-paragraph (4) unless otherwise agreed in writing by the relevant planning authority or, in the case of the scheduled monument area, Historic England.

(6) If the relevant planning authority or, in the case of a scheduled monument, Historic England determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority or, in the case of a scheduled monument, Historic England.

Traffic management

10.—(1) No part of the authorised development 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 with the relevant planning authority on matters related to its function.

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

Amendments to approved details

11. 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.

Pedestrian, cyclist and horse riding facilities

12.—(1) The North Dene Footbridge shall be replaced in its current location with a new footbridge which will have a single drawstring truss.

Fencing

13. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Allerdene bridge replacement

14. The undertaker is restricted to carrying out Work No.5a as either one of the works specified in paragraph (i) or (ii) of Work No. 5a as follows:-

- (a) In the event that the Work No. 5a is to comprise a single span bridge structure in terms of paragraph (i) of Work No. 5a then it shall be carried out generally in accordance with Sheet 3 of the structures engineering drawings and sections;
- (b) In the event that the Work No. 5a is to comprise a six span bridge structure in terms of paragraph (ii) of Work No. 5a then it shall be carried out generally in accordance with Sheet 4 of the structures engineering drawings and sections;
- (c) In the event that the Work No. 5a is to comprise a seven span bridge structure in terms of paragraph (ii) of Work No. 5a then it shall be carried out generally in accordance with Sheet 5 of the structures engineering drawings and sections.

Primary Design Mitigation

15.—(1) The Scheme shall include the following primary mitigation measures:-

- (a) A fence will be provided to restrict access to the northbound carriageway for pedestrians and animals between the Northside Overbridge and the A1;
- (b) A retaining wall will be included to retain the access road located adjacent to junction 65 (Birtley) southbound exit slip to ensure access is maintained to properties;
- (c) The earthworks design shall use a 1:2 slope at Longacre wood to minimise land take at this location.

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 requirement 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 17;
- (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 worse 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. In the event that the Secretary of State does not give such notification within that 21 business day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 1 (applications made under requirements) and in this paragraph.

Register of requirements

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

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

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

Anticipatory steps towards compliance with any requirement

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.

SCHEDULE 3

Articles 14,18

Classification of roads etc.

PART 1

Trunk roads

<i>(1)</i> <i>Road</i>	<i>(1)</i> <i>Road</i>
Junction 67 (Coal House) to Smithy Lane Overbridge for Southbound and Northbound carriageways	Between point 2/1 on Sheet 2 and point 3/16 on Sheet 3 of the Streets, Rights of Way and Access Plans.
Junction 67 (Coal House) Southbound on slip	Between point 3/1 and point 3/6 on Sheet 3 of the Streets, Rights of Way and Access Plans.
Junction 67 (Coal House) Northbound off slip	Between point 2/2 on Sheet 2 and point 3/5 on Sheet 3 of the Streets, Rights of Way and Access Plans.

PART 2

Other rights of way

<i>(1)</i> <i>Public right of way</i>	<i>(2)</i> <i>Extent</i>
Public Right of Way BI/16/1 leading to North Dene Footbridge (including crossing facilities over the A1 Southbound and Northbound carriageway)	To be substituted in part at its southern end where it meets the proposed North Dene Footbridge and continues over A1 Southbound and Northbound carriageway between point 6/4 and point 6/5 on Sheet 6 of the Streets, Rights of Way and Access Plans.

SCHEDULE 4

Article 16

Permanent stopping up of streets, public rights of way and private means of access

PART 1

Streets to be stopped up and for which a substitute is to be provided

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted</i>
The permanent stopping up and removal of the existing A1 carriageway and its embankments and associated structures. between junction 67 (Coal House) and Smithy Lane Overbridge.	From point 2/1 on Sheet 2 (measuring approximately 800m in length) and terminating at point 3/16 on Sheet 3 of the Streets, Rights of Way and Access Plans.	Highway to be removed and replaced by Work No 4a, 4b and 5a.

PART 2

Public rights of way to be stopped up and for which a substitute is to be provided

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted</i>
Permanent stopping up of existing footpath that crosses Public Right of Way LA/72a/16 (Longbank Bridleway) adjacent to southbound onslip at junction 66 (Eighton Lodge).	From point 5/3 on Sheet 5 and terminating at point 6/2 on Sheet 6 of the Streets, Rights of Way and Access Plans.	To be substituted by a new footpath that runs to the north of the existing footpath from point 5/3 on Sheet 5 and terminating at point 6/2 on Sheet 6 of the Streets, Rights of Way and Access Plans.

PART 3

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 highway to be substituted</i>
Private means of access from Lamesley Road to land adjacent to south side of proposed Allerdene Bridge and East Coast Main Line.	From point 3/3 on Sheet 3 to point 3/7 on Sheet 3 of the Streets, Rights of Way and Access Plans.	To be substituted by new access road from Lamesley Road from point 3/4 to point 3/8 on Sheet 3 of the Streets, Rights of Way and Access Plans.

SCHEDULE 5

Article 15

Public rights of way to be temporarily stopped up and for which a substitute is to be provided

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New public right of way to be substituted</i>
Temporary stopping up of Public Right of Way BI/16/1 leading to North Dene Footbridge (including crossing facilities over the A1 Northbound and Southbound carriageway).	Southern end of public right of way where it connects with existing footbridge at point 6/4 to point 6/5 on Sheet 6 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily whilst the Footbridge is being demolished by a diversion route from point 6/4 to point 6/1 on Sheet 6 of the Streets, Rights of Way and Access Plans. The replacement Footbridge will be provided in the same location as the existing structure shown between point 6/4 and point 6/5 on Sheet 6 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of Public Right of Way LA/72a/16 (referred to as Longbank Bridleway).	To be temporarily stopped up between point 5/4 on Sheet 5 and point 6/1 on Sheet 6 of the Streets, Rights of Way and Access Plans.	A new footpath will be provided from point 6/5 to point 6/3 on Sheet 6 of the Streets, Rights of Way and Access Plans. To be substituted temporarily by a diversion route that runs between point 6/1 on Sheet 6 and point 5/2 and point 5/5 on Sheet 5 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of Public Right of Way GA/7/1 to provide construction works access with a controlled crossing point.	To be temporarily stopped up between point 3/10 and point 3/11 on Sheet 3 of the Streets, Rights of Way and Access Plans.	To include a controlled crossing point between point 3/10 and point 3/11 on Sheet 3 of the Streets, Rights of Way and Access Plans.
Temporary stopping up of Public Right of Way GA/6/1 to provide construction works access.	To be temporarily stopped up between point 3/12 and point 3/14 on Sheet 3 of the Streets, Rights of Way and Access Plans.	To include a controlled crossing point between point 3/12 and point 3/14 on Sheet 3 of the Streets, Rights of Way and Access Plans
Temporary stopping up of footpath that runs parallel to A167 Durham Road from Angel of the North to junction 66 (Eighton Lodge).	To be temporarily stopped up from point 4/1 on Sheet 4 to point 5/1 on Sheet 5 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily by a diversion route that runs to the north of the existing footpath from point 4/1 on Sheet 4 to point 5/1 on Sheet 5 of the Streets, Rights of Way and Access Plans.

<i>(1) Public right of way to be stopped up</i>	<i>(2) Extent of stopping up</i>	<i>(3) New public right of way to be substituted</i>
Temporary stopping up of footpath that runs adjacent to the southbound off slip at junction 65 (Birtley).	To be temporarily stopped up from point 7/1 to point 7/2 on Sheet 7 of the Streets, Rights of Way and Access Plans.	To be substituted temporarily by a diversion route that runs to the north of the existing footpath from point 7/1 to point 7/2 on Sheet 7 of the Streets, Rights of Way and Access Plans.

SCHEDULE 6

Article 26

Land in respect of which only new rights etc. may be acquired

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 2		
2/2	Construction of retaining wall, new/relocation of existing ADS signs, upgrading of road lighting (including rights for access and maintenance).	Work Nos. 1a and 3a
Land Plans – Sheet 3		
3/1	Construction of retaining wall, new/relocation of existing ADS signs, upgrading of road lighting (including rights for access and maintenance).	Work Nos. 1a and 3a
3/3e	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct and maintain works to junction 67 (Coal House) northbound on slip road. Rights to construct and retain grouting works under land and maintenance	Work Nos. 1b and 3d
3/3f	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct and maintain works to junction 67 (Coal House) northbound on slip road. Rights to construct and retain grouting works under land.	Work Nos. 2 and 3d
3/3g	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side) and for grouting works on the land underneath the proposed new structure.	Work Nos. 2 and 3d
3/3h	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side) and for	Work Nos. 2 and 3a

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/3i	grouting works on the land underneath the proposed new structure. New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Rights to construct and retain grouting works under land.	Work Nos. 2 and 3a
3/3z	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Grouting works under land.	Work Nos. 2, 3c and 3d
3/3dd	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 1b, 2, 3c and 3d
3/3ff	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side) and for grouting works on the land underneath the proposed new structure.	Work Nos. 2 and 3c
3/3gg	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Rights to construct and retain grouting works under land.	Work Nos. 2 and 3b
3/3hh	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side) and for	Work Nos. 2 and 3b

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/3ll	grouting works on the land underneath the proposed new structure. New right to construct, operate, access and maintain a private maintenance access road on land adjacent to Lamesley Road and extending to land adjacent to south side of the proposed Allerdene Bridge and the East Coast Main Line for the benefit of Network Rail, Highways England and Northern Gas Networks Ltd.	Work No. 11
3/3mm	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 3c, 13 and 14
3/3pp, 3/3qq, 3/3tt	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Rights to construct and retain grouting works under land.	Work Nos. 1a and 3b
3/3ww	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for installation and retention of grouting works on the land underneath the proposed new structure.	Work No. 5a, 5b and 23
3/3yy	New right to demolish the existing Allerdene Bridge and construct, operate, access and maintain a replacement offline Allerdene Bridge structure.	Work No. 5a, 5b and 21
3/3aaa	Required for proposed Northumbrian Water pipeline diversion. Rights to construct and retain grouting works under land.	Work Nos. 4b, 5a, and 22
3/3hhh	New right to access, operate, make alterations to and maintain the existing drainage outlet pipeline.	Work No. 6a

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/3kkk	Required for access and to construct proposed highway and associated embankment. Rights to construct and retain grouting works under land.	Work Nos. 6a and 7a
3/3lll	New right to access, operate, make alterations to and maintain the existing drainage outlet pipeline. Rights to construct and retain grouting works under land.	Work Nos. 6a and 7a
3/3nnn	Required for access and to construct proposed highway and associated embankment. Required to alter existing drainage outlets. Rights to construct and retain grouting works under land.	Work Nos. 6a and 7a
3/4a, 3/4b	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side) and for grouting works on the land underneath the proposed new structure.	Work Nos. 1a, 1b and 2
3/4q	Required to access, maintain and alter existing drainage outlet and ditch. Rights to construct and retain grouting works under land.	Work No. 6b
3/6b	New right to construct, operate, access and maintain a private maintenance access road on land adjacent to Lamesley Road and extending to land adjacent to south side of the proposed Allerdene Bridge and the East Coast Main Line for the benefit of Network Rail, Highways England and Northern Gas Networks Ltd.	Work No. 11
3/6d	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 9, 13, 14 and 15

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/6f	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway. Rights to construct and retain grouting works under land.	Work Nos. 10, 14 and 15
3/6k	Required for construction compound. Rights to construct and retain grouting works under land.	N/A
3/6l	New right to access and maintain Allerdene culvert and drainage ditch.	Work No. 20
3/10d	New right to demolish the existing Allerdene Bridge and construct, operate, access and maintain a replacement offline Allerdene Bridge structure and for installation and retention of grouting works on the land.	Work No. 5a, 5b and 23
3/10g, 3/12d, 3/12f	New right to construct, operate, access and maintain a replacement offline Allerdene Bridge structure and for grouting works on the land underneath the proposed new structure.	Work No. 5a
3/10e, 3/10f, 3/12c, 3/12e	New right to operate, access and maintain a replacement offline Allerdene Bridge structure and for installation and retention of grouting works on the land.	Work No. 5a
3/10h	New right to construct, operate, access and maintain a replacement offline Allerdene Bridge structure, associated Overhead Line Equipment and for installation and retentions of grouting works on the land.	Work Nos. 4a, 4b, 5a, 5b and 23
3/12b	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for installation and retention of grouting works on the land.	Work Nos. 4a, 4b, 5a, 5b and 23

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
4/2d	New right to extend the Longbank Bridleway Underpass and operate, access and maintain the structure and associated equipment. Grouting works under land.	Work Nos. 6a and 19
4/3b	Required for utility diversions and associated works within junction 66 (Eighton Lodge) Roundabout. Rights to construct and retain grouting works under land.	Work No. 6a
4/3q, 4/4b	Required for the construction compound at junction 66 (Eighton Lodge) and associated access. Rights to construct and retain grouting works under land.	N/A
4/6b	Required to construct the extension of Longbank Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure. Rights to construct and retain grouting works under land.	Work Nos. 6a and 19
4/7b, 4/7e	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Rights to construct and retain grouting works under land.	Work No. 18
4/7f	New right to access, operate, make alterations to and maintain the existing drainage outlet pipeline. Grouting works under land.	Work Nos. 6a and 19
4/9b, 4/10	New right to access, operate, make alterations to and maintain the existing drainage outlet pipeline.	Work No. 6b
4/12b, 4/13b, 4/13d	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Rights to construct and retain grouting works under land.	Work No.18

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
4/14b	Required to carry out the demolition and construction of the replacement North Dene Footbridge and rights to construct and retain grouting works under land.	Work No.18
Land Plans – Sheet 5		
5/3b, 5/4b, 5/4d	Required for access and construction of main highway works and junction 65 (Birtley) off slip. Rights to construct and retain grouting works under land.	Work Nos. 6a and 8a
5/5a	Required to construct the proposed highway works and associated access. Rights to construct and retain grouting works under land.	Work No. 8a
5/6, 5/7, 5/8, 5/9, 5/11	Required for construction of junction 65 (Birtley) southbound off slip road works and temporary footpath diversion. Rights to construct and retain grouting works under land.	Work No. 8a

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 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, subject to the modifications set out in this Schedule.

2.—(1) Without limiting paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2).

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

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

3.—(1) Without limiting 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, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) to the A1 Birtley to Coal House Development Consent Order 201[] 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 where it entered on that land for the purpose of exercising that right.”

Application of the 1965 Act

4.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references—

- (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.

(2) Without limiting sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

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

(a) 1973 c. 26

to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the 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.”

5. 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.

6. Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right 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 (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

7. Section 20(d) (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 (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.

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

9. For Schedule 2A of the 1965 Act substitute—

SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

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 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

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

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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) and S.I. 2009/1307.
 - (b) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c.23).
 - (c) 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).
 - (d) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and S.I. 2009/1307.

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

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

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

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

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

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

SCHEDULE 8

Article 32

Land of which temporary possession may be taken

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Land Plans - Sheet 3		
3/3b, 3/3d	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road.	Work Nos. 1b and 3d
3/3c	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road.	Work Nos. 1b, 2 and 3d
3/3e	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road. Grouting works under land.	Work Nos. 1b and 3d
3/3f	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound on slip road. Grouting works under land.	Work Nos. 2 and 3d
3/3i	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Grouting works under land.	Work Nos. 2 and 3a
3/3k, 3/3n	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 2, 3a and 3b

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/3p	Temporary working space for the widening, alteration and realignment of the existing highway and the widening of Kingsway Viaduct. The realignment of southbound off slip and northbound on slip (junction 67) with construction of new pavements, embankments, retaining walls, ground improvements.	Work Nos. 2, 3c and 3d
3/3q, 3/3r	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 2, 3a and 3b
3/3s	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team	Work Nos. 2, 3c and 3d
3/3v	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 2, 3a and 3b
3/3w, 3/3x, 3/3y	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 2, 3c and 3d
3/3z	New right to widen the existing Kingsway Viaduct and operate, access and maintain the structure (including the airspace underneath and extending up to 15m either side). Grouting works under land	Work Nos. 2, 3c and 3d
3/3aa	Required for access to construct works to junction 67 (Coal House) southbound on slip road.	Work No. 3b
3/3bb	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team.	Work Nos. 1b, 2, 3c and 3d
3/3cc	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound off slip road.	Work Nos. 1b, 2, 3c and 3d
3/3dd	Required for works within and around junction 67 (Coal	Work Nos. 1b, 2, 3c and 3d

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/3ee	House) Roundabout including works to River Team. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 1a and 3b
3/3gg	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Widening to Junction 67 Southbound on slip road.	Work Nos. 2 and 3b
3/3jj	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Grouting works under land. Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway.	Work Nos. 9, 10, 13 and 14
3/3mm	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 3c, 13 and 14
3/3oo	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Widening to junction 67 southbound on slip road.	Work Nos. 1a and 3b
3/3pp, 3/3qq, 3/3tt	Required for works within and around junction 67 (Coal House) Roundabout including works to River Team. Grouting works under land.	Work Nos. 1a and 3b
3/3ss	Required for access to the works within junction 67 (Coal House) Roundabout.	Work Nos. 12 and 16
3/3uu, 3/10b, 3/10c, 3/11	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for grouting	Work No. 5a, 5b and 23

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/3ww	works on the land underneath the proposed new structure. Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for grouting works on the land underneath the proposed new structure	Work No. 5a, 5b and 23
3/3xx	Required for the working compound and associated access.	N/A
3/3aaa	Required for proposed Northumbrian Water pipeline diversion. Grouting works under land.	Work Nos. 4b, 5a, and 22
3/3bbb	Required for proposed Northumbrian Water pipeline diversion.	Work No. 22
3/3ccc	Required to access, maintain and alter existing drainage outlet and ditch.	Work No. 6b
3/3eee	Required for the working compound and associated access. Demolition of Existing Allerdene Bridge.	Work No. 21
3/3fff	Temporary working space for the widening, alteration and realignment of the existing highway with construction of new pavements, embankments, retaining walls, ground improvements and directional gantry signs. Diversion of Northumbrian Water main under the A1 carriageway.	Work No. 6a and 22
3/3ggg	Required for the working compound and associated access. Northumbrian Water pipeline diversion.	Work No. 22
3/3jjj	Required to access, maintain and alter existing drainage outlets.	Work No. 6a
3/3kkk	Required for access and to construct proposed highway and associated embankment. Grouting works under land.	Work Nos. 6a and 7a
3/3nnn	Required for access and to construct proposed highway and associated embankment.	Work Nos. 6a and 7a

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
3/4e, 3/4f	Required to alter existing drainage outlets. Grouting works under land. Required for access and to construct proposed highway and associated embankment. Required to access, maintain and alter existing drainage outlet and ditch.	Work No. 6b
3/4h, 3/4r	Required to access, maintain and alter existing drainage outlet and ditch.	Work No. 6b
3/4j, 3/4k	Required for access and to construct proposed highway and associated embankment.	Work No. 6b
3/4q	Required to access, maintain and alter existing drainage outlet and ditch. Grouting works under land.	Work No. 6b
3/4t	Required for proposed Northumbrian Water pipeline diversion.	Work No. 22
3/5	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway.	Work Nos. 9, 10, 13, 14 and 15
3/6a	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound carriageway.	Work Nos. 9, 10, 13, 14 and 15
3/6c	Required for the construction compound for Allerdene Bridge and associated access.	N/A
3/6d	Required for diversion of existing Northern Gas Networks pipelines. Required for access to construct works to junction 67 (Coal House) northbound off slip road. Grouting works under land.	Work Nos. 9, 13, 14 and 15
3/6f	Required for diversion of existing Northern Gas Networks pipelines and construction of associated gas transfer station building adjacent to northbound	Work Nos. 10, 14 and 15

<i>(1)</i> <i>Plot Reference Number shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
3/6g, 3/6h	carriageway. Grouting works under land. Required for access to the works within junction 67 (Coal House) Roundabout.	Work Nos. 12 and 16
3/6i	Required for access to the works within junction 67 (Coal House) Roundabout.	Work Nos. 12, 15 and 16
3/6k	Required for construction compound. Grouting works under land.	N/A
3/6m, 3/7, 3/8, 3/9	Required for access to the works within junction 67 (Coal House) Roundabout.	Work No. 16,
3/10a	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment.	Work Nos. 5a, 5b and 23
3/10d	New right to demolish the existing Allerdene Bridge and construct, operate, access and maintain a replacement offline Allerdene Bridge structure and for grouting works on the land underneath the proposed new structure.	Work No. 5a, 5b and 23
3/10h	New right to construct, operate, access and maintain a replacement offline Allerdene Bridge structure, associated Overhead Line Equipment and for grouting works on the land underneath the proposed new structure.	Work Nos. 4a, 4b, 5a, 5b and 23
3/10i	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment.	Work Nos. 4a, 4b, 5a, 5b and 23
3/12b	Required to access and carry out the demolition of the existing Allerdene Bridge, the construction of the replacement Allerdene Bridge and associated Overhead Line Equipment, and for grouting works on the land underneath the proposed new structure.	Work Nos. 4a, 4b, 5a, 5b and 23

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
Land Plans – Sheet 4		
4/1m	Realignment of junction 66 southbound on slip road.	Work No. 7b
4/1p	Required for the construction compound at junction 66 (Eighton Lodge) and associated access.	N/A
4/2a, 4/2b	Required for the temporary stopping up of footpath that runs parallel to A167 Durham Road from Angel of the North to junction 66 (Eighton Lodge).	N/A
4/2d	New right to extend the Longbank Bridleway Underpass and operate, access and maintain the structure and associated equipment. Grouting works under land.	Work Nos. 6a and 19
4/2e	Required to construct the extension of Longbank Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure.	Work Nos. 6a and 19
4/3a	Required for utility diversions and associated works within junction 66 (Eighton Lodge) Roundabout.	Work No. 6a
4/3b	Required for utility diversions and associated works within junction 66 (Eighton Lodge) Roundabout. Grouting works under land.	Work No. 6a
4/3i, 4/3j, 4/3m, 4/3n, 4/3p, 4/4a, 4/4c, 4/4d, 4/4e, 4/4f, 4/5	Required for the construction compound at junction 66 (Eighton Lodge) and associated access.	N/A
4/3q, 4/4b	Required for the construction compound at junction 66 (Eighton Lodge) and associated access. Grouting works under land.	N/A
4/6a	Required to construct the extension of Longbank Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure.	Work Nos. 6a and 19
4/6b	Required to construct the extension of Longbank	Work Nos. 6a and 19

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
4/7b, 4/7e	Bridleway Underpass, including temporary working space and diversions for pedestrians during the Underpass closure. Grouting works under land.	Work No. 18
4/7c	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Grouting works under land.	Work No. 19
4/8	Required to carry out the Longbank Underpass and for temporary diversion of pedestrians during closure of the Footbridge.	Work No. 18
4/9a	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge.	Work Nos. 6a and 6b
4/12a	Required to construct the proposed highway widening works and for construction access.	Work No. 6b
4/12b, 4/13b, 4/13d	Required for access, alteration and maintenance of existing discharge outlet pipelines.	Work No.18
4/13e, 4/13f, 4/14c	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge. Grouting works under land.	Work No. 18
4/14b	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for temporary diversion of pedestrians during closure of the Footbridge.	Work No.18
4/15, 5/1a, 5/1b	Required to carry out the demolition and construction of the replacement North Dene Footbridge and for grouting works under land.	Work No. 6b
	Required to construct the proposed highway works and for utility diversions	

Land Plans – Sheet 5

<i>(1) Plot Reference Number shown on Land Plan</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
5/3b, 5/4b, 5/4d	Required for access and construction of main highway works and junction 65 (Birtley) off slip. Grouting works under land.	Work Nos. 6a and 8a
5/5a	Required to construct the proposed highway works and associated access. Grouting works under land.	Work No. 8a
5/5c, 5/5e, 5/10b	Required for access and construction of junction 65 (Birtley) northbound on-slip road works.	Work Nos. 6b and 8b
5/6, 5/7, 5/8, 5/9, 5/11	Required for construction of junction 65 (Birtley) southbound off slip road works and temporary footpath diversion. Grouting works under land.	Work No. 8a

SCHEDULE 9

Article 38

Trees subject to tree preservation order

<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>
TPO area No. 21 located adjacent to Banesley Lane (multiple species).	Potential removal of trees to the north of Banesley Lane to enable the Junction 67 (Coal House) northbound on slip road works.	Work No 3d

SCHEDULE 10

Article 39

Scheduled monuments

<i>(1)</i> <i>Type of monument</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Bowes Railway Scheduled Monument (1003723), a partly preserved standard gauge rope haulage railway with associated structures and apparatus. Included within the monument are the colliery and railway workshops which comprised the former Springwell Colliery.	The extension of the underpass requiring the replacement of the corrugated metal structure and the demolition of stone retaining walls that border the former railway bed of Bowes Railway. Works will include the excavation of two foundation trenches, each 15-17m in length, and the insertion of piles at approximately every 1m within the trenches.	Work No. 19

Protective provisions

PART 1

For the protection of electricity, gas, water and sewage undertakers

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

2. In this Part of this Schedule—

“alternative apparatus” means 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(a)), 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(b) 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(c); 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;

“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.

(a) 1989 c. 29.

(b) 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).

(c) 1991 c.56.

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

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), 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 24 (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 question 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 in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an 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 in question and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46, 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 in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

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

Retained apparatus

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

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

(3) Any requirements made by a utility undertaker under sub-paragraph (2) 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 to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

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 subparagraph (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 46 (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 in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus 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 to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

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

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

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

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker 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.

Cooperation

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);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)(b) of that code;

“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(c);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

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

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

16. The exercise of the powers conferred by article 34 (statutory undertakers) is subject to paragraph 23 of Schedule 2 (undertaker's works) to the Telecommunication Act 1984.(d)

(a) 2003 c.21.

(b) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003 (2003 c. 21).

(c) See section 106.

(d) 1984 c.12.

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.

(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 46 (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 railway interests

18. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 32, any other person on whom rights or obligations are conferred by that paragraph.

19. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the undertaker in exercise of powers under section 8 (licences) of the Railways Act 1993(a) ;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail

(a) 1993 c.46

(b) 2006 c.46

Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“protective works” means any works specified by the engineer under paragraph 22;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for or connected with the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is, or is to be, situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

20.—(1) Where under this Part of this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

21.—(1) The undertaker must not exercise the powers conferred by articles 22 (authority to survey and investigate land), 23 (compulsory acquisition of land), 26 (compulsory acquisition of rights), 27 (private rights over land), 30 (acquisition of subsoil or air-space only), 31 (rights under or over streets), 32 (temporary use of land for carrying out the authorised development), 33 (temporary use of land for maintaining the authorised development), 34 (statutory undertakers), 37 (felling or lopping of trees) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or by section 203 (power to override easements and rights) of the Housing and Planning Act 2016(a) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act, or article 34 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use, or acquire new rights over, any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent or agreement under this paragraph, such consent or agreement must not be unreasonably withheld but may be given subject to reasonable conditions.

(a) 2016 c.22

22.—(1) The undertaker must, before commencing construction of any specified work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 46 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

23.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 22(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 22;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents, or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or the undertaker's employees, contractors or agents.

24. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work or protective work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or protective work or the method of constructing it.

25. Network Rail must at all reasonable times afford reasonable facilities to the undertaker and the undertaker's agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as the undertaker may reasonably require with regard to such works or the method of constructing them.

26.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or protective work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any such approval of a specified work or protective work under paragraph 22(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to Network Rail under this paragraph.

(4) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 27(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

27. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 22(3) or in constructing any protective works under the provisions of paragraph 22(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the

construction or failure of a specified work or a protective work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and

- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

28.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus;

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 22(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 22(1) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified under sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution may be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 22(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail’s apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus under subparagraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and

(b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 23.

(9) To the extent that it would not otherwise do so, paragraph 32(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 27(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 46 (arbitration) to a single arbitrator to be agreed between the parties is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology to be agreed.

29. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as to not adversely affect railway property.

30. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless the undertaker has first consulted Network Rail and the undertaker must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

31. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or a protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

32.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or a protective work or the failure of it; or

(b) by reason of any act or omission of the undertaker or of any person in the undertaker's employ or of the undertaker's contractors or others whilst engaged upon a specified work or a protective work, and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this subparagraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, except that the sums payable by the undertaker under that sub-paragraph include a sum equivalent to the relevant costs in circumstances where—

- (a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and
- (b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under sub-paragraph (5).

(7) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

33. Network Rail must, on receipt of a request from the undertaker, at a frequency to be agreed between the undertaker and Network Rail, provide the undertaker free of charge with written estimates of the costs, charges, expenses, future cost forecasts and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 32) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

34. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

35. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property;
- (c) and any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

36. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993.

37. The undertaker must give written notice to Network Rail where any application is required and is proposed to be made for the Secretary of State's consent under article 9 (consent to transfer benefit of the Order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the decision-maker to whom the application is to be made.

38. The undertaker must no later than 28 days from the date that the documents referred to in article 40(1) (certification of plans, etc.) are submitted to and certified by the Secretary of State in accordance with article 44, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

SCHEDULE 12

Article 45

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.

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Book of Reference	TR010031/APP/4.3	Revision 1 – Section 51 update
Environmental Statement – Volume 1: Chapters	TR010031/APP/6.1	Revision 0 – Application Issue
Environmental Statement – Volume 2: The Figures	TR010031/APP/6.2	Revision 0 – Application Issue
Environmental Statement – Volume 3: Appendices	TR010031/APP/6.3	Revision 0 – Application Issue
Environmental Statement – Volume 4: Non-Technical Summary	TR010031/APP/6.4	Revision 0 – Application Issue
Statement of Statutory Nuisance	TR010031/APP/5.2	Revision 0 – Application Issue
Flood Risk Assessment – Appendix 13.1	TR010031/APP/6.3	Revision 0 – Application Issue
Plan and Assessment of Nature Conservation – Figures 8.1, 8.2, 13.8; Chapter 7, 8 and 13 of the ES; Appendix 13.2 of the ES.	TR010031/APP/6.2; TR010031/APP/6.1; and TR010031/APP/6.3	Revision 0 – Application Issue
Plan and Assessment of Historic Environmental Effects – Figures 6.1 and 6.2; and Chapter 6 of the ES	TR010031/APP/6.2 and TR010031/APP/6.1	Revision 0 – Application Issue
Scoping Opinion and Scoping Opinion Response Table – Appendix 4.1 of the ES	TR010031/APP/6.3	Revision 0 – Application Issue
Habitat Regulation Assessment – Appendix 8.2	TR010031/APP/6.3	Revision 0 – Application Issue
Outline Construction Environmental Management Plan (CEMP)	TR010031/APP/7.4	Revision 0 – Application Issue
Location Plan – Regulation 5(2)(o)	TR010031/APP/2.1	Revision 0 – Application Issue
General Arrangement Drawings – Regulation 5(4) and 5(2)(o)	TR010031/APP/2.6	Revision 0 – Application Issue
Land Plans – Regulation 5(4) and 5(2)(i)	TR010031/APP/2.2	Revision 1 – Section 51 update
Works Plans – Regulation 5(4) and 5(2)(j)	TR010031/APP/2.3	Revision 1 – Section 51 update
Special Category Land Plans – Regulation 5(4) and 5(2)(i)	TR010031/APP/2.8	Revision 1 – Section 51 update
Streets, Rights of Way and Access Plans – Regulation 5(4) and 5(2)(k)	TR010031/APP/2.4	Revision 0 – Application Issue

Engineering Drawings and Sections – Regulations 5(4), 5(2)(o) and 6(2)	TR010031/APP/2.5	Revision 0 – Application Issue
Structures Engineering Drawings and Sections - Regulation 5(4) and 5(2)(o)	TR010031/APP/2.7	Revision 0 – Application Issue
Environmental Masterplan – Regulation 5(2)(a) - Figure 2.4	TR010031/APP/6.2	Revision 0 – Application Issue
Environmental Statement Addendum (including updates to Figure 8.1)	TR010031/APP/6.1	Revision 0 – Section 51 Issue

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to undertake works to alter the A1 between land north of junction 67 (Coal House) and junction 65 (Birtley) near Gateshead in Tyne and Wear 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 plans, engineering drawings and sections, the book of reference, the environmental statement and the outline CEMP mentioned in this Order and certified in accordance with article 45 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, Lateral, 8 City Walk, Leeds, West Yorkshire, LS11 9AT.