

A57 Link Roads TR010034

3.2 Explanatory Memorandum

APFP Regulation 5(2)(c)

Planning Act 2008 Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009



Infrastructure Planning Planning Act 2008

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

A57 Link Roads Scheme

Development Consent Order 202[x]

3.2 EXPLANATORY MEMORANDUM

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1. Summary

- 1.1.1 This memorandum explains the purpose and effect of each article of, and the Schedules to, the draft A57 Link Roads Development Consent Order (the "Order"), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹.

¹ SI2009/2264

2. Purpose of the Order

Nationally Significant Infrastructure Project – Construction of a highway

- 2.1.1 The draft Order is a development consent order authorising the construction and operation of the A57 Link Roads (the "**Scheme**").
- 2.1.2 The Scheme has been developed to improve journeys between Manchester and Sheffield, and has evolved over more than 50 years, as different improvements have been explored. The current A57 around Mottram in Longdendale suffers from congestion which limits journey time reliability. This restricts economic growth due to the delays experienced by commuters and business users alike. This has a negative effect on local businesses and employment opportunities.
- 2.1.3 The congestion also results in rat running through smaller towns and villages, as vehicles attempt to reduce queuing times. Much of this heavy traffic travels along local roads, which disrupts the lives of communities, and makes it difficult and potentially unsafe for pedestrians to cross the roads. It is likely that these issues would get worse with time, if significant improvements are not made.
- 2.1.4 To address these problems, Highways England is applying to the Secretary of State for an Order to authorise the construction of the Scheme.
- 2.1.5 The Scheme lies mainly within the administrative boundaries of Tameside Metropolitan Borough Council (TMBC), up until to the proposed River Etherow Bridge. To the east of this, the Scheme crosses over the boundary with High Peak Borough Council (HPBC) and Derbyshire County Council (DCC).
- 2.1.6 The Scheme includes the following components:
- A new offline bypass of 1.12 miles (1.8km) of dual carriageway road connecting the M67 Junction 4 to A57(T) Mottram Moor Junction
 - A new offline bypass of 0.81 miles (1.3km) of single carriageway connecting the A57(T) Mottram Moor to the A57 Woolley Bridge
 - Creation of two new junctions, Mottram Moor Junction and Woolley Bridge Junction and improvement works to the existing M67 Junction 4
 - Creation of five new structures (Old Hall Farm Underpass, Roe Cross Road Overbridge, Mottram Underpass, Carrhouse Lane Underpass, River Etherow Bridge and Roe Cross Road Overbridge)
 - One main temporary construction compound area, located on agricultural land to the east of the M67 Junction 4
 - Detrunking, including safety measures from the M67 Junction 4 to Mottram Moor Junction, to be agreed with TMBC.
 - Safety measures and improvements to the A57 from Mottram Moor Junction to Gun Inn Junction and from Gun Inn Junction to Woolley Lane Junction, to be agreed with TMBC.
- 2.1.7 Associated works for temporary access, temporary lay-down, work areas and ancillary works will also be required.

- 2.1.8 The Scheme is a nationally significant infrastructure project ("**NSIP**") within Sections 14(1)(h) and 22(1) of the Planning Act 2008 (the "**Act**"). Under Section 22 an NSIP must fall within one of the three categories specified, which are expressly stated to be alternatives. The Scheme is construction of a highway in a case within the meaning of Section 22(1)(a). Whilst the Scheme includes some alteration and improvement of the existing A57/A628, the new carriageway will follow a different alignment requiring construction of sections of new highway with a speed limit of 50 miles per hour on an area in excess of 12.5 hectares. The area of development in this case (as shown on the land plans (document reference TR010034/APP2.2) is 62.3 hectares (ha), of which 41.9 ha is to be required permanently as part of the Scheme, comfortably in excess of the threshold.
- 2.1.9 The Scheme is wholly located in England and Highways England Company Ltd, being a strategic highways authority, will be the highway authority for the highway to be constructed as part of the Scheme. The development therefore complies with the requirements of Section 22(2) and 22(4) of the Act.
- 2.1.10 As the proposed authorised development is an NSIP, consent under the Act is required (section 31 of the Act). Under section 37 of the Act, an order granting development consent may only be made if application for it is made (through the Planning Inspectorate) to the Secretary of State.
- 2.1.11 Schedule 1 (authorised development) to the Order contains a list of numbered works comprising the Scheme.

3. Associated Development

- 3.1.1 The Order also seeks consent for works which would constitute associated development, and which is included in the “authorised development” listed in Schedule 1 of the Order.
- 3.1.2 Guidance² on associated development has been issued by the Secretary of State for Housing, Communities and Local Government (“the Guidance”). In this Guidance associated development is described as being “typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project” (paragraph 6) and “requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development” (paragraph 5).
- 3.1.3 Annex B of the Guidance listed the following as examples of associated development for highway NSIP schemes:
- replacement roadside facilities where this becomes necessary due to the elimination of an existing facility by highway improvement;
 - infrastructure associated with cycle/pedestrian access;
 - off-site landscaping, habitat creation and other environmental works;
 - off-site drainage works;
 - alteration/diversion/stopping up of local roads, accesses and other rights of way; and
 - off-site diversion of statutory undertakers’ equipment.
- 3.1.4 However, in some cases it should be recognised that there may be some overlap, or the absence of the clear boundary, between associated development and works which form part of the NSIP. For instance, there may be some on-highway, and some off-highway, diversion of the same piece of statutory undertaker equipment.
- 3.1.5 For this reason and noting that there is no requirement for a development consent order to distinguish between these two categories, Highways England has chosen not to differentiate the NSIP and associated development works in Schedule 1 to the Order. Ultimately, all elements of the authorised development either constitute part of the NSIP or are “associated development” within the meaning of section 115(2) of the Act, and so can properly be authorised by the Order.
- 3.1.6 For the avoidance of doubt, the diversions of statutory undertaker equipment and apparatus required for the Scheme do not constitute an NSIP in their own right.
- 3.1.7 In order to ensure that the development and the associated development (once authorised) are constructed efficiently and without impediment, the Order contains the powers to carry out the works in Schedule 1. The use of such

² Guidance on associated development applications for major infrastructure projects

measures was explicitly approved in the A19/A1058 Coast Road (Junction Improvement) Order 2016 (the "Coast Road Order") and extensive provisions were used in both the A14 Cambridge to Huntingdon Improvement Order 2016 (the "A14 Order"), the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 (the "M4 Order") and the A19/A184 Testo's Junction Alteration Development Consent Order 2018 (the "Testo's Order"), the Silvertown Tunnel Development Consent Order 2018 (the "Silvertown Order"), the A63 (Castle Street Improvement, Hull) Development consent Order 2020 (the "Castle Street Order"), the Windy Harbour to Skippool Improvement Scheme Development Consent Order 2020, (the "Windy Harbour Order").

4. Ancillary matters

- 4.1.1 The Order also contains several ancillary matters, i.e. provisions not consisting of development. Under section 120(3) of the Act “an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted”
- 4.1.2 The main ancillary matter is a power to acquire land or rights over land compulsorily or by agreement, in accordance with section 120(4) of the Act, required for the authorised development, or to facilitate, or that are incidental to the authorised development under section 122 of the Act. A justification for these powers is set out in the Statement of Reasons (document reference TR010034/APP/4.1) that accompanies the application.
- 4.1.3 Further to providing these powers, the Order seeks to apply and modify statutory provisions that relate to the compulsory acquisition of land. Under sections 117 and 120(5) of the Act, an order containing provisions of this nature must be made by Statutory Instrument. The Order is therefore presented in that form.
- 4.1.4 Other ancillary matters include the stopping up of lengths of existing highways and private means of access in the vicinity of the route, the classification of highways, including the detrunking of sections of highway, the application of speed limits, the creation of new private means of access, and the application and disapplication of legislative provisions.

5. Draft Order

5.1.1 The purpose and effect of the provisions of the draft Order are now explained in sequence. While the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265) has been repealed, the draft Order draws on the model provisions (general and highway), as well as precedent set by development consent orders that have been made to date.

Part 1 – Preliminary

Article 1 (Citation and commencement)

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

Article 2 (Interpretation)

5.1.3 The purpose of article 2(1) is to define terms used in the remainder of the Order. It is a standard article and was included in the model provisions as article 1.

5.1.4 The following definitions are used in articles in the remainder of the Order that are typical of highway schemes:

- "the 1984 Act";
- "carriageway";
- "commence"; which makes clear that a number of works that would constitute a 'material operation' under the Town and Country Planning Act 1990 do not mean that the Scheme has been 'commenced.' This enables the undertaker to undertake certain preparatory works prior to the submission of relevant details for approval under the requirements, which Highways England considers proportionate. The operations that are allowed to be carried out without discharge of the requirements listed in Schedule 2 are either de minimis or have minimal potential for adverse impacts. They may in some cases need to be carried out in order to comply with the pre-commencement requirements (for example, to inform assessments and proposals required to be submitted for approval). Highways England should be permitted to carry out low impact preparatory works following the grant of the Order, whilst it is working to discharge the pre-commencement requirements, thereby helping to minimise the construction timetable. Similar operations have been broadly excluded from the definition of commence used in the Silvertown Order.
- "cycle track": this term is used interchangeably with "cycleway" in the application documents and both are intended to have the meaning defined in this article. Note that the definition is modified to make it clear that all cycle tracks authorised by the Order provide a right of way on foot;
- "footway" and "footpath";
- "street";
- "street authority"; and

- "trunk road".

5.1.5 Other definitions to note include:

- "Maintain", which is limited in relation to the authorised development to such maintenance works as *"do not give rise to any materially new or materially worse effects"* from those identified in the Environmental Statement (document reference TR010034/APP/6.1 – 6.3) and, inspect, repair, adjust, alter, remove, replace and reconstruct. Highways England considers that this is an appropriate definition and this approach has been taken by Highways England on the A30 Chiverton to Carland Cross Order 2020 and by other DCO promoters (see, for example, The National Grid (Hinkley Point C Connection Project) Order 2016). In the context of the Scheme it is important for Highways England to be able to undertake all the elements of maintenance that are included within this definition. The inclusion of 'adjust' or 'alter' is justifiable on the basis that during maintenance operations changes to existing specifications may be required. Similarly, 'remove' is included as it may be necessary to remove something in order to repair, clean or replace it, for example. The proper maintenance of the highway is an essential part of ensuring the safety of road users. It is therefore appropriate to ensure that Highways England can carry out whatever maintenance activities it needs to in order to ensure continued public safety. The power to maintain in article 4 is expressed as being a power to *"maintain the authorised development"* and it does not extend to matters beyond the development as authorised. There is precedent for such provision, for example the Secretary of State approved the same wording in the Silvertown Order;
- "the Order land", which comprises all of the land to be acquired or used permanently or temporarily as shown on the land plans (document reference TR010034/APP/2.2);
- "the Order limits", which references the extent of the area within which the authorised development may be carried.

5.1.6 Article 2(2)–(3) provides that a broad definition of 'rights over land' applies to the Order.

5.1.7 Article 2(4) provides that measurements are approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the works are permitted by the Order. Thus this provision allows for a small tolerance with respect to any distances and points although works will take place within the limits of deviation. It is common-place to include such provision in an act or instrument authorising linear infrastructure and the model provisions included similar wording in article 1(3).

5.1.8 Article 2(5) provides that areas given in the Book of Reference (document reference TR010034/APP/4.3) are approximate as these are not covered by article 2(3). This is intended to clarify the position of the areas in the Book of Reference, the purpose and effect is the same as set out in the previous paragraph.

- 5.1.9 Article 2(6) and 2(7) tie references to lettered/numbered points and numbered works in the Order to the streets, rights of way and access plans and works numbered is Schedule 1, as appropriate.

Part 2 – Principal Powers

Article 3 (Development consent etc. granted by the Order)

- 5.1.10 Article 3(1) grants the development consent by giving Highways England the power to construct the authorised development, which is described in Schedule 1. This article makes the consent subject to the requirements that are listed in Schedule 2. This is based on article 2 of the model provisions.
- 5.1.11 Article 3(2) states that any enactment applying to land within the order limits has effect subject to the provisions of the Order. This provision ensures that the modifications made in the Order apply to any enactments that may affect the authorised development and further ensures consistency with legislation more generally. There is precedent for such provision, for example the Secretary of State approved the same wording in the A14 Order (see article 5(2)) and in the Testo's Order (see article 3(2)).
- 5.1.12 Article 3(3) states that nothing in the Order prevents the carrying out of operations consisting of archaeological investigations, non-intrusive investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements immediately upon this Order coming into force.

Article 4 (Maintenance of authorised development)

- 5.1.13 This article empowers Highways England to maintain the authorised development. The definition of "maintain" is contained in Article 2(1) as including "inspect, repair, adjust, alter, remove or reconstruct", with these terms bearing their common-sense meanings. This definition is broader than the equivalent in section 329 of the Highways Act 1980, which simply states that maintenance "includes repair" – there is no explicit mention of inspect, adjust, alter, remove or reconstruct. The power to maintain is, however, limited to such maintenance works as "is unlikely to give rise to any materially new or materially worse environmental effects" from those identified in the Environmental Statement. Article 4 therefore supplements the maintenance powers under the Highways Act 1980 and ensures that Highways England has the necessary powers to maintain the Scheme. It is considered necessary and appropriate to adopt the broader definition.
- 5.1.14 Powers of maintenance are subject to the other provisions of the Order and any agreements made under the Order.

Article 5 (Maintenance of drainage works)

- 5.1.15 The purpose of this article is to make it clear that any realignment of drains or other works to them that are carried out as part of the Scheme do not affect the existing allocation of responsibility for maintenance of those drains, unless this is agreed between Highways England and the responsible party. The provision is well precedented (see, for example, article 4 of the A14 Order and article 5 of the

Testo's Order) and is considered a sensible inclusion to clarify who has responsibility for the maintenance of drainage works.

Article 6 (Planning Permission)

- 5.1.16 This article permits certain development authorised by a planning permission granted under the Town and Country Planning Act that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This is not a model provision but ensures that the undertaker does not breach section 161 of the Act in carrying out certain development pursuant to a grant of planning permission, provided that development is not of itself an NSIP or part of one or required to complete or enable the use or operation of any part of the authorised development.
- 5.1.17 This article has been included in the M20 Junction 10a Order (see article 7) (the "**M20 Order**") and the M4 Order (see article 5).

Article 7 (Limits of deviation)

- 5.1.18 Since the Scheme involves linear works, article 7 provides for limits of deviation to allow for a lateral deviation from the lines and situations of the authorised development within the limits of deviation shown on the works plans, and vertical deviation of the linear works subject to maximum deviations upwards or downwards. The vertical limits can be exceeded where it is demonstrated to the Secretary of State's satisfaction (and the Secretary of State has certified accordingly following consultation with the relevant planning authority) that such deviation would not give rise to any materially new or materially worse adverse environmental effects from those reported in the Environmental Statement.
- 5.1.19 The purpose of this provision is to provide Highways England with a proportionate degree of flexibility when constructing the Scheme, reducing the risk that the Scheme as approved cannot later be implemented for unforeseen reasons but at the same time ensuring that any flexibility will not give rise to any materially new or materially worse environmental effects.
- 5.1.20 This article was not included in the model provisions but has become commonplace in development consent orders (see article 5 of the Silvertown Tunnel Order, article 8 of the M20 Order, and article 7 of the A14 Order). The ability to deviate within the prescribed limits of deviation is important to ensure that, if the precise 'as built' alignments or elevations are slightly different to those indicatively shown on the application plans, no question arises as to whether or not the works are permitted by the Order. The detailed design of the Scheme will take place following the grant of the Order (see Requirement 3) and the limits of deviation therefore ensure that Highways England and its contractor have a proportionate degree of flexibility to design and construct the Scheme post consent. This provision reduces the risk that the Scheme as approved cannot later be implemented for unforeseen reasons.

Article 8 (Benefit of the Order)

- 5.1.21 Article 8 overrides section 156(1) of the Act (as permitted by section 156(2)) to give the benefit of the Order to Highways England rather than anyone with an

interest in the land. It would be impracticable for a variety of landowners to implement parts of the Order in an uncoordinated manner, which might be the case if section 156(1) were to remain.

- 5.1.22 The purpose of article 8(2) is to clarify the exceptions where the Order will self-evidently benefit others, e.g. rights for statutory undertakers. Absent this provision, there would be a contradiction since strictly speaking only Highways England could benefit from these works. The same wording was accepted and approved by the Secretary of State in the A14 Order (see article 8(2)), the M4 Order (see article 7(2)) and in the Testo's Order (see article 7(2)).

Article 9 (Consent to transfer benefit of the Order)

- 5.1.23 This article allows powers under the Order to be transferred to others by Highways England. The consent of the Secretary of State is required for a transfer or grant, except where it is made to specified companies in relation to certain utility diversion works.
- 5.1.24 This article is based on article 5 of the model provisions. It differs in that it allows a transfer or grant to a specified company to take place without the Secretary of State's consent, on the basis that it is appropriate for those companies to be able to carry out those works.

Part 3 – Streets

Article 10 (Street Works)

- 5.1.25 Article 10 allows the undertaker to interfere with and execute works in or under the streets within the Order limits for the purposes of the authorised development. The authority given by this article is a statutory right for the purposes of sections 48(3) and 51(1) of the New Roads and Street Works Act 1991 (the "**1991 Act**"). Certain provisions in the 1991 Act apply to works carried out under this article, subject to the provisions of article 11 (application of the 1991 Act).
- 5.1.26 Article 10 is based on article 8 of the model provisions and article 11 of the M4 Order. It departs from the model provisions in that it authorises interference with any street within the Order limits, rather than just those specified in a schedule. The application of sections 54 to 106 of the 1991 Act is also expressed to be subject to article 11, which applies and modifies that Act.
- 5.1.27 The definition of 'apparatus' that was included as paragraph (4) in the model provisions is omitted because that term is already defined in article 2.

Article 11 (Application of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004)

- 5.1.28 Article 11 modifies the application of the 1991 Act to works carried out under the powers of the Order.
- 5.1.29 Article 11(1) provides that works carried out under the powers of the Order which match the description of "major highway works" in the 1991 Act will be treated as major highways works for the purposes of the 1991 Act. The effect of this is to clarify that the provisions for sharing the burden of dealing with apparatus in the street (under sections 84 and 85 of the 1991 Act), which would normally apply

only to major works carried out by the highway authority, will apply in respect of the works authorised by the Order irrespective of who in fact carries them out.

- 5.1.30 “Major Highways Works” are defined at section 86 of the 1991 Act. The definition includes, at sub-sections 86(3)(b) and (f), works undertaken under powers conferred by sections 64 and 184 the Highways Act 1980. As that would not be relevant in this context (where the works will be undertaken under the powers of the Order), these sub-sections are omitted from article 11(1)(a). Works equivalent to works undertaken under those sections of the Highways Act 1980, but carried out under powers conferred by the Order, are included through article 11(1)(b). The effect is that any works which would be “major highway works” under the 1991 Act if carried out by a highway authority in relation to one of its streets are also “major highway works” if carried out under the powers of the Order regardless of who carries them out.
- 5.1.31 Article 11(3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order and the provisions in the Order (including the requirements) which regulate the carrying out of the Order works.
- 5.1.32 Articles 11(4) to 11(6) apply certain provisions of the 1991 Act (listed in article 11(5)) to any streets which are temporarily stopped up under the Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporarily stopped-up street are “street works” for the purposes of the 1991 Act and, secondly, it simplifies the implementation of the works by providing for a single process in respect of streets which are stopped up and those which are not.
- 5.1.33 Article 11(7)(a) provides that nothing in article 11 shall affect the ability of the local highway authority (under section 87 of the 1991 Act) to declare a street in its area a maintainable highway, which would make maintenance of the street (once completed) the responsibility of the local highway authority, and would mean that the 1991 Act would apply to street works carried out in that street. Further, it provides that Highways England will not be under the duties that apply to a “street authority” for the purposes of the 1991 Act by virtue of being responsible for the maintenance of a street under article 11.
- 5.1.34 Article 11(7)(b) makes it clear that the maintenance obligations imposed by article 11 do not override the provisions of the 1991 Act that govern procedures for street works i.e. works in streets involving the placing of an alteration to apparatus in the street. After the implementation of the Order it is appropriate that the 1991 Act should govern such works as it is specifically designed to ensure a fair and efficient procedure for the various parties affected by such works.
- 5.1.35 Article 11(8) applies to Part 3 (permit schemes) of the 2004 Act. This provision removes the need for a permit to be obtained for works authorised by the Order. The permitting scheme which may be brought in by a local highway authority is designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus. Given the scale of the works proposed

by the Order it is appropriate for those works to be regulated by the specific authorisation in the Order (particularly article 3 and Schedule 1).

- 5.1.36 These modifications reflect those made in other highway DCOs, for example the M4 Order, the Coast Road Order and in the Testo's Order.

Article 12 (Construction and maintenance of new, altered or diverted streets and other structures)

- 5.1.37 The standard position in respect of maintenance of streets is that Highways England is responsible for maintaining trunk roads. Other streets are to be maintained by the local highway authority in respect of highways maintainable at the public expense, or whichever body is responsible for the maintenance of the street in respect of streets which are not maintainable at the public expense. This is reflected in articles 12(1), (2) and (3). These provisions are subject to any agreement to the contrary between Highways England and the relevant street or highway authority.
- 5.1.38 Article 12(4) makes provision for those roads which are to be detrunked.
- 5.1.39 Article 12(5) makes specific maintenance provision in relation to certain bridges and underpasses
- 5.1.40 The effect of Articles 12(6) and (7) are that in any action for damages against Highways England alleging failure to maintain a street, Highways England will have the defence that it had taken such care as was reasonably required in the circumstances to secure that the street was not dangerous for traffic. This extends the provision in section 58 of the Highways Act 1980 to Highways England and draws on the approach taken in article 21 of the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and repeated in in article 9 of the Coast Road Order, article 12 of the M4 Order and article 10 of the Testo's Order.
- 5.1.41 While Highways England would benefit from the equivalent defence in the Highways Act 1980 in respect of trunk roads, for which it is the highway authority, the proposed development includes roads which are not trunk roads and so this article is needed to ensure Highways England is covered by this defence in respect of all the roads that comprise the authorised development.

Article 13 (Classification of roads etc)

- 5.1.42 The designation of highways and the specification of the classes of traffic authorised to use a highway, are ancillary matters which may be included in a development consent order.³ These matters are addressed by this article, which is integral to the implementation of the Scheme, and therefore are considered appropriate to be included in the Order as an ancillary matter under section 120(3) of the Act.
- 5.1.43 In particular:

³ Planning Act 2008 section 120 (5) and Schedule 5, paragraphs 19 and 20

- Paragraph (1) of article 13 provide for the roads described in Part 1 of Schedule 3 to become special roads. Under paragraph (1) they will be classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads, and will be provided for the use of traffic of Classes I and II as set out in the Highways Act 1980.
- Paragraph (2) provides for the roads in Part 1 of Schedule 3 to be classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads from the date that they are completed and open for through traffic.
- Paragraph (3) of article 13 provides for the roads described in Part 2 of Schedule 3 to become trunk roads from the date that the authorised development is open to traffic.
- Paragraph (4) provides for the roads described in Part 3 of Schedule 3 to become classified roads from the date that the authorised development is open to traffic.
- Paragraph (5) provides for the roads described in Part 4 of Schedule 3 to cease to be trunk roads on such day as Highways England may determine. In practice, this will be a date that has been agreed with or notified to the local highway authority.
- Paragraph (6) imposes speed limits along certain sections of the authorised development as described in Part 5 of Schedule 3.
- Paragraph (7) provides that the orders specified in Part 6 are to be made on such day as the undertaker may determine. Paragraph (8) provides that the orders specified in Part 7 of Schedule 3 are to be varied or revoked as specified in that Part on such day as the undertaker may determine. Again, in practice the relevant date(s) will be agreed with or notified to the local highway authority.
- Paragraph (9) confirms that the public rights of way in Part 8 of Schedule 3 will be provided, and can be open as soon as reasonably practicable following completion of the public right of way unless otherwise agreed with the relevant highway authority
- Paragraph (10) confirms that the private means of access in Part 9 of Schedule 3 will be provided and to be open no later than the date on which the authorized development is open to traffic.

5.1.44 The purpose of article 13(11) is to confirm that the matters covered in paragraphs (1) to (10) could be varied or revoked in the future using existing enactments for such matters without the need to apply under the Act for an amendment to the Order.

Article 14 (Temporary alteration, diversion, prohibition and restriction of the use of streets)

5.1.45 This article allows for the temporary alteration, diversion, prohibition or restriction of the use of streets for the purposes of the Scheme.

5.1.46 Article 14(2) Paragraph (2) differs from the Model Provisions and confers a power on Highways England where the use of a street has been temporarily altered, diverted, prohibited or restricted under this article to use it as a

temporary working site. This provision has precedent in a number of DCOs including the A19/A184 Testo's Junction Alteration Order 2018 and The A30 Chiverton to Carland Cross Development Consent Order 2020.

- 5.1.47 Article 14(3) provides that reasonable access for pedestrians going to or from premises abutting a street must be provided if there would otherwise be no such access.
- 5.1.48 Article 14(4) confirms that, save in respect of streets for which it is the street authority, Highways England must not alter, divert, prohibit or restrict the use of any street, without the consent of the street authority (such consent not to be unreasonably withheld or delayed).
- 5.1.49 Article 14(5) provides a right to compensation for any person suffering loss due to the suspension of a private rights of way under this article.
- 5.1.50 Article 14(6) states that where a street authority fails to notify Highways England of its decision in respect of an application for consent within 28 days of the application being made, it is deemed to have given its consent. It is considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by Highways England in a timely fashion. The article is a standard provision in highways development consent orders (see for example, article 11 of the Coast Road Order, article 14(6) of the A14 Order and article 12 of the Testo's Order and article 15 of The A30 Chiverton to Carland Cross Development Consent Order 2020).

Article 15 (Permanent stopping up and restriction of use of highways, streets and private means of access)

- 5.1.51 This article allows highways, streets and private means of access named in Parts 1 and 2 in Schedule 4 to be stopped up (i.e. the legal right of way along them to be extinguished) and for the private means of access in Part 3 to be altered or diverted.
- 5.1.52 For the streets to be stopped up as specified in Schedule 4, a substitute is to be provided and is described. Such a street may not be stopped up unless the conditions referred to in paragraph (2) are met (i.e. the substitute is completed and open for use, or a temporary alternative route is available).
- 5.1.53 Since the definition of a "street" in section 48 of the 1991 Act includes highways and footways the stopping up and diversion of footpaths and footways are also dealt with in this article and Schedule 4. This article was included in the model provisions as article 9 and has been adopted by several highways orders. The wording is based on numerous highway DCOs (see for example article 12 of the Coast Road Order, article 15 of the M20 Order and article 13 of the Testo's Order).

Article 16 (Access to works)

- 5.1.54 This article allows works accesses to public highways to be created. This article departs from model provision article 12 and provides Highways England with a general power to form means of access rather than accesses set out in a schedule, to provide an appropriate degree of flexibility in case the need for an access only becomes apparent at a later stage in the implementation of the proposed development. These powers are equivalent to those available to

Highways England when implementing schemes under the Highways Act 1980. This article was included in the A14 Order (see article 15) the M20 Order (see article 16) and the Testo's Order (see article 14).

Article 17 (Clearways)

- 5.1.55 This article makes it unlawful for road users to stop on the existing M67 roundabout approach and the proposed A57(T) dual carriageway, except upon the direction of or with the permission of a constable or a traffic officer in uniform, or for emergency and other unavoidable reasons. The purpose is to ensure safe and proper operation of the authorised development, and to ensure the Scheme delivers its intended benefits. It is therefore considered appropriate to be included in the Order as an ancillary matter under section 120(3) of the Act.
- 5.1.56 Such traffic regulation measures are normally made by order under the Road Traffic Regulation Act 1984 (the "1984 Act"), with such orders subject to consultation and publicity requirements. Inclusion within the Order is appropriate as the consultation, publicity and examination processes within the Order procedure provide a more than adequate substitute for the consultation and publicity requirements of traffic regulation orders.
- 5.1.57 The proposed restrictions sought under article 17 are similar to those which would apply to a clearway established under section 2 of the 1984 Act. This provides that a traffic regulation order may make provision prohibiting, restricting or regulating the use of a road, or any part of the width of a road, by vehicular traffic, or by vehicular traffic of any class specified in the order either generally or subject to exceptions specified in the order or determined in a manner provided for it or with reference to periods of time.
- 5.1.58 Article 17(4) also clarifies that paragraphs (1), (2) and (3) have effect as if made by an order under the 1984 Act, and can be varied or revoked by an order made under that Act or other enactment which provides for the variation or revocation of such orders, without the need to apply under the 1984 Act for an amendment to the Order.
- 5.1.59 The wording in this article has been approved and the principle of inclusion of traffic regulation measures accepted in the Coast Road Order (see article 14) and in the Testo's Order (see article 15).

Article 18 (Traffic regulation)

- 5.1.60 The purpose of this article is to provide Highways England with powers to make traffic regulation orders in relation to roads for which it is not the highway authority, so that it can implement traffic management measures (e.g. restrictions on the use of roads) necessary to construct the authorised development. This draws on the approach taken in article 37 of the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and article 43 of the M4 Order and in the Testo's Order (see article 16).
- 5.1.61 This article would, at any time prior to 12 months following the opening of the authorised development for public use, allow Highways England, in so far as it is necessary or expedient for the purposes of the construction, maintenance or operation of the authorised development, to:

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

5.1.62 Implementation of any of the measures is subject to the prior approval of the traffic authority in whose area the roads are situated. Provision is also made for the chief officer of police and the relevant traffic authority to be notified in advance. This complies with the consultation and publicity requirements for Traffic Regulation Orders under the Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990/1656.

Part 4 – Supplemental Powers

Article 19 (Discharge of water)

5.1.63 This article establishes statutory authority for Highways England to discharge water into a sewer, watercourse or drain in connection with the carrying out or maintenance of the authorised development.

5.1.64 This statutory authority is subject to Highways England obtaining the consent of the owner of the sewer, watercourse or drain, but that consent cannot be withheld unreasonably.

Article 20 (Protective work to buildings)

5.1.65 The purpose of this article is to allow Highways England to undertake protective works to buildings affected by the authorised development. It was included in the model provisions as article 15. The wording has broad precedent (see article 16 of the Coast Road Order, article 18 of the A14 Order and article 18 of the Testo's Order).

Article 21 (Authority to survey and investigate the land)

5.1.66 This article gives Highways England the power to enter certain land for the purpose of surveying and investigating. The article provides that Highways England must give 14 days' notice before exercising the powers of entry, and that compensation is payable for any loss or damage. The drafting in paragraph (1) authorises surveys on any land shown within the Order limits or affected by the authorised development. This potential extension beyond the Order limits has precedent in the Silvertown Tunnel Order 2018. Powers to make excavations and boreholes, to investigate groundwater and discharge water onto land are also included, to ensure that Highways England is able to undertake all necessary activities in connection with surveying the land. The ability to survey land affected by the authorised development which may be adjacent to the Order limits is required so that Highways England can be confident that the surveys can be conducted to assess the effects of the Scheme, or on the Scheme, from outside its limits. It imposes a lesser burden than seeking compulsory acquisition

of such land. This, again, is a standard provision with broad precedent (see article 20 of the M20 Order and article 19 of the Testo's Order).

Part 5 – Powers of Acquisition and Possession

Article 22 (Compulsory acquisition of land)

- 5.1.67 This article authorises the acquisition of land by compulsory purchase. It grants the power to acquire such of that land as is required for the Scheme. The power of acquisition over the Order Land is qualified and restricted by sub-article (2), in the case of parcels of land specified in the Order where only rights are required (article 25 (2)-(3)), or where possession of land parcels as specified in the Order may be taken temporarily only (article 32(9)).

Article 23 (Compulsory acquisition of land – incorporation of the mineral code)

- 5.1.68 This article incorporates Part 2 of Schedule 2 of the Acquisition of Land Act 1981. This means that where Highways England acquires land under the powers of the Order, it will not acquire any mineral deposits present in the land (other than those necessarily extracted or used in constructing the authorised development) unless they are expressly included in the conveyance. Article 23 was included in the model provisions as article 19.

Article 24 (Time limit for exercise of authority to acquire land compulsorily)

- 5.1.69 This article gives Highways England five years to issue 'notices to treat' or to execute a 'general vesting declaration' to acquire the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should this Order be made.
- 5.1.70 The article also sets a five year time limit on the power of Highways England to take temporary possession of land, although it does not prevent Highways England from remaining in possession of land after that time if it took possession within the five year limit. This article was included in the model provisions as article 20 and has consistently been approved by the Secretary of State, see for example article 22 of the A14 Order and article 22 of the Testo's Order.

Article 25 (Compulsory acquisition of rights and restrictive covenants)

- 5.1.71 This article allows for rights in land to be acquired as well as the land itself, and also for new rights to be created over land.
- 5.1.72 This article provides for such rights as may be required to be acquired by Highways England over land which it is authorised to acquire under article 22. The public benefit of this is that it would allow Highways England, if possible, to reduce the area of outright acquisition and rely on rights instead. A provision of this kind is usual in Transport and Works Act orders and Hybrid Bills and has been followed in a number of DCOs for example article 23 of the A14 Order and article 23 of the Testo's Order.
- 5.1.73 Article 25(2) provides that for the land described in Schedule 5, Highways England's powers of compulsory acquisition are limited to the acquisition of such rights as may be required for the purposes set out in the Schedule.

- 5.1.74 Article 25(3) provides that the power to impose restrictive covenants under sub-article (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.
- 5.1.75 Article 25(4) provides that where Highways England needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 5.1.76 Article 25(5) and Schedule 6 impose modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired).
- 5.1.77 For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled. Furthermore, the provisions have been amended so that the time limits are consistent with the Order (five years as opposed to three years) and the appropriate references to the Act).
- 5.1.78 Article 23(6) provides that Highway England's powers rights under paragraph (1) includes the power to create rights for the benefit of third parties.
- 5.1.79 The modifications are based on changes made consistently in most schemes granted under the Act (see, for example, Schedule 6 of the A14 Order and Schedule 6 to the Testo's Order). As a result of changes contained in the Housing and Planning Act 2016, the Order has been updated to ensure that the correct provisions are modified.
- 5.1.80 Article 23(6) provides that Highway England's powers rights under paragraph (1) includes the power to create rights for the benefit of third parties.

Article 26 (Private rights over land)

- 5.1.81 In order for it to be possible to implement the authorised development, provision is needed for the extinguishment of private rights in the Order land that would otherwise be incompatible. Article 26 supplies that provision.
- 5.1.82 Article 26(1) provides for the extinguishment of private rights over the Order land subject to compulsory acquisition under the Order, from the moment of acquisition or occupation of that land.
- 5.1.83 Article 26(2) provides for the extinguishment of existing private rights over land that is subject to the compulsory acquisition of new rights (but where the underlying land is not subject to powers of compulsory acquisition), if the exercise of those existing rights is inconsistent with the implementation of the Scheme, from the date of acquisition of the right or occupation of the underlying land.
- 5.1.84 Article 26(3) provides that rights over Order land that is already owned by Highways England are also extinguished, at the point that any activity authorised by the Order interferes with or breaches those rights.

- 5.1.85 Article 26(4) provides for the temporary suspension of private rights over Order land that is not acquired but is occupied temporarily by Highways England in order to construct the proposed development. The suspension is for the duration of the occupation.
- 5.1.86 Articles 26(5) to 26(8) make provision for compensation and for circumstances where rights are preserved.
- 5.1.87 Article 26(9) sets out a list of matters deemed to be private rights to provide certainty as to the scope of the article. The list of deemed private rights is broad in order to ensure that any right which could potentially interfere with the implementation of the proposed development can be extinguished. A similar list appears in the equivalent article in the A14 Order (see article 25), the Coast Road Order (see article 24) and in the Testo's Order (see article 24).

Article 27 (Modification of Part 1 of the Compulsory Purchase Act 1965)

- 5.1.88 The purpose of this article is to ensure consistency between the standard terms of highways development consent orders and the Compulsory Purchase Act 1965 (as amended by the Housing and Planning Act 2016) as applied by section 125 of the Act. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017.

Article 28 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)

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

Article 29 (Modification of the 2017 Regulations)

- 5.1.93 This article modifies the Compulsory Purchase of Land (Vesting Declaration) (England) Regulations 2017 to ensure that the interests and rights in land which are intended to benefit a third party, such as a statutory undertaker whose apparatus may be re-located in order to construct the authorised development, will vest in that third party instead of Highways England, who would otherwise be the acquiring authority in respect of those interests and rights.

Article 30 (Acquisition of subsoil or airspace only)

- 5.1.94 This article allows Highways England to acquire land below the surface or the airspace above the surface, rather than having to acquire all of the land. This article does not apply where land below the surface or the airspace above the surface is excluded from the Order Limits.
- 5.1.95 The purpose of this article is to give Highways England the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on affected landowners, and lower payments of compensation which is in the public interest. This too is a standard provision used in many highways development consent orders (see for example article 27 of the A14 Order and article 27 of the Testo's Order).

Article 31 (Rights under or over streets)

- 5.1.96 The purpose of this article is to allow Highways England to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without full acquisition, is prohibited in the circumstances set out in article 31(3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place
- 5.1.97 Article 31 was included in the model provisions as article 27 and has been included in the majority of DCOs made to date (see for example article 32 of The A30 Chiverton to Carland Cross Development Consent Order 2020).

Article 32 (Temporary use of land for carrying out the authorised development)

- 5.1.98 The purpose of this article is to allow the land set out in Schedule 7 to be occupied temporarily while the works are carried out. This is land which is required during construction of the Scheme but is not required permanently. The authorisation of temporary possession prevents Highways England having to permanently acquire land which is required to construct the Scheme but which is not needed permanently and therefore assists in minimising the interference with the landowners' rights. This article also allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been taken possession of. In particular:
- (a) Article 32(1)(a)(i) allows the land set out in Schedule 7 to be occupied temporarily while the works are carried out. This is land which is required during construction of the Scheme but which is not required outright permanently and includes land which will be occupied temporarily and then subject to permanent rights (e.g. diversion of utilities apparatus). Article 32(9) prevents this land from being acquired permanently, although confirms

that acquisition of rights over this land, or of subsoil /airspace only, is not prevented and is required in respect of certain parcels (save where land below the surface or the airspace above the surface is excluded from the Order Limits). Likewise some land taken temporarily may have permanent works undertaken to it, e.g. accommodation works (see further sub article (4)(b), and Schedule 7).

- (b) Article 32(1)(a)(ii) allows for the temporary occupation of any of the land that is subject to the powers of permanent acquisition, but in respect of which no process for acquisition has yet been commenced. The rationale for this is that it reduces the amount of land that is required to be subject to outright acquisition. Thus article 22 with article 32(1)(a)(ii) makes it possible for Highways England to occupy land temporarily initially and only proceed to acquire permanently that part which is necessary for the Scheme as constructed. The benefits of this are lesser impacts on landowners and lower costs to Highways England, which is in the public interest. In line with this, article 32(1)(d) confirms that the authorised development as listed in Schedule 1 can be undertaken on land that has been temporarily occupied.
- (c) Article 32(4) provides that, prior to giving up possession of land taken temporarily, Highways England will remove all temporary works and restore the land to the original surveyed condition at the time of entry (unless otherwise agreed with the owner of the land) so as to provide certainty as to the extent and standard of restoration required. The same approach has been adopted in article 32(5) where possession of land has been taken temporarily for maintaining the authorised development.

Article 33 (Temporary use of land for maintaining the authorised development)

- 5.1.99 This article provides that Highways England may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first open for use. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied. This article was included in the model provisions as article 29 and the Coast Road Order (see article 28), the M4 Order (see article 29) and the Testo's Order (see article 30) reflect the wording used in this article.

Article 34 (Statutory undertakers)

- 5.1.100 This article provides Highways England with clear statutory authority to acquire rights over land owned by statutory undertakers (i.e. utilities such as electricity and gas companies).
- 5.1.101 It also allows Highways England to extinguish rights that statutory undertakers have over the Order land, and to remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plans and described in the Book of Reference (document reference TR010034/APP/4.3).

- 5.1.102 In practice it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any Order land is required.
- 5.1.103 All land over which this power may be exercised is shown on the Land Plans (document reference TR010034/APP/2.2), and the beneficiaries of such rights are described in the Book of Reference (document reference TR010034/APP/4.3), the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 5.1.104 Article 34(2) restricts Highways England's power to extinguish rights or move apparatus by excluding apparatus in streets. It applies alternative provisions more appropriate to balancing the interests of the various affected parties where the apparatus in question is in a street.
- 5.1.105 This article is subject to Schedule 9 which contains provisions for the protection of certain statutory undertakers to ensure their continued ability to carry out their functions despite the interference with their rights/apparatus required to facilitate the authorised development.
- 5.1.106 This is an article with broad precedent (see: the A14 Order (see article 32), the Coast Road Order (see article 29), the M4 Motorway Order (see article 30) and the Testo's Order (see article 31).

Article 35 (Apparatus and rights of statutory undertakers in stopped up streets)

- 5.1.107 This article governs what happens to statutory undertakers' apparatus under streets that are stopped up by the Order. Without the article, the statutory undertaker will not have access to the apparatus, since there will no longer be a right of way along the street. The statutory undertaker may remove, relocate or replace any affected apparatus of its own volition, or must do so if it is reasonably requested by the Secretary of State.
- 5.1.108 The statutory undertaker will receive compensation from Highways England for any relocation works and associated costs. Sub-articles (4) – (5) discount from this compensation the cost associated with a higher specification in the replacement apparatus. Article 35(6) discounts from this compensation the increase in value to the statutory undertaker for having new rather than old (i.e. older than 7 ½ years) apparatus.
- 5.1.109 Article 35 (7) provides that where statutory undertakers are affected by a stopping up in relation to those parts of the project that constitute "major bridge works", "major transport works" or "major highways works", as defined in the 1991 Act, the cost sharing provisions under the 1991 Act will apply instead of the compensation provision in this article.
- 5.1.110 Article 35 was included in the model provisions as article 32. This article is also standard for highways development consent orders (see, for example, article 30 of the Coast Road Order, article 34 of the M20 Order and article 32 of the Testo's Order).

Article 36 (Recovery of costs of new connections)

- 5.1.111 This article provides that if any statutory undertaker's apparatus is removed and this cuts a service to anyone, then the cost of establishing a new service can be claimed from Highways England.

Article 37 (Felling or lopping of trees and removal of hedgerows)

- 5.1.112 Article 37(1) allows any tree or shrub that is near the Scheme to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the Scheme or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 5.1.113 Highways England considers that, in addition to the conditions imposed on the carrying out of the activities included within the precedents set out above, a further condition should be included (see article 37(2)(b)) to ensure that trees or shrubs shall not be felled, lopped or have their roots cut back if they are identified as retained trees or shrubs (as the case may be) in the Environmental Statement save where the Secretary of State is satisfied that the removal, felling, lopping or cutting back of roots would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the Environmental Statement. This is to ensure that this article does not permit Highways England to act contrary to the assumptions relied upon in the Environmental Statement (document reference TR010034/APP/6.1-6.5) unless, in doing so no materially new or materially worse adverse environmental effects would result. For the same reasons, a similar approach has been adopted to article 39 (Trees subject to tree preservation orders), as to which see below.
- 5.1.114 Article 37(3) allows any hedgerow listed in Part 1 of Schedule 8 to the Order to be removed. Article 37(4) allows any other hedgerow to be removed with the prior consent of the local authority. Compensation is payable for any loss or damage caused.

Article 38 (Application of landlord and tenant law)

- 5.1.115 This article governs the leasing of land by Highways England to any other person. Essentially it allows the terms of the lease to override any statutory provisions relating to landlord and tenant law. This article was included in the model provisions as article 35.

Article 39 (Trees subject to tree preservation orders)

- 5.1.116 This article allows Highways England to fell or lop any trees subject to tree preservation orders described in Part 2 of Schedule 8. This is a model provision which has been used in numerous orders (see for example article 36 of the M4 Order, article 39 of the M20 Order and article 35 of the Testo's Order).

Article 40 (Operational land for the purposes of the 1990 Act)

- 5.1.117 This article means that the land within the Order limits in which Highways England holds an interest shall be treated as "operational land of a statutory undertaker" for the purposes of the Town and Country Planning Act 1990.
- 5.1.118 The effect of that Order land being treated as operational land is that the person responsible for operating and maintaining the proposed development (Highways England or any transferee of its powers) will benefit from certain permitted

development rights on that land in connection with the operation of the road. This article was included in the model provisions as article 36.

Article 41 (Defence to proceedings in respect of statutory nuisance)

- 5.1.119 Section 158 of the Act confers statutory authority for the purposes of a defence in statutory nuisance generally, subject to any contrary provision made by a particular order. This article is such a contrary provision, amending the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by s158).
- 5.1.120 The defence is available if the noise relates to:
- the construction or maintenance of the project, and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974, or cannot reasonably be avoided; or
 - the use of the project and cannot reasonably be avoided.
- 5.1.121 Article 41 is based on article 7 of the model provisions and is an article which has precedent in recent highway orders made, for example article 38 of the M4 Order, article 42 of the M20 Order and article 38 of the Testo's Order.

Article 42 (Protection of interests)

- 5.1.122 This article simply gives effect to Schedule 9, which contains provisions protecting the interests of third parties.
- 5.1.123 Schedule 9 contains protective provisions for the benefit of electricity, gas, water and sewerage undertakers; electronic communications code network operators; drainage authorities and the Environment Agency. These provisions are based on the standard protective provisions approved by the Secretary of State on other schemes including The A14 Cambridge to Huntingdon Improvement Order 2016, The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 and The A19/A184 Testo's Junction Alteration Order 2018.
- 5.1.124 Highways England has sought the views of the undertakers who have interests affected by the Scheme and continues to negotiate with the undertakers to ensure any concerns are dealt with appropriately. Highways England will provide a full update of the status of the negotiations throughout the examination.

Article 43 (Certification of documents, etc.)

- 5.1.125 This article provides for various documents and plans (including those listed in Schedule 10) to be certified by the Secretary of State. This was included in the model provisions as article 41.

Article 44 (Service of notices)

- 5.1.126 This article governs how any notices that may be served under the Order shall be deemed to have been served properly. In particular it allows service by email with the consent of the recipient and deals with the situation of service on an unknown landowner.

- 5.1.127 It is common to have such an article in an order authorising development such as this. The article has precedent in a number of orders including the A14 Order (see article 42), the M20 Order (see article 45) and the Testo's Order (see article 41).
- 5.1.128 The provision is useful because it provides clarity on the issue. It is noted that the service of notice provisions under sections 229 and 230 of the Act apply to notices served under that Act rather than notices served under a development consent order made under that Act.

Article 45 (Arbitration)

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

6. Schedule 2 - Requirements

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

The requirements provide that the various schemes, details and plans to be approved must, where appropriate, reflect the measures included in the Register of Environmental Actions and Commitments ("REAC", Document Reference TR010034/APP/7.3) which contains the mitigation commitments in the Environmental Statement. This is the mechanism to ensure that environmental mitigation is secured by the Order, and the approach here is consistent with other DCOs which have been made. Further, the requirements provide that the approved schemes, details and plans must be implemented as approved, unless the Secretary of State approves further amendments to them.

- 6.1.1 Requirement 1 (Interpretation) contains a number of definitions used in Part 1 of Schedule 2.
- 6.1.2 Requirement 2 (Time limits) provides that the authorised development must not commence later than five years from the date of the Order coming into force.
- 6.1.3 Requirement 3 (Detailed Design) states that the authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the works plans (Document Reference TR010034/APP/2.3) and the engineering drawings and section plans, (Document Reference TR010034/APP/2.7) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and the local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans and the engineering drawings and section plans showing departures from the preliminary scheme design would not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement. This requirement is based on Requirements 4 to 6 of the model provisions and Requirement 12 of the M20 Order and Requirement 3 of the Testo's Order.
- 6.1.4 Requirement 4 (Second Iteration EMP) requires the preparation of a second revision of the First Iteration Environmental Management Plan (Document Reference TR010034/APP/7.2) in consultation with the relevant planning authority and for its approval by the Secretary of State. The Second Iteration EMP will be based substantially on the First Iteration Environmental Management Plan prepared as part of the Scheme application. The Second Iteration EMP will fulfil the construction-related objectives and measures as outlined in the REAC and must be in accordance with ISO14001. Further details of what must be included in the Second Iteration EMP are set out at sub-paragraph (2).

- 6.1.5 Requirement 5 requires the preparation of a landscaping scheme covering all hard and soft landscaping works for approval by the Secretary of State. The proposed landscaping scheme must reflect the relevant mitigation measures in the REAC and must be based on the illustrative Environmental Masterplan annexed to the Environmental Statement (Document Reference TR010034/APP/6.4). Requirement 5 was included as requirement 5 of the Testo's Order.
- 6.1.6 Requirement 6 makes provision for dealing with any contaminated land and groundwater discovered during construction of the works, in consultation with the relevant planning authority and the Environment Agency. This requirement was included as Requirement 6 of the Testo's Order.
- 6.1.7 Requirement 7 states Highways England must carry out a final pre-construction survey to establish whether 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. Where, following pre-construction survey work or at any time when carrying out the Scheme the conditions listed in sub-paragraph (2) are met then the relevant parts of the relevant works must not begin until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State. Consultation with Natural England is required unless a qualified ecologist determines that the works in question do not require a protected species licence. Requirement 7 is based on requirement 34 of the model provisions and replicates (with minor modification, as below) Requirement 7 of the Testo's Order.
- 6.1.8 Requirement 8 provides that no part of the authorised development can commence until written details of a surface and foul water drainage system, reflecting the mitigation measures in the REAC and including means of pollution control, have been prepared in consultation with the relevant planning authority and approved in writing by the Secretary of State. This requirement is based on requirement 14 of the model provisions and has been included in the M20 Order (see requirement 13) and the Testo's Order (see Requirement 8).
- 6.1.9 Requirement 9 requires that: (i) the Scheme must be carried out in accordance with the Flood Risk Assessment (Document Reference TR010034/APP/5.5) (including the mitigation measures detailed within it) so that no part of the authorised development is predicted to result in any exceedance of the flood levels to properties and land shown in the Flood Risk Assessment; or (ii) where Highways England seeks to otherwise carry out the authorised development, it must demonstrate to the Environment Agency that either there is no material exceedance to the flood levels in the Flood Risk Assessment or that the landowners have accepted the change in flood levels from those shown reported in the Flood Risk Assessment. The Flood Risk Assessment will be a certified document. Requirement 9 was not included in the model provisions but was included as requirement 15 in the A14 Order.
- 6.1.10 Requirement 10 states no part of the Scheme is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the mitigation measures included in the REAC, has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority. The Requirement puts further limitations on

construction activity within 10 metres of any archaeological remains which were not previously identified but are revealed when carrying out the Scheme. This requirement has been included in other Highways England orders (see, for example, requirement 9 of the M20 Order and the Testo's Order).

- 6.1.11 Requirement 11 provides that permanent and temporary fencing must be constructed and installed in accordance with the Applicant's Manual of Contract Documents for Highway Works unless otherwise agreed with the Secretary of State. It is based on Requirements 12 and 13 of the model provisions, amended to reflect that standards are already set out in the Manual of Contract Documents. This wording has been included as Requirement 7 of the M20 Order and Requirement 12 of the Testo's Order.
- 6.1.12 Requirement 12 provides a clear procedure for the discharge of requirements where any requirement requires details to be submitted to the Secretary of State following consultation with another party. In such circumstances a summary report setting out any consultation undertaken is to be provided to the Secretary of State. This wording has been included as Requirement 13 of the Windy Harbour Order.
- 6.1.13 Requirement 13 provides that, where the Scheme must be carried out in accordance with approved details/schemes, those details/schemes are taken to include any subsequent amendments that are approved or agreed in writing by the Secretary of State.
- 6.1.14 Part 2 of Schedule 2 (Requirements 14-17) provides a clear procedure for the discharge of requirements by the Secretary of State. It sets out clear time limits for decisions to be made and makes provision for circumstances where the Secretary of State requires further information to be provided in relation to an application for the discharge of a requirement. This also includes an obligation on the undertaker to make public an electronic register of requirements under paragraph 16, which would track where each requirement is in the process. Part 2 as drafted reflects the discharge of requirements provisions approved in the A14 Order and in the Testo's Order.
- 6.1.15 Any steps Highways England takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps.

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