

## **A57 Link Roads**

**TR010034**

### **9.3 Draft DCO showing all changes since the previous submitted version (tracked)**

Rule 8(1)(k)

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

April 2022

# Infrastructure Planning Planning Act 2008

## The Infrastructure Planning (Examination Procedure) Rules 2010

### A57 Link Roads

#### Development Consent Order 202[x]

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#### 9.3 DRAFT DCO SHOWING ALL CHANGES SINCE THE PREVIOUS SUBMITTED VERSION (TRACKED)

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**202[ ] No.**

**INFRASTRUCTURE PLANNING**

**The A57 Link Roads Development Consent Order 202[ ]**

*Made*

*Coming into force*

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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 section 37 of the Planning Act 2008 (“the 2008 Act”) (b).

The application was examined by a panel (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The panel, having considered the representations made and not withdrawn and having examined the application together with the accompanying documents, in accordance with section 74(2) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the panel, has decided to make an Order granting development consent for the development described in the application [with modifications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

The Secretary of State is satisfied that the land plots identified in the special category land plans and the book of reference as open space authorised to be permanently compulsorily acquired under this Order are required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and that the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public and that, accordingly, section 131(5) of the 2008 Act applies.

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

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the A57 Link Roads Development Consent Order 202[ ] and comes into force on [ ] 202[ ].

#### **Interpretation**

2.—(1) In this Order—

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

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

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

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

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524 and S.I. 2017/572, S.I. 2018/378 and S.I. 2019/7342008 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.

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1980 c. 66.

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

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

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

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

“the 2004 Act” means the Traffic Management Act 2004(e);

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

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

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

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) or any 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;

“British Telecommunications PLC” means the company registered in England and Wales, company number 01800000, whose registered address is 81 Newgate Street, London EC1A 7AJ;

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

“bridleway” has the same meaning as in the 1980 Act and includes a right of way on pedal cycles and on foot;

“Cadent Gas Limited” means the Company registered in England and Wales, company number 10080864, whose registered address is Ashbrook Court, Prologis Park, Central Boulevard, Coventry, CV7 8PE;

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

“the classification of roads plans” means the plans certified by the Secretary of State as the classification of road plans for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“commence” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, ecological surveys and mitigation works, environmental surveys and monitoring, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, establishment of work areas and compounds, receipt of construction plant and equipment, erection of construction plant and equipment for the preliminary works, diversion and laying of underground apparatus and site clearance, and the temporary display of site notices or information and “commencement” and “commencing” is to be construed accordingly;

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

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(a) 1981 c. 66.

(b) 1984 c. 27.

(c) 1990 c. 8.

(d) 1991 c. 22.

(e) 2004 c.18.

(f) 2008 c.29

(g) S.I. 2017/3.

(h) 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)

“cycleway” means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988) with a right of way on foot and or a right of way on horseback or leading a horse;

“Electricity North West Limited” means the company registered in England and Wales, company number 02366949, whose registered address is 304 Bridgewater Place, Birchwood Park, Warrington, WA3 6XG;

“electronic transmission” means a communication transmitted—

- (i) by means of an electronic communications network; or
- (ii) by other means but while in electronic form;

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

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

“Environment Agency” means the body of that name created by the Environment Act 1995(b) or any successor in function to it;

“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;

“highway” and “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 10 (documents to be certified) and certified as the land plans by the Secretary of State for the purposes of this Order;

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act;

“maintain” in relation to the authorised development includes, to the extent that is unlikely to give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement, inspect, repair, adjust, alter, remove or reconstruct in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

“Natural England” means the body established by section 1 of the Natural Environment and Rural Communities Act 2006(c) or any successor in function to it;

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

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

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

“relevant planning authority” has the same meaning as in section 173 (the relevant local planning authority) of the 2008 Act;

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(a) Section 32(1) was amended by S.I. 2011/1210.

(b) 1995 c.25.

(c) 2006 c.16.

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



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

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

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

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

“street authority” has the same meaning as in Part 3(b) of the 1991 Act;

“streets, rights of way and access plans” means the plans listed in Schedule 10 (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;

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

“TPO and hedgerow plans” means the tree preservation order (TPO) and hedgerow drawings referenced in Schedule 10 (documents to be certified) and certified as the TPO and hedgerow plans by the Secretary of State for the purposes of this Order;

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

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

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

“undertaker” means National Highways Limited (Company No. 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“United Utilities Group PLC” means the Company registered in England and Wales, company number 06559020, whose registered office is at Haweswater House, Lingley Mere Business Park, Lingley, Green Avenue, Great Sankey, Warrington WA5 3LP;

“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 10 (documents to be certified) and certified as 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.

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- (a) Section 48 was amended by section 124 of the Local Transport Act 2008 (c.26).
  - (b) See section 49, as amended by section 1(6) of, and paragraphs 113 and 117(a) of Part 2 of Schedule 1 to the Infrastructure Act 2015.
  - (c) Section 121A was inserted by section 168(1) of, and paragraph 70 of Part 2 of Schedule 8, to the 1991 Act; and amended by section 271 of the Greater London Authority Act 1999 (c.29), section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to, the Infrastructure Act 2015, and S.I. 1999/1920 and S.I. 2001/1400.
  - (d) Section 10 was amended by section 22(2) of the 1991 Act; paragraph 22 of Schedule 2 to the 2008 Act; and by section 1(6) of, and paragraph 10 of Schedule 1 to, the Infrastructure Act 2015.
  - (e) Section 19(1) was amended by section 1(6) of, and paragraph 15 of Schedule 1 to, the Infrastructure Act 2015.

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

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

(b) to any statutory undertaker for the purposes of their undertaking.

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

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

(6) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

(7) References in this Order to numbered works are references to the works as numbered in Schedule 1 (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 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.

#### **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 and save in circumstances where access to works connected with the drainage of land is restricted by the undertaker. Where access is restricted the undertaker shall be responsible for the maintenance of any works connected with the drainage of land during any period that access is restricted.

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

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

## **Planning Permission**

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

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

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

## **Limits of deviation**

7. 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 0.5 metres upwards or 0.5 metres downwards with the exception of the following—
  - (i) to a maximum of 1.0 metres upwards or downwards at Carrhouse Lane as defined by Work No. 23;
  - (ii) to a maximum of 1.0 metres upwards or downwards at Old Mill Underpass as defined by Work No. 31;
  - (iii) to a maximum of 1.0 metres upwards or downwards at Roe Cross Bridge as defined by Work No. 32;
  - (iv) to a maximum of 1.0 metres upwards or downwards at Mottram Moor Underpass as defined by Work No. 33;
  - (v) to a maximum of 1.0 metres upwards or downwards at Carrhouse Lane Underpass as defined by Work No. 34; and
  - (vi) to a maximum of 1.0 metres upwards or downwards at River Etherow Bridge/Underpass as defined by Work No. 35;

except that these maximum limits of horizontal 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 environmental effects in comparison with those reported in the environmental statement.

## **Benefit of Order**

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

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

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

9.—(1) Subject to 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.

(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) Electricity North West Limited for the purposes of undertaking Work No. 61, 62, and 64;
- (b) United Utilities Group PLC Electricity North West Limited for the purposes of undertaking Work No. 58, 59 60, 62 and 65;
- (c) Cadent Gas Limited for the purposes of undertaking Work No. 62 and 63; and
- (d) British Telecommunications PLC for the purposes of undertaking Work No. 62.

provided that any transfer or grant under this paragraph (4) must not include the transfer or grant of any benefit of the provisions of Part 5 (powers of acquisition and possession) of this Order without the consent of the Secretary of State.

## PART 3 STREETS

### Street Works

**10.**—(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 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 street works) of the 1991 Act.

(3) Subject to article 11 (application of the 1991 Act), the provisions of section 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### Application of the 1991 Act and the 2004 Act

**11.**—(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) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or

- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the 1980 Act or section 184(b) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act, references to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), 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 conferred by this Order—

- section 56(c) (power to give directions as to timing);
- section 56A(d) (power to give directions as to placing of apparatus);
- section 58(e) (restrictions on works following substantial road works);
- section 58A(f) (restriction on works following substantial street works);
- Schedule 3A(g) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act referred to 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 14 (temporary alteration, diversion, prohibition and restriction of the use of streets), whether or not the alteration or diversion constitutes street works within the meaning of that Act.

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

- section 54(i) (advance notice of certain works), subject to paragraph (6);
- section 55(j) (notice of starting date of works), subject to paragraph (6);
- section 57(k) (notice of emergency works);
- section 59(l) (general duty of street authority to co-ordinate works);
- 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 12 (construction and maintenance of new, altered or diverted streets)—

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- (a) Section 64 was amended by Section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and Schedule 168(2) of, and Schedule 9 to, the 1991 Act.
  - (b) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Part 1 of Schedule 8 and Schedule 9 to, the 1991 Act.
  - (c) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the 2004 Act (c.18).
  - (d) Section 56A was inserted by section 44 of the 2004 Act.
  - (e) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the 2004 Act.
  - (f) Section 58A was inserted by section 52(1) of the 2004 Act.
  - (g) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the 2004 Act.
  - (h) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the 2004 Act.
  - (i) Section 54 was also amended by section 49(1) of the 2004 Act.
  - (j) Section 55 was also amended by sections 49(2) and 51(9) of the 2004 Act.
  - (k) Section 57 was also amended by section 52(3) of the 2004 Act.
  - (l) Section 59 was also amended by section 42 of the 2004 Act.

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

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

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

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

(3) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority and unless otherwise agreed in writing with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(4) Where a highway described in Part 5 (roads to be detrunked) of Schedule 3 (classification of roads, etc.) is detrunked under this Order—

- (a) section 265(a) (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that highway; and
- (b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that detrunking must, unless otherwise agreed in writing with the local highway authority, be maintained by and at the expense of the local highway authority from the date of detrunking.

(5) In the case of—

- (a) the ‘Carrhouse Lane Underpass’ to be constructed pursuant to Work No. 34, and the ‘River Etherow Bridge’ to be constructed pursuant to Work No. 35, must be maintained by and at the expense of the local highway authority, unless otherwise agreed in writing with the local highway authority;
- (b) works above the structure of the ‘Mottram Underpass’ and ‘Roe Cross Road Bridge’ to be constructed pursuant to Work No. 32 and Work No.33 must be maintained by and at the expense of the local highway authority and the structure of the underpass and the Mottram Moor Link Road to be constructed pursuant to Work No. 5 and 6 must be maintained by and at the expense of the undertaker, unless otherwise agreed in writing with the local highway authority;

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

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(a) Section 265 was amended by section 146 of, and paragraph 45 of Schedule 13 to, the 1984 Act and section 1(6) of, and paragraph 52 of Schedule 1 to, the Infrastructure Act 2015.

(7) For the purposes of a defence under paragraph (7), the court must in particular have regard to the following matters—

- (a) the character of the street or other structure and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street or other structure of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street or other structure;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street or other structure to which the action relates was likely to cause danger to users of the street or other structure; 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 or structure to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street or structure and that the competent person had carried out those instructions.

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

**13.**—(1) The roads described in Part 1 (special roads) of Schedule 3 (classification of roads, etc.) are to be—

- (a) classified as special roads for the purposes of any enactment or instrument which refers to highways classified as special roads; and
- (b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 of the 1980 Act.

(2) From the date on which the undertaker notifies the Secretary of State that the roads described in Part 1 (special roads) of Schedule 3 have been completed and are open for traffic—

- (a) the undertaker is the highway authority for those roads; and
- (b) they are classified as trunk roads for the purposes of any enactment or instrument which refers to highways classified as special roads.

(3) From the date on which the authorised development is open for traffic the roads described in Part 2 (trunk roads) of Schedule 3 (classification of roads, etc.) are to become trunk roads as if they had become so by virtue of an order under section 10(2) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(4) From the date on which the authorised development is open for traffic the roads described in Part 3 (classified roads) of Schedule 3 are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(5) On a date to be determined by the undertaker, the roads described in Part 4 (roads to be detrunked) of Schedule 3 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

(6) On the date on which the roads specified in Part 5 (speed limits) of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of Part 5 of Schedule 3 along the lengths of road identified in the corresponding row of column (1) of that Part to the extent described in column (2) of that Part.

(7) On such a day as the undertaker may determine, the orders specified in column (3) of Part 6 (new traffic regulation orders sought) of Schedule 3 are to be made in respect of the roads specified in the corresponding row of column (2) of that Part.

(8) On such a day as the undertaker may determine, the orders specified in column (3) of Part 7 (revocations and variations of existing traffic regulation orders) of Schedule 3 are to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

(9) The public rights of way described in Part 8 (public rights of way) of Schedule 3 and identified in the streets, rights of way and access plans will be of the type described in column (1) of that Part to the extent described in column (2) and, unless otherwise agreed with the local highway authority and provided there are no materially new or materially worse environmental effects in comparison with those reported in the environmental statement, are to be constructed by the undertaker in the specified locations and open for use no later than the date on which the authorised development is open for traffic.

(10) Unless otherwise agreed with the relevant land owner, the private means of access specified in column (2) of Part 9 (private means of access) of Schedule 3 and as identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use no later than the date of the on which the authorised development is open for traffic.

(11) The application of paragraphs (1) to (10) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

#### **Temporary alteration, diversion, prohibition and restriction of the use of streets**

**14.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit 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 where the use has been temporarily prohibited or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

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

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

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

(6) Subject to the undertaker complying with paragraph (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.

(7) The undertaker when making an application for consent under paragraph (4) shall notify the street authority of the content of paragraph (6) and the fact that, if the street authority 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 highways, streets and private means of access**

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

(2) No street, public rights of way or private means of access specified in column (1) of Parts 1 and 2 of Schedule 4 is to be wholly or partly stopped up under this article unless—

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

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

- (a) all rights of way over or along the street 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 or private means of access as is bounded on both sides by land owned by the undertaker.

(4) The undertaker may, in connection with the carrying out of the authorised development alter the private means of access specified in column (1) of Part 3 (alterations to private means of access) of Schedule 4 as specified in column (2) of that Part.

(5) 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.

(6) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).

## **Access to works**

**16.** 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.

## **Clearways**

**17.**—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) and in Part 6 of Schedule 3 (new traffic regulation orders) are open to traffic, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
  - (i) the removal of any obstruction to traffic;
  - (ii) the maintenance, improvement, reconstruction or operation of the road;

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

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

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

### **Traffic regulation**

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

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

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) 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,

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

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

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

(b) 1991 c. 56.

(c) 2000 c. 26.

(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(a) (power of local authorities to provide parking places) 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 2004 Act.

(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 conferred by paragraph (2) within a period of 24 months from the opening of the authorised development.

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

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

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

(11) Subject to the undertaker complying with paragraph (12), 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.

(12) The undertaker when making an application for consent under paragraph (2) shall notify the traffic authority of the content of paragraph (11) and the fact that if the traffic authority fails to notify the undertaker of its decision within 28 days of receiving the application for consent, it is deemed to have granted consent.

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(a) Section 32 was 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.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

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

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

(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 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

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

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

(9) Subject to the undertaker complying with paragraph (10) 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.

(10) The undertaker when making an application for consent under paragraph (3) or approval under paragraph (4)(a) shall notify the person receiving the application of the content of paragraph (9) and the fact that, if the person fails to notify the undertaker of its decision within 28 days of receiving the application, the person will be deemed to have granted consent.

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

(b) S.I. 2016/1154. Regulation 12 was amended by 2018/110.

(c) 1991 c. 57.

## Protective work to buildings

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

(2) Protective works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works to a building under this article 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 and survey any building and any land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and any 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 45 (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(a) (compensation in case where no right to claim in nuisance) of the 2008 Act.

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

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

(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**

**21.**—(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 (including any watercourses, ground water, static water bodies or vegetation on the land);
- (b) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes or boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water samples on to the land;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; 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 or boreholes.

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

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

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

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

- (a) in land located within a highway boundary for which the local highway authority is the highway authority without the consent of the local 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 of the 1961 Act.

(6) Subject to the undertaker complying with paragraph (7), if either a local highway authority or a 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 the local highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

(7) The undertaker when making an application for consent under paragraph (4)(a) or 4(b) shall notify the local highway authority or the street authority of the content of paragraph (6) and the fact that, if the local highway authority or the street authority fails to notify the undertaker of its decision within 28 days of receiving the application for consent, it is deemed to have granted consent.

## PART 5

### POWERS OF ACQUISITION AND POSSESSION

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

**22.**—(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 25 (compulsory acquisition of rights and restrictive covenants) and paragraph (9) of article 32 (temporary use of land for carrying out the authorised development).

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

**23.** Part 2 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) 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**

**24.**—(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 as modified by article 27 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 28 (application of the 1981 Act).

(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 from 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**

**25.**—(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 22 (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 5 (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 and relating to that part of the authorised development specified in column (3) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of the plots specified in column (1) of Schedule 5.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act, (as substituted by paragraph 5(8) of Schedule 6 (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 under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 6 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

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(a) 1981 c. 67.

under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(6) The undertaker's powers to create rights under paragraph (1) includes the power to create rights for the benefit of third parties. Where a right is for the benefit of a third party that right shall on the exercise of the power of compulsory acquisition have effect for that party's benefit and be treated for all purposes as though it was vested in the third party directly.

### **Private rights over land**

**26.**—(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)(a) (powers of entry) of the 1965 Act,

whichever is the earlier.

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

- (a) 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,

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 which are required to be interfered with or breached for the purposes of this Order 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(b) (compensation in case where no right to claim in nuisance) 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(c) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 33 (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 or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,

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(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and sections 186 (1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

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

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



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.

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

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

(2) In section 4A(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118(c) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the A57 Link Roads Development Consent Order 20[ ]”.

(3) In section 11A(d) (powers of entry: further notices of entry)—

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

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 24 (time limit for exercise of authority to acquire land compulsorily) of the A57 Link Roads Development Consent Order 20[ ]”.

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

- (a) for paragraphs 1(2) and 14(2) substitute—
- (b) “(2) But see article 30(3) (acquisition of subsoil or airspace only) of the A57 Link Roads Development Consent Order 20[ ], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and
- (c) after paragraph 29, insert—

## **“PART 4**

### **INTERPRETATION**

In this Schedule, references to entering on and taking possession of land do not include doing so under article 20 (protective work to buildings), 32 (temporary use of land for

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

carrying out the authorised development) or 33 (temporary use of land for maintaining the authorised development) of the A57 Link Roads Development Consent Order 20[.]”

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

- 28.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of the Act), in subsection (1), omit the words “in themselves”
- (4) 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.”
- (5) In section 4 (execution of declaration), for subsection (1) substitute—
- “(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are expressly authorised to acquire for the benefit of a third party in the third party in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 below is completed)”
- (6) In section 5(a) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (7) Omit section 5A(b) (time limit for general vesting declaration).
- (8) In section 5B(1)(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008 the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the A57 Link Roads Development Consent Order 20[.]”
- (9) In section 6 (notices after execution of declaration) in subsection (1)(b)(d) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(e) (notice of authorisation of compulsory acquisition of the Planning Act 2008”.
- (10) In section 7(f) (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (11) In section 8 (vesting, and right to enter and take possession), after subsection (3), insert—
- “(4) In this section references to the acquiring authority include any third party referred to in section 4(1).”
- (12) In section 10 (acquiring authority’s liability arising on vesting of the land), in subsection (1), after “vested in an acquiring authority” insert “or a third party”.
- (13) In section 11 (recovery of compensation overpaid), for subsection (1) substitute—
- “(1) This section applies where after the execution of a general vesting declaration a person (“the claimant”) claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.”
- (14) In Schedule A1(a) (counter-notice requiring purchase of land not in general vesting declaration) omit paragraph 1(2).

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(a) Section 5 was amended by paragraphs 4 and 6 of Schedule 15 to the Housing and Planning Act 2016.

(b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(c) Section 5B was inserted by section 202(2) of Schedule 3 to the Housing and Planning Act 2016.

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

(e) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 and S.I. 2012/16.

(f) Section 7 was substituted by Schedule 18 to the Housing and Planning Act 2016.

(15) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 27 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

### **Modification of the 2017 Regulations**

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

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

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

(3) In paragraph (b) of the notes on use of form 2—

(a) after “Insert the name of the authority” insert “and, where the context so requires, a reference to third parties”; and

(4) omit “Thereafter rely on that definition wherever “(b)” appears in the text.”.

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

**30.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 22 (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 the land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

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

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 27 (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)(b) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

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

### **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.

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

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

(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, is 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 a statutory undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

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

**32.**—(1) The undertaker may, in connection with the carrying out of the authorised development, and subject to article 24 (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (1) of Schedule 7 (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(a) (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 works on that land as are mentioned in Schedule 1 (authorised development).

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

(3) The undertaker must 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 7; 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 condition

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(a) Section 11 was amended by section 34(1) of, and paragraph 14(3) of 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 (c. 71) section 14 of, paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1), sections 186, 187 and 188 of, and paragraph 3 of Schedule 16 to, the housing and Planning Act 2016 and S.I. 2009/1307.

it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) 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 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 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (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 25 (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(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) The provisions of the Neighbourhood Planning Act 2017(b) do not apply insofar as they relate to temporary possession of land under this article 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.

### **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) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

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

(b) 2017 c.20

- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) does not authorise the undertaker to take temporary possession of—
  - (a) any house or garden belonging to a house; or
  - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken.
- (4) The undertaker 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.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (7) Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- (11) 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.
- (12) The provisions of the Neighbourhood Planning Act 2017 do not apply insofar as they relate to the temporary possession of land under this article in relation to the maintenance of any part of the authorised development within the maintenance period

### **Statutory undertakers**

- 34.**—(1) Subject to the provisions of Schedule 9 (protective provisions), article 25 (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; and
  - (b) extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.
- (2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—
  - (a) Part 3 (street works in England and Wales) of the 1991 Act; and
  - (b) article 35 (apparatus and rights of statutory undertakers in stopped up streets) of this Order.

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

**35.**—(1) Where a street is stopped up under article 15 (permanent stopping up and restriction of use of highways, 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 15 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

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

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

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

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

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

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

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

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

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

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

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

(8) In this article—

“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) (interpretation of Chapter 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 article—

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

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

## **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—

(a) do no unnecessary damage to any tree or shrub;

(b) not fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots if the tree or shrub is identified as being retained in the environmental statement unless the undertaker reasonably believes it to be necessary to do so for the

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



purposes of the construction or operation of the authorised development and provided that the Secretary of State is satisfied that the felling, lopping or cutting back of roots would not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement; and

(c) pay compensation to any person for any loss or damage arising from such activity.

(3) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow described in Part 1 (hedgerows) of Schedule 8 (hedgerows and trees).

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow which is not described in Part 1 of Schedule 8 (hedgerows and trees) with the prior consent of the relevant planning authority.

(5) In carrying out any activity authorised by paragraph (4) and (5), the undertaker must pay compensation to any person for any loss or damage arising from such activity.

(6) Any dispute as to a person's entitlement to compensation under paragraph (2) (or (5)), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(7) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(a) and includes important hedgerows for the purposes of those regulations.

## PART 7

### MISCELLANEOUS AND GENERAL

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

**38.**—(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
- (c) so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

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

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

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

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

**39.**—(1) The undertaker may fell or lop any tree described in Part 2 (trees subject to tree preservation orders) of Schedule 8 (hedgerows and trees) or cut back its roots or undertake such other works described in column (2) of Part 2 of that Schedule relating to the relevant part of

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(a) S.I. 1997/1160.

the authorised development described in column (3) of that Schedule, if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

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

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

- (a) the undertaker must not cause 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)(a) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed;

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

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

### **Operational land for purposes of the 1990 Act**

**40.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land for the purposes of that Act) of the 1990 Act.

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

**41.—**(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(b) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(c) 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 sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(d); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9)(e) (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

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(a) Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act.

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

(c) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection which are not relevant to this Order.

(d) 1974 c. 40.

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

premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protection of interests**

42. Schedule 9 (protective provisions) has effect.

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

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

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

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

### **Service of notices**

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

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

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

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

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

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

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(a) 1978 c. 30.

- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must 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 does not 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**

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

Date

*Signed*  
Title  
Department

# SCHEDULES

## SCHEDULE 1

### AUTHORISED DEVELOPMENT

#### **In the administrative area of Tameside Metropolitan Borough Council and High Peak Borough Council**

A nationally significant infrastructure project as defined in sections 14 and 22(a) of the 2008 Act, and associated development as defined in section 115(2)(b) of the 2008 Act, comprising:

**Work No. 1** - Shown on sheet 1 of the works plans is the construction of a new eastbound lane approximately 350 metres in length on the M67 approaching the roundabout at Junction 4. To include upgraded lighting, new signs and new traffic signals plus signal controlled cyclist/pedestrian crossings.

**Work No. 2** - Shown on sheet 1 of the works plans is the widening of the entry, for a length of approximately 370 metres, from the Junction 4 roundabout on to the M67 westbound. Works will include the addition of low noise surfacing, controlled pedestrian/cyclist crossing and upgraded lighting.

**Work No. 3** - Shown on sheet 1 of the works plans is the works to improve the M67 Junction 4 (Hattersley) roundabout including:

- (i) widening of the circulatory carriageway, upgrading lighting and installation of traffic signals and signal controlled cyclist/pedestrian crossings;
- (ii) realignment of spur to Edge Lane for a length of approximately 42 metres and upgraded pedestrian/cyclist crossing facility;
- (iii) upgrade to Stockport Road for a length of approximately 145 metres, installation of new signs, upgraded lighting, resurfacing and addition of traffic signals including signal controlled pedestrian/cyclist crossings at junction;
- (iv) upgrade to Mottram Road for a length of approximately 160 metres, installation of new signs, upgraded lighting, resurfacing and addition of traffic signals including signal controlled pedestrian/cyclist crossings at junction;
- (v) new westbound throughabout at M67 Junction 4 roundabout, which consists of a new, two lane carriageway through the centre of the existing roundabout, of length approximately 100 metres, including new lighting, signs and traffic signals; and
- (vi) upgraded entry to M67 Westbound from M67 Junction 4 roundabout, comprising new traffic signals, signal controlled pedestrian/cyclist crossing, upgraded lighting and resurfacing.

**Work No. 4** - Shown on sheet 1 of the works plans is the works to improve the non-motorised user provision at the roundabout including:

- (i) existing footway upgraded to a combined footway/cycleway on the northern side of M67 Junction 4 roundabout;
- (ii) creation of new signal controlled pedestrian/cycle crossings across the M67 and roundabout circulatory carriageway on the west side of M67 Junction 4 roundabout;

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(a) Section 22 was substituted by article 3 of S.I. 2013/1883 and amended by section 1(6) of, and paragraph 153 of Schedule 1 to, the Infrastructure Act 2015.

(b) Section 115(2) was amended by section 160(1) and (3) of the Housing and Planning Act 2016 (c. 22).

- (iii) creation of signal controlled pedestrian/cycle crossings across Mottram Road at M67 Junction 4 roundabout including crossing of roundabout circulatory carriageway;
- (iv) creation of pedestrian/cyclist routes through centre of M67 Junction 4 Roundabout;
- (v) creation of signal controlled pedestrian/cycle crossings across Hyde Road at M67 Junction 4 roundabout including crossing of roundabout circulatory carriageway;
- (vi) creation of signal controlled pedestrian/cycle crossings across Stockport Road at M67 Junction 4 roundabout;
- (vii) existing footway upgraded to a combined footway/cycleway for approximately 80 metres between Mottram Road and the M67 at M67 Junction 4 roundabout;
- (viii) creation of an equestrian route through the centre of M67 Junction 4 roundabout including crossing of the circulatory carriageway; and
- (ix) existing footway/cycleway upgraded to a combined footway/cycleway with equestrian use for approximately 140 metres to the north of the A57 Hyde Road.

**Work No. 5** - Shown on sheets 1, 2, 3 and 4 of the works plans is the construction of a new section of the eastbound A57 dual carriageway, known as Mottram Moor Link Road, approximately 1,640m in length, including earthworks, new drainage, signs, lighting and traffic signals at each end.

**Work No. 6** - Shown on sheets 1, 2, 3 and 4 of the works plans is the construction of a new section of the westbound A57 dual carriageway, known as Mottram Moor Link Road, approximately 1,720m in length, including earthworks, new drainage, signs, lighting and traffic signals at each end.

**Work No. 7** - Shown on sheets 1 and 2 of the works plans is the creation of new public rights of way, north and south of the proposed new dual carriageway including:

- (i) a proposed combined footway/cycleway with equestrian use (approximately 230 metres in length) including access to culverts, and new private access to overhead electric line/pylon, plus connections to existing footpaths and field accesses;
- (ii) a proposed combined footway/cycleway with equestrian use (approximately 935 metres in length) including access to culverts, Pond 1, plus connections to existing footpaths and field accesses;
- (iii) a footpath connection north of proposed combined footway/cycleway with equestrian use (approximately 20 metres in length);
- (iv) a footpath connection north of proposed combined footway/cycleway with equestrian use (approximately 10 metres in length); and
- (v) a footpath connection and field access south of proposed combined footway/cycleway with equestrian use (approximately 20 metres in length).

**Work No. 8** - Shown on sheet 1 of the works plans is the construction of a private access track to support the maintenance of Pond 1 approximately 70 metres in length.

**Work No. 9** - Shown on sheet 2 of the works plans is the creation of a means of access and egress points serving land situated south of Edge Lane including:

- (i) a proposed footpath connection approximately 125 metres in length linking the proposed combined footway/cycleway with equestrian use with the existing public footpath LON 52/10 and providing field access to Old Mill Farm to the north of the proposed combined footway/cycleway with equestrian use; and
- (ii) a proposed field access north of the proposed footpath approximately 50 metres in length, providing access to Old Mill Farm.

**Work No. 10** - Shown on sheet 3 of the works plans is the realignment of Old Hall Lane for a length of 110 metres.

**Work No. 11** - Shown on sheets 3 and 4 of the works plans is the creation of means of access and egress to the south of the land currently known as the Showground, including:

- (i) creation of a combined footway/cycleway with equestrian use of approximately 720 metres in length, providing access to land south of the Showground and a connection between Old Hall Lane and the west side of Mottram Moor Junction;
- (ii) creation of a field access approximately 10 metres in length;
- (iii) creation of a signal controlled equestrian crossing; and
- (iv) creation of an equestrian holding pen and combined footway/cycleway with equestrian use diversion, on the approach to the equestrian crossing approximately 35 metres in length.

**Work No. 12** - Shown on sheet 4 of the works plans and is the construction of the following works at Mottram Moor Junction and including traffic signals, signs and lighting:

- (i) A57 northbound approach approximately 165 metres in length to Mottram Moor Junction;
- (ii) A57 southbound exit from Mottram Moor Junction approximately 20 metres in length;
- (iii) westbound approach from Back Moor Junction to Mottram Moor Junction approximately 165 metres in length;
- (iv) eastbound exit from Mottram Moor Junction towards Tintwistle approximately 140 metres in length;
- (v) eastbound approach from Tintwistle to Mottram Moor Junction approximately 140 metres in length;
- (vi) westbound exit from Mottram Moor Junction approximately 175 metres in length towards Back Moor;
- (vii) southbound approach to Mottram Moor Junction from A57 Link Road approximately 150 metres in length; and
- (viii) southbound exit from Mottram Moor Junction to A57 Link Road approximately 145 metres in length.

**Work No. 13** - Shown on sheets 4 of the works plans is the creation of new non-motorised user provision associated with Mottram Moor Junction, including the creation of a:

- (i) footway on the westbound carriageway opposite Back Moor Junction, approximately 100 metres in length;
- (ii) combined footway/cycleway on the westbound approach to Mottram Moor Junction, approximately 100 metres in length;
- (iii) signal controlled pedestrian/cycle crossing across the northern arm of Mottram Moor Junction, approximately 55 metres in length;
- (iv) signal controlled pedestrian/cycle crossing across the eastern arm of Mottram Moor Junction, approximately 40 metres in length;
- (v) signal controlled pedestrian/cycle crossing across the southern arm of Mottram Moor Junction, approximately 50 metres in length;
- (vi) signal controlled pedestrian/cycle crossing across the western arm of Mottram Moor Junction, approximately 35 metres in length;
- (vii) combined footway/cycleway including signal controlled pedestrian/cycle crossing on the eastern arm of Mottram Moor Junction, approximately 45 metres in length;
- (viii) combined footway/cycleway on the eastern arm of Mottram Moor Junction approximately 160 metres in length;
- (ix) combined footway/cycleway including signal controlled pedestrian/cycle crossing on the eastbound approach from the eastern arm of Mottram Moor Junction, approximately 140 metres in length; and

- (x) footway between the existing footway on the north side of the Mottram Moor and the westbound approach to Mottram Moor Junction, approximately 20 metres in length.

**Work No. 14** - Shown on sheets 4, 5, 6 and 8 of the works plans is the creation of a new combined footway/cycleway with equestrian use along the south side of the A57 Link Road, approximately 985 metres in length.

**Work No. 15** - Shown on sheet 4 and 8 of the works plans, the realignment of the (A6018) Back Moor approximately 125 metres in length to link with Mottram Moor Junction, including new lighting and traffic signs.

**Work No. 16** - Shown on sheet 8 of the works plans is the realignment of Hyde Road (A57) including construction of new lighting and signs on its approach to Back Moor Junction, for approximately 50 metres in length.

**Work No. 17** - Shown on sheet 4 of the works plans is the retention of the existing carriageway, reduced to two single lanes, ending in a turning head. This short section of road to the west of Mottram Moor Junction will be approximately 95 metres in length between the junction with the realigned (A6018) Back Moor and the turning head.

**Work No. 18** - Shown on sheet 4 of the works plans is the retention of the existing carriageway, reduced to two single lanes, ending in a turning head. This short section of road to the east of Mottram Moor Junction will be approximately 90 metres in length between the junction with the realigned Mottram Moor and the turning head.

**Work No. 19** - Shown on sheet 4 of the works plans is the alignment and surface improvement of Mottram Moor Junction and the existing A57 (T) Mottram Moor, for approximately 90 metres in length and including new lighting and signs.

**Work No. 20** - Shown on sheet 4 of the works plans is the creation of a private access track, approximately 75 metres in length to accommodate the maintenance of Pond 2.

**Work No. 21** - Shown on sheet 4 and 8 of the works plans is the creation of a public footpath approximately 82 metres in length, located between the new Mottram Moor Junction and the existing public footpath LON 87/10 to the west of Mottram Moor Junction.

**Work No. 22** - Shown on sheets 4, 5 and 6 of the works plans is the A57 Link Road (being a new section of single carriageway approximately 1,090m in length between the proposed Mottram Moor Junction and Woolley Bridge Junction), including earthworks, new drainage, signs, lighting and traffic signals at each end.

**Work No. 23** - Shown on sheets 5 and 9 of the works plans is the realignment of Carrhouse Lane approximately 310 metres in length; together with a new access track and public footpath, including associated earthworks and drainage.

**Work No. 24** - Shown on sheet 5 of the works plans is the creation of a private, field access track, approximately 76 metres in length from Carrhouse Lane to a field east of Carrhouse Lane.

**Work No. 25** - Shown on Sheet 6 of the works plans is the:

- (i) diversion of public footpath LON 90/10 for approximately 200 metres in length between work number 25 (ii) and an access on the south side of the A57 Link Road facilitating a private access track to Pond 3 and access to an existing maintenance track;
- (ii) creation of an access track to Pond 3, located between work number 25 (i) and Pond 3, approximately 10 metres in length;
- (iii) diversion of public footpath LON 90/10 and creation of a new access track to Tara Brook Farm for approximately 210 metres in length between work number 25 (i) and Tara Brook Farm; and
- (iv) creation of private access to Hope Farm for approximately 10 metres in length.



**Work No. 26** - Shown on sheet 6 of the works plans is the creation of a combined footway/cycleway with equestrian use of approximately 520 metres in length along south side of A57 Link Road, between the access off the south side of the proposed A57 Link Road and Woolley Bridge Junction.

**Work No. 27** - Shown on sheet 6 of the works plans is the construction of an at grade signal controlled T-Junction between the new A57 Link Road and Woolley Bridge including new traffic signals, signs, drainage, lighting and associated earthworks, and the construction of a new:

- (i) eastbound approach to Woolley Bridge Junction from A57 Link Road, approximately 95 metres in length;
- (ii) westbound exit from Woolley Bridge Junction to A57 Link Road, approximately 95 metres in length;
- (iii) westbound approach to Woolley Bridge Junction, a short length of road to facilitate a proposed housing development, approximately 15 metres in length;
- (iv) southbound approach to Woolley Bridge Junction from Woolley Bridge, approximately 65 metres in length;
- (v) northbound exit from Woolley Bridge Junction to Woolley Bridge, approximately 70 metres in length;
- (vi) southbound exit from Woolley Bridge Junction to Woolley Bridge approximately 100 metres in length; and
- (vii) northbound approach to Woolley Bridge Junction from Woolley Bridge approximately 100 metres in length.

**Work No. 28** - Shown on sheet 6 of the works plans road widening and resurfacing between Woolley Bridge Junction and A57 Brookfield, approximately 55 metres in length.

**Work No. 29** - Shown on sheet 6 of the works plans being the creation of:

- (i) signal controlled pedestrian/cycle crossing across the Eastern arm of Woolley Bridge Junction, approximately 10 metres in length
- (ii) signal controlled pedestrian/cycle crossing across the Southern arm of Woolley Bridge Junction, approximately 30 metres in length.

**Work No. 30** - Shown on sheet 6 of the works plans is the creation of:

- (i) a new private access to the field on the east of River Etherow, approximately 15 metres in length
- (ii) creation of a highway layby, approximately 15 metres in length, to the south west of Woolley Bridge Junction.

**Work No. 31** – Shown on sheet 2 of the works plans is the construction of the proposed Old Mill Farm underpass, approximately 35 metres in length to carry work number 7 (ii) and farm access tracks facilitating various farm access points (work numbers 7 (iii), 7 (iv), 7(v), 9(i) and 9 (ii)).

**Work No. 32** – Shown on sheet 2 of the works plans is the construction of the proposed Roe Cross Road Bridge and retaining walls to Mottram Underpass, carrying Roe Cross Road over works number 5 and 6 on the existing alignment for approximately 60 metres in length, and space for traffic diversions during construction.

**Work No. 33** – shown on sheet 3 of the works plans is the construction of the proposed Mottram Underpass of approximately 130 metres in length, carrying both Old Road and Old Hall Lane above work numbers 5 and 6, including reinstatement and landscaping on land above and between the roads, and space for traffic diversions during construction.

**Work No. 34** - Shown on sheet 5 of the works plans is the construction of the proposed Carrhouse Lane underpass at Carrhouse Lane, approximately 30 metres in length to accommodate work number 23, below the proposed A57 Link Road.

**Work No. 35** - Shown on sheet 6 of the works plans is the construction of the proposed River Etherow bridge over the River Etherow, approximately 45 metres in length, including all associated bridge foundations, carriageway, parapets and other associated structures.

**Work No. 36** – Shown on sheets 1, 2, 4, 5 and 6 of the works plans and comprising the following works to the culverted watercourses:

- (i) creation of a culvert to carry an unnamed ordinary watercourse below work numbers 5 and 6 for a length of approximately 85 metres (Sheet 1);
- (ii) creation of a culvert to carry an unnamed ordinary watercourse below work numbers 5 and 6 for a length of approximately 80 metres (Sheet 1);
- (iii) creation of a culvert to carry drainage outfall below work number 7 (ii) for a length of approximately 20 metres (Sheet 1);
- (iv) creation of a culvert to carry an unnamed ordinary watercourse below an existing public right of way LON/50/10 for a length of approximately 15 metres (Sheet 1);
- (v) creation of a culvert to carry an unnamed ordinary watercourse below an existing public right of way LON/51/20 for a length of approximately 15 metres (Sheet 2);
- (vi) creation of a culvert to carry a drainage ditch below farmland for a length of approximately 35 metres (Sheet 2);
- (vii) creation of a culvert to carry Hurstclough Brook below works 5 and 6 for a length of approximately 55 metres (Sheet 2);
- (viii) creation of a culvert to support a drainage ditch below farmland for a length of approximately 50 metres (Sheet 2);
- (ix) creation of a culvert to carry unnamed watercourse below work numbers 5 and 6 for a length of approximately 119 metres (Sheet 4);
- (x) creation of a culvert to carry Tara Brook below work number 21, for a length of approximately 35 metres (Sheet 4);
- (xi) creation of a culvert to carry Tara Brook below work number 22, for a length of approximately 73 metres (Sheet 4);
- (xii) creation of a culvert to carry a drainage ditch below work number 56 for a length of approximately 15 metres (Sheet 5 and 6); and
- (xiii) creation of a culvert to carry drainage ditch below work number 25 (iii) for a length of approximately 15 metres (Sheet 6).

**Work No. 37** - Shown on sheet 1 of the works plans is the construction of a drainage attenuation pond (Pond 1) approximately 3430 square metres in size, with sediment forebay for attenuation, prior to outfall, including associated earthworks and drainage connections.

**Work No. 38** - Shown on sheet 4 of the works plans is the construction of a drainage attenuation pond (Pond 2) approximately 6440 square metres in size with sediment forebay for attenuation, prior to outfall, including associated earthworks and drainage connections.

**Work No. 39** – Shown on sheet 6 of the works plans is the construction of a drainage attenuation pond (Pond 3) approximately 3305 square metres in size for attenuation, prior to outfall, including associated earthworks and drainage connections.

**Work No. 40** – Shown on sheets 1 and 2 of the works plans is the construction of new drainage ditches to the north of the A57 link between M67 and Roe Cross Road.

**Work No. 41** – Shown on sheets 1 and 2 of the works plan is the construction of new watercourses to north of work number 5 between M67 and Roe Cross Road.

**Work No. 42** - Shown on sheets 1 and 2 of the works plans is the construction of a highway drainage ditch to south of work number 6, for approximately 265 metres.

**Work No. 43** – Shown on sheet 2 of the works plans is the diversion of Hurstclough Brook along a length of approximately 220 metres, south of work number 6.

**Work No. 44** - Shown on sheets 3 and 4 of the works plans are new watercourses to manage local drainage; a proposed watercourse to the east of Old Hall Lane and on the north side of the proposed cutting to the east of the proposed underpass.

**Work No. 45** – Shown on sheet numbers 4 and 8 of the works plans is the diversion of Tara Brook either side of work number 22 linked through the culvert constructed pursuant to work number 36(xi).

**Work No. 46** - Shown on sheet numbers 4, 5, 6 and 9 of the works plans is the construction of various drainage ditches relating to A57 Link Road (work number 22).

**Work No. 47** - Shown on sheets 1 and 2 of the works plans is the construction of:

- (i) an earthwork screening bund along the north side of work number 5, approximately 145 metres in length as shown on sheet 1 of the works plans;
- (ii) an earthwork screening bund along the north side of work number 5, approximately 180 metres in length (Sheet 2); and
- (iii) an earthwork screening bund along the south side of work number 6, approximately 165 metres in length (Sheet 2).

**Work No. 48** – Shown on sheets 4, 5 and 6 of the works plans is the construction of:

- (i) an earthwork screening bund to the south west of work number 14, approximately 135 metres in length as shown on sheet 4 of the works plans;
- (ii) an earthwork screening bund to the south west of work number 22, approximately 280 metres in length as shown on sheet 4 of the works plans;
- (iii) an earthwork screening bund to the south of work number 22, approximately 55 metres in length as shown on sheet 5 of the works plans;
- (iv) an earthwork screening bund to the south of work number 22, approximately 260 metres in length, as shown on sheets 5 and 6 of the works plans; and
- (v) an earthwork screening bund to the north side of work number 22, west of Carrhouse Lane, approximately 330 metres in length, as shown on sheets 4 and 5 of the works plans.

**Work No. 49** – shown on sheet numbers 2 and 8 of the works plans, indicates specific environmental mitigation works:

- (i) New ecological mitigation area on land situated to the north of work number 5 (Sheet 2); and
- (ii) New ecological mitigation works on land situated to the south of work number 14 (Sheet 8).

**Work No. 50** - shown on sheet number 2, 3, 4, 5, 6 and 8 of the works plans to indicate the location of bat boxes installed on existing trees.

**Work No. 51** - Shown on sheet numbers 1, 7 and 8 of the works plans is the detrunking of the existing A57 (T) between the M67 Junction 4 and Mottram Moor Junction for a length of approximately 1587 metres, including associated traffic calming measures and signage.

**Work No. 52** - Shown on sheets 4 and 9 of the works plans is the improvement of the existing A57 (T) for a length of approximately 360 metres from Mottram Moor Junction to Gun Inn Junction, including improvements to pedestrian and cycle facilities.

**Work No. 53** - Shown on sheet 9 of the works plans:

- (i) the installation of new traffic signals, signs and pedestrian facilities at the existing Gun Inn Junction Western arm (approximately 20 metres in length);
- (ii) the installation of new traffic signals, signs and pedestrian facilities at the existing Gun Inn Junction Northern arm (approximately 20 metres in length);

- (iii) the installation of new traffic signals, signs and pedestrian facilities at the existing Gun Inn Junction Eastern arm (approximately 30 metres in length); and
- (iv) the installation of new traffic signals, signs and pedestrian facilities at the existing Gun Inn Junction Southern arm (approximately 25 metres in length).

**Work No. 54** - Shown on sheet 6, 9 and 10 of the works plans, improvements to Woolley Lane for approximately 810 metres to include improved facilities for non-motorised users, signage and traffic calming measures.

**Work No. 55** - Shown on sheet 6 of the works plans, the construction of the River Etherow flood compensation area, with an area of approximately 5595 square metres.

**Work No. 56** - Shown on sheet number 5 and 6 of the works plans, the creation of a new access track to Carrhouse Lane Farm of approximately 380 metres in length.

**Work No. 57** - Shown on sheet 3 of the works plans, a new ecological mitigation area, including an ecological mitigation (bat) structure.

**Work No. 58** – Shown on sheets 3 and 4 of the works plans diversion of United Utilities Group PLC water sewerage pipes for approximately 735 metres.

**Work No. 59** - Shown on sheet 4 of the works plans, the diversion of United Utilities Group PLC water main for approximately 420 metres.

**Work No. 60** - Shown on sheets 1 and 2 of the works:

- (i) diversion of United Utilities Group PLC water distribution main for approximately 135 metres;
- (ii) diversion of United Utilities Group PLC water distribution main for approximately 205 metres;
- (iii) diversion of United Utilities Group PLC water distribution main for approximately 215 metres.

**Work No. 61** - Shown on sheets 3 and 4 of the works plans, diversion of existing 33kv, 415V and 11kV Electricity North West buried power cables, for approximately 465 metres, to the east of work number 5, crossing the eastern and southern arms of Mottram Moor Junction.

**Work No. 62** – Shown on sheet 4 of the works plans, diversion of a various utilities for approximately 400 metres north and south of Mottram Moor Junction, including:

- (i) the diversion of existing Electricity North West Limited buried power cables;
- (ii) the diversion or protection works to existing British Telecommunications PLC buried communications cables;
- (iii) diversion of existing Cadent Gas Limited gas main pipes; and
- (iv) diversion of United Utilities Group PLC clean water mains and protection of existing sewerage pipes.

**Work No. 63** – Shown on sheet 5 of the works plans, diversion of an existing Cadent Gas Limited gas main pipe, for approximately 70 metres.

**Work No. 64** - Shown on sheet 5 and 6 of the works plans, diversion of existing Electricity North West Limited buried power cables, for approximately 100 metres.

**Work No. 65** - Shown on sheet 6 of the works plans, diversion of existing United Utilities PLC water main, for approximately 210 metres.

**Work No. 66** – Shown on sheet 2, 3, 4, 5, 6 of the works plans:

- (i) a noise barrier to the north side of work number 5, approximately 180 metres in length as shown on sheet 2 of the works plans;

- (ii) a noise barrier to the south side of work number 6, approximately 307 metres in length as shown on sheet 2 of the works plans;
- (iii) a noise barrier curving from the north west to the east on the south side of work number 6, approximately 133 metres in length as shown on sheet 3 of the works plans;
- (iv) a noise barrier to the north side of work number 5, approximately 173 metres in length as shown on sheet 3 of the works plans
- (v) a noise barrier to the south side of work number 6, approximately 125 metres in length as shown on sheet 4 of the works plans;
- (vi) a noise barrier to the north side of work number 12 (i), approximately 128 metres in length as shown on sheet 4 of the works plans;
- (vii) a noise barrier to the south side of work number 14, approximately 333 metres in length as shown on sheet 5 of the works plans;
- (viii) a noise barrier to the north side of work number 22, approximately 330 metres in length as shown on sheets 5 and 6 of the works plans.

**Work No. 67** - Shown on sheets 4 and 8 of the works plans, creation of a combined footway/cycleway approximately 150 metres in length on the eastbound approach to Mottram Moor Junction.

**Work No. 68** - Shown on sheet 8 of the works plans, diversion of a footway approximately 50 metres in length on the south side of Mottram Moor.

**Work No. 69** - Shown on sheet 8 of the works plans, diversion of a footway approximately 60 metres in length between Mottram Moor and Back Moor.

In connection with the construction of any of those works, further development within the Order limits provided that it does not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement, consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, cycleway or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track, cycleway or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (c) works for the strengthening, alteration or demolition of any building;
- (d) ramps, means of access, non-motorised links, footpaths, footways, bridleways, cycle tracks, cycleways and crossing facilities;
- (e) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, pollution control devices, wing walls, highway lighting, fencing and culverts;
- (f) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (g) works to place, alter, divert, relocate, remove or maintain the position of apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, lights and cables;
- (h) works to alter the course of, or otherwise interfere with a watercourse;
- (i) landscaping, 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;
- (j) works for the benefit or protection of land affected by the authorised development;
- (k) works to place, alter, remove or maintain road furniture;

- (l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping and storage, site levelling);
- (m) the felling of trees and hedgerows;
- (n) 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;
- (o) the provisions of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (p) such other works, working sites storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development.

## SCHEDULE 2 REQUIREMENTS

Article 3

### PART 1 REQUIREMENTS

#### *Interpretation*

**1.** In this Schedule—

“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 42 (European protected species of animals) and 44 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(b);

“flood risk assessment” means the document of that description set out in Schedule 10 certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

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

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

“preliminary works” means archaeological investigations and mitigation works, ecological surveys and mitigation works, environmental surveys and monitoring, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, establishment of work areas and compounds, diversion and laying of underground apparatus and site clearance, and the temporary display of site notices or information and the receipt of construction plant and equipment, erection of construction plant and equipment for the preliminary works;

“REAC” means the register of environmental actions and commitments contained in the first iteration EMP;

“the first iteration EMP” means the document described as the first iteration environmental management plan set out in Schedule 10 submitted with the application for this Order and certified as the first iteration environmental management plan by the Secretary of State for the purposes of this Order;

“the second iteration EMP” means the second revision of the first iteration EMP which is refined during the construction stage for the consented project, in advance of construction;

“the third iteration EMP” means the third revision of the first iteration EMP, which builds upon the second iteration EMP refined at the end of the construction stage to support future management and operation.

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

(b) S.I. 2017/1012.

(c) 1981 c. 69.

### *Time limits*

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

### *Detailed design*

3.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the works plans and the engineering drawings and sections, 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 sections 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.

(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.

### *Second Iteration EMP*

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

(2) The second iteration EMP must be written in accordance with ISO14001 and must—

- (a) be in accordance with 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 07:30–18:00 Mondays to Fridays and 07:30–16:00 on Saturday except for—
  - (i) deliveries, movements to work, maintenance and general preparation works but not including running plant and machinery for a period of one hour either side of the above times;
  - (ii) night-time closures including for road crossings and final surfacing tie ins provided that the activity does not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement;
  - (iii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
  - (iv) junction tie-in works;
  - (v) repair or maintenance of construction equipment;
  - (vi) removal of overhead power lines provided that the activity does not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement;
  - (vii) overnight traffic management measures;
  - (viii) cases of emergency; and
  - (ix) as otherwise agreed by the relevant planning authority in advance provided that any other work carried out outside the specified working hours or any extension to the working hours will only be permitted if there has been prior written agreement of the relevant environmental health officer of the relevant planning authority and provided



that the activity does not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement; and

- (x) provided that written notification of the extent, timing and duration of each activity is given to relevant local authorities in advance of any works that are to be undertaken outside of the specified hours, except in cases of emergency or for the repair or maintenance of construction equipment, which are to be notified to the relevant local authorities as soon as is practicable;
- (d) include the following management plans which must be in accordance with the REAC—
- (i) Soil Resource Plan;
  - (ii) Noise and Vibration Management Plan;
  - (iii) Pollution Prevention Plan;
  - (iv) Emergency Spillage Response Plan;
  - (v) Emergency Flood Response Plan;
  - (vi) Dewatering Management Plan;
  - (vii) Construction Water Management Plan;
  - (viii) Site Waste Management Plan;
  - (ix) Materials Management Plan;
  - (x) Asbestos Management Plan;
  - (xi) Arboricultural Method Statement;
  - (xii) Community Engagement Plan;
  - (xiii) Nuisance Management Plan;
  - (xiv) Ecological Management Plan;
  - (xv) Traffic Management Plan;
  - (xvi) Biosecurity Management Plan;
  - (xvii) Invasive Non Native Management Plan;
  - (xviii) Landscape and Ecological Management and Monitoring Plan; ~~and~~
  - (xix) Archaeological Fieldwork Strategy; and
  - (xx) Carbon Management Plan;
- (e) contain a record of the consents, commitments and permissions resulting from liaison with statutory bodies;
- (f) incorporate the measures for the construction stage identified in the environmental statement;
- (g) be kept up to date with any material changes during construction and include a mechanism for consultation on such material changes with the relevant planning authority, the local highway authority and the Environment Agency on matters related to their functions;
- (h) include details of the process for the preparation of the third iteration EMP.
- (3) The construction of the authorised development must be carried out in accordance with the approved second iteration EMP.
- (4) A third iteration EMP 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 second iteration EMP.
- (5) The third iteration EMP must substantially accord with the measures for the management and operation of the authorised development included in the first iteration EMP and address the matters set out in the environmental statement and the approved second iteration EMP 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 third iteration EMP.

#### *Landscaping*

- 5.—**(1) No part of the authorised development is to commence unless a written landscaping scheme which sets out details of all proposed hard and soft landscaping works 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 landscaped in accordance with the landscaping scheme approved under sub-paragraph (1).
- (3) The landscaping scheme prepared under sub-paragraph (1) must reflect the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan annexed to the environmental statement.
- (4) 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.
- (5) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised standards and codes of good practice, as specified in the Landscape and Ecological Management and Monitoring Plan for the authorised development.
- (6) 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.

#### *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) Remediation must be carried out in accordance with the approved scheme.

#### *Protected species*

7.—(1) No part of the authorised development is to commence until for that part final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by any part of the authorised development, 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 likely to affect the identified protected species 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 the Secretary of State has consulted 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 lead local flood authority and the Environment Agency on matters related to their functions.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant lead local flood 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 environmental effects in comparison with those reported in the environmental statement.

#### *Flood risk assessment*

9.—(1) Subject to sub-paragraph (2), the authorised development must be carried out in accordance with the flood risk assessment or any update thereof approved by the Environment Agency, including the mitigation measures detailed in 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.

(2) Sub-paragraph (1) does not apply in any circumstance where the undertaker proposes to carry out a part of the authorised development otherwise than in accordance with the flood risk assessment or demonstrates to the Environment Agency's satisfaction, in consultation with the relevant lead local flood authority, that the part of the authorised development concerned would not result in an exceedance of the flood levels shown in the flood risk assessment.

#### *Archaeological remains*

**10.**—(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 including a programme for post excavation analysis, reporting, publication or archiving, 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, Greater Manchester Archaeological Advisory Service (GMAAS) and the county archaeologist at Derbyshire County Council on matters related to their 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 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.

(6) If the relevant planning authority 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.

(7) On completion of the authorised development, suitable resources and provisions for long term storage of the archaeological archive will be agreed with the county archaeologist.

(8) For the purposes of this paragraph 10 reference to part shall include the preliminary works where the preliminary works comprise intrusive ground works.

#### *Fencing*

**11.** 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.

#### *Details of consultation*

**12.**—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the undertaker must provide such other party with not less than ~~14~~21 days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.

(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

#### *Amendments to approved details*

13. 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 or plans are taken to include any amendments that may subsequently be approved in writing by the Secretary of State.

## PART 2

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

#### *Applications made under requirements*

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

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 15 (further information); or
- (c) such longer period as may be agreed between the parties.

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

(3) Where—

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

**15.**—(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 14 (applications made under requirements) and in this paragraph.

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

### *Register of requirements*

**16.**—(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*

**17.** 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.

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(a) 1971 c. 80.

## SCHEDULE 3

Article 13

### CLASSIFICATION OF ROADS, ETC.

#### PART 1

##### SPECIAL ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Existing M67 roundabout approach	Between points C1/1 and C1/2 or C1/5 on Sheet 1 of the classification of roads plans

#### PART 2

##### TRUNK ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Existing M67 Junction 4 roundabout	Between points C1/2 and C1/5 passing around the circulatory carriageway in a clockwise direction (north, east, south and west) on Sheet 1 of the classification of roads plans
Proposed M67 Junction 4 throughabout link	Between points C1/5 and C1/6 on Sheet 1 of the classification of roads plans
Proposed A57(T) Dual Carriageway	Between points C1/6 or C1/9 on Sheet 1 and C2/2 on Sheet 2 of the classification of roads plans
Proposed Mottram Moor Junction	Between points C2/2 and C2/9, C2/10 and C2/11 on Sheet 2 of the classification of roads plans
Improvements to existing A57 carriageway between Mottram Moor to Gun Inn	Between Mottram Moor Junction (point C2/11) and the existing Gun Inn Junction (Wedneshough/Market Street /Woolley Lane and A57 (T) Mottram Moor) on Sheet 2 of the classification of roads plans
Improvements to existing A628 (T) Market St	Improvements to Market Street within the DCO limits. As shown on Sheet 2 of the classification of roads plans

#### PART 3

##### CLASSIFIED ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
A57 Link (single carriageway) (A Road)	Between points C2/9 and C2/4 on Sheet 1 and Sheet 2 of the classification of roads plans
Hyde Rd (A57) (B Road)	Between points C1/7 or C1/8 and C2/3 Sheet 1 and Sheet 2 on the classification of road plans
Mottram Moor Junction local roads exits (A and B Roads)	Between points C2/10 and C2/1 on Sheet 2 on the classification of road plans

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Mottram Moor Junction short road to the east of the Junction	Short, classified road between points C2/7 and C2/8 with an entrance to the east of the proposed Mottram Moor Junction (C2/7), serving local residents and providing access to nearby houses.
Mottram Moor Junction short road to the west of the Junction	Short, classified road between points C2/5 and C2/6 with an entrance to the west of the proposed Mottram Moor Junction (C2/5), serving local residents and providing access to nearby houses.

## PART 4

### ROADS TO BE DETRUNKED

A length of 1587 metres of the existing A57(T) Hyde Road from points 1/3 on Sheet 1 of the speed limits and traffic regulations plans, being the junction of the M67 Junction 4 Roundabout in an easterly direction to the junction with Back Moor and then following the A57 Mottram Moor to the tie in at point 2.8, as shown on Sheet 2 of the speed limits and traffic regulations plans.

## PART 5

### SPEED LIMITS

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Speed Limit</i>
Proposed Throughabout link at M67 Junction 4	From point 1/2 on the eastern side of the M67 Junction 4 roundabout, crossing the roundabout to point 1/5 at the western exit from the roundabout to the M67 for a distance of 160 metres, as shown on Sheet 1 of the speed limits and traffic regulations plans.	40 miles per hour
Proposed A57(T) Dual Carriageway (both directions)	From points A and B, 70 metres north east of its junction with the M67 Junction 4 roundabout circulatory carriageway along its length to within 110 metres of Mottram Moor Junction (points L, M and N) for a total distance of 1650 metres as shown on Sheets 1 and 2 of the speed limits and traffic regulations plans.	50 miles per hour
Proposed A57(T) Dual Carriageway (both directions)	From its junction with the M67 Junction 4 roundabout (points 1/1 and 1/2) along its length for a total distance of 70 metres to points A and B, as shown on Sheet 1 of the speed limits and traffic regulations plans.	40 miles per hour
Proposed Mottram Moor Junction (all four directions)	The cross road identified as Mottram Moor Junction, from its tie in with the proposed A57(T) Dual Carriageway (points L, M and N), its tie in with Mottram Moor (points 2/8), its tie in with Back Moor (point 2/7), its tie in with Hyde Road (point 2/6) and its linkage with the Proposed A57 Link Road (Single Carriageway) as shown on Sheet 2 of the speed limits and traffic regulations plans. (This includes the	30 miles per hour



	short stretches of retained existing highway, either side of Mottram Moor Junction.)	
Proposed A57 Link Road (Single Carriageway) (both directions)	From the Mottram Moor Junction (points L, M and N) along its length to the Woolley Bridge Junction (point 2/9) for a total distance of 1250 metres as shown on Sheet 2 of the speed limits and traffic regulations plans.	30 miles per hour
A57 (T) (Hyde Road) from the M67 Junction 4 to the tie in at the junction with A6018 Back Moor (both directions)	From a point 23 metres east of its junction with the M67 Junction 4 roundabout (points C and D) to its tie in with the realigned junction with A6018 Back Moor (points P and O) for a total distance of 1100metres, as shown on Sheets 1 and 2 of the speed limits and traffic regulations plans.	20 miles per hour
Junction between Hyde Rd and Stalybridge Road (all directions)	From Stalybridge Road points (K and H) 20 metres north of the Junction with A57 (T) Hyde Road to A57(T) Hyde Road as shown on Sheet 1 of the speed limits and traffic regulations plans.	20 miles per hour
Junction between Hyde Rd and Broadbottom Road (all directions)	From Broadbottom Road points (J and I) 20 metres south of the its junction with A57 (T) Hyde Road to A57(T) Hyde Road as shown on Sheet 1 of the speed limits and traffic regulations plans.	20 miles per hour
A57 Woolley Lane (both directions)	From the Junction between A57 (T) Mottram Moor, Wednesough and Market Street (points Q, R, S and T) for a total of 665 metres, to its junction with Woolley Bridge Road (points U and V), as shown on Sheet 2 of the speed limits and traffic regulations plans.	20 miles per hour
Existing M67 Junction 4	The whole length of the improved M67 Junction 4 circulatory carriageway, for a distance of 422 metres, as shown on Sheet 1 of the speed limits and traffic regulations plans.	40 miles per hour, as existing limit
Existing M67 (both directions)	Along the length of the improved M67 carriageway, for a total distance of 330 metres, as shown on Sheet 1 of the speed limits and traffic regulations plans.	70 miles per hour, as existing limit
Existing A6018 Roe Cross Road (both directions)	Along the length of the existing Roe Cross Road within the DCO boundary, for a distance of 295 metres, as shown on Sheet 1 of the speed limits and traffic regulations plans.	40 miles per hour and 30 miles per hour, as existing limits
Existing Old Hall Lane (both directions)	Along the length of the existing Old Road within the DCO boundary, for a distance of 133 metres, as shown on Sheet 1 of the speed limits and traffic regulations plans.	30 miles per hour, as existing limit
Existing Market Street (leading into Broadbottom Road)	Along the length of the existing Market Street, (leading into Broadbottom Road) within the DCO boundary, for a distance of 50 metres, as shown on Sheet 1 of the speed limits and traffic regulations plans.	30 miles per hour, as existing limit
Existing B6174 Stalybridge Road	Along the length of the existing Stalybridge Road within the DCO boundary, for a distance of 50 metres and a further section of 20 metres, as shown on Sheet 1 of the speed limits and traffic regulations plans.	30 miles per hour, as existing limit

Existing Old Road (both directions)	Along the length of the existing Old Road within the DCO boundary, for a distance of 185 metres, as shown on Sheet 1 of the speed limits and traffic regulations plans.	30 miles per hour, as existing limit
Existing Mottram Road (both directions)	Along the length of the existing Mottram Road within the DCO boundary, for a distance of 200 metres, as shown on Sheet 1 of the speed limits and traffic regulations plans.	40 miles per hour, as existing limit
Existing Stockport Road (both directions)	Along the length of the existing Stockport Road within the DCO boundary, for a distance of 223 metres, as shown on Sheet 1 of the speed limits and traffic regulations plans.	30 miles per hour, as existing limit
Existing Market St (both directions)	Along the length of the existing Market Street within the DCO boundary, for a distance of 173 metres, as shown on Sheet 2 of the speed limits and traffic regulations plans.	30 miles per hour, as existing limit
Existing A57 Woolley Bridge (both directions)	Along the length of the existing A57 Woolley Bridge within the DCO boundary, for a distance of 370 metres, north and south of proposed Wooley Bridge Junction, as shown on Sheet 2 of the speed limits and traffic regulations plans.	30 miles per hour, as existing limit
Existing A6018 Back Moor (both directions)	Along the length of the existing A6018 Back Moor within the DCO boundary, for a distance of 18 metres and 69 metres, as shown on Sheet 1 and 2 of the speed limits and traffic regulations plans.	30 miles per hour, as existing limit
Existing A57 (T) Mottram Moor	Along the length of the existing A57 Mottram Moor within the DCO boundary, for a distance of 390 metres, as shown on Sheet 2 of the speed limits and traffic regulations plans.	30 miles per hour, as existing limit
Existing Wedneshough	Along the length of the existing Wedneshough within the DCO boundary, for a distance of 53 metres, as shown on Sheet 2 of the speed limits and traffic regulations plans.	30 miles per hour, as existing limit

## PART 6

### NEW TRAFFIC REGULATION ORDERS SOUGHT

<i>(1)</i> Area	<i>(2)</i> Road name and number and length	<i>(3)</i> Traffic Regulation Sought
Longdendale Ward, Tameside	Proposed A57(T) dual carriageway (both directions from its junction with the M67 Junction 4 roundabout (points 1/1 and 1/2) to Mottram Moor Junction (points 2/1, 2/2, 2/3, 2/4, and 2/5) a total distance of 2980 metres as shown on Sheet 1 and Sheet 2 of the speed limits and traffic regulations plans.	Clearway (to include verges) Prohibition of pedestrians. Prohibition of cyclists. Prohibition of ridden or accompanied horses

## PART 7

### REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Title of Order</i>	<i>(4)</i> <i>Revocations or Variations</i>
Longdendale Ward, Tameside	Hyde Road (A57 (T)) and Mottram Moor (A57 (T)) as shown on Sheet 1 of the speed limits and traffic regulations plans between points 1/3 and 2/8	The A57 Trunk Road (Hyde Road and Mottram Roundabout) (30 Miles Per Hour and 40 Miles Per Hour Speed Restriction) Order 2013	To be revoked in so far as it is in force and within the Order Limits

## PART 8

### PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Public right of way</i>	<i>(2)</i> <i>Extent</i>
Proposed combined footway/cycleway with equestrian use	1566 metres of combined footway/cycleway with equestrian use connecting point 6/9 and point 4/16, as shown on Sheets 4, 5 and 6 of the streets, rights of way and access plans.
Proposed footpath	249 metres of footpath connecting point 5/2 on Sheet 5 and point 9/2 on Sheet 9 of the streets, rights of way and access plans.
Proposed combined footway/cycleway with equestrian use	1170 metres of new combined footway/cycleway with equestrian use as shown between point 1/7 on Sheet 1, points 2/8 and 2/6 on Sheet 2 and point 1/8 on Sheet 1 of the streets, rights of way and access plans.
Proposed footpath	124 metres of new footpath running in a north eastern direction as shown between points 2/8 and 2/5 on Sheet 2 of the streets, rights of way and access plans.
Proposed footpath	15 metres of new footpath between points 1/42 and 1/43 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	65 metres of combined footway/cycleway as shown between points 1/4 and 1/1 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	50 metres of combined footway/cycleway as shown between point 1/1 and 1/37 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	40m of combined footway/cycleway as shown between points 1/27 and 1/37 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	15 metres of combined footway/cycleway as shown between points 1/25 and 1/26 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	55 metres of combined footway/cycleway as shown between points 1/25 and 1/22 on Sheet 1 of the streets, rights of way and access plans.

Proposed combined footway/cycleway	20 metres of combined footway/cycleway as shown between points 1/22 and 1/29 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	20 metres of combined footway/cycleway as shown between points 1/29 and 1/28 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	15 metres of combined footway/cycleway as shown between points 1/29 and 1/30 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway with equestrian use	105 metres of combined footway/cycleway with equestrian use as shown between points 1/22 and 1/21 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	15 metres of combined footway/cycleway as shown between points 1/21 and 1/20 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway with equestrian use	35 metres of combined footway/cycleway with equestrian use as shown between points 1/21 and 1/19 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway with equestrian use	35 metres of combined footway/cycleway with equestrian use as shown between points 1/23 and 1/27 of Sheet 1 of the streets, rights of way and access plans.
Proposed segregated equestrian route	15 metres of segregated equestrian route as shown between points 1/27 and 1/22 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway with equestrian use	140m of combined footway/cycleway with equestrian use as shown between points 1/19 and 1/24 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	50 metres of combined footway/cycleway as shown between points 1/15 to 1/16 on Sheet 1 of the streets, rights of way and access plans.
Proposed combined footway/cycleway with equestrian use	736 metres of new combined footway/cycleway with equestrian use as shown between Point 3/3 and Point 4/10 on Sheet 3 and 4 of the Streets, Rights of Way and Access Plan.
Proposed combined footway/cycleway	205 metres of combined footway/cycleway (comprising crossing points at Mottram Moor Junction) as shown between points 4/9 to point 4/19, point 4/19 to point 4/3, point 4/3 to point 4/22, point 4/22 to point 4/4, point 4/4 to point 4/23 and point 4/23 to point 4/5, point 4/5 to point 4/9 on Sheet 4 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	100 metres of combined footway/cycleway, as shown between points 4/8 and 4/9 on Sheet 4 of the streets, rights of way and access plans.
Proposed footway	20 metres of footway as shown between points 4/28 and 4/29 on Sheet 4 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	200 metres of combined footway/cycleway, as shown between points 4/19 and 4/20 on Sheet 4 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	150 metres of combined footway/cycleway, as shown between points 4/21 and 4/22 on Sheet 4 of the streets, rights of way and access plans.
Proposed combined footway/cycleway	150 metres of combined footway/cycleway as shown between point 4/17 on Sheet 4 and point 8/10 on Sheet 8 of the streets, rights of way and access plans.

Proposed footway	15 metres of footway/crossing as shown between points 6/14 and 6/15 on Sheet 6 of the streets, rights of way and access plans.
Proposed footway	7.5 metres of footway as shown between points 6/16 and 6/17 on Sheet 6 of the streets, rights of way and access plans.
Proposed footpath	425 metres of footpath as shown between points 6/3 and 6/5 on Sheet 6 of the streets, rights of way and access plans.
Proposed footpath	85 metres of footpath as shown between point 4/18 on Sheet 4 and point 8/11 on Sheet 8 of the streets, rights of way and access plans.
Proposed footway	60 metres of footway as shown between points 8/9 and 8/10 on Sheet 8 of the streets, rights of way and access plans.
Proposed/diverted footway	100 metres of proposed/diverted footway as shown between points 8/4 and 4/7 on Sheets 4 and 8 of the streets, rights of way and access plans.
Proposed footway	60 metres of footway as shown between points 8/5 and 8/6 on Sheet 8 of the streets, rights of way and access plans.
Proposed footpath	10 metres of footpath as shown between points 2/1 and 2/2 on Sheet 2 of the streets, rights of way and access plans.
Proposed footpath	20 metres of footpath as shown between points 2/6 and 2/7 on Sheet 2 on the streets, rights of way and access plans.

## PART 9

### PRIVATE MEANS OF ACCESS

(1) Road	(2) Extent
New private maintenance track to be created to maintain Old Mill Farm underpass	As shown on Sheets 1 and 2 of the works plans, the extent of Work No. 7(i) and 7(ii)
New private maintenance track to be created to maintain the new Pond 1	As shown on Sheet 1 of the works plans, the extent of Work No. 8
New private access track providing access to farms and for maintenance of Electricity pylon and overhead lines	As shown on Sheet 3 and 4 of the works plans, the extent of Work No. 11(i)
New private maintenance track to be created to maintain the new Pond 2	As shown on Sheet 4 of the works plans, the extent of Work No. 20(i) and 20(ii)

SCHEDULE 4

Article 15

PERMANENT STOPPING UP AND ALTERATION OF HIGHWAYS,  
STREETS AND PRIVATE MEANS OF ACCESS

PART 1

PUBLIC RIGHTS OF WAY OR HIGHWAY TO BE STOPPED UP AND FOR  
WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Public right of way or highway to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted/provided</i>
Footpath LON/90/100	For a distance of 60 metres between points 6/4 and 6/5 as shown on Sheet 6 of the streets, rights of way and access plans	New footpath heading south east from point 6/3 to point 6/1 on Sheet 6 of the streets, rights of way and access plans.
Footpath LON/88/60	For a distance of 210 metres between point 9/2 on Sheet 9 and point 5/2 on Sheet 5 of the streets, rights of way and access plans	New footpath from point 9/2 on Sheet 9 to point 5/2 on Sheet 5 of the streets, rights of way and access plans.
Footpath LON/87/10	For a distance of 160 metres between points 4/14 on Sheet 4 and point 8/11 on Sheet 8 of the streets, rights of way and access plans	Proposed footpath will connect directly onto the new A57 Link Roads 'Mottram Moor Junctions' footway (south west corner) via points 4/19, 4/a and 4/18 to point 8/11.
Footpath LON/52/10	For a distance of 230 metres between points 2/5 and 2/4 on Sheet 2 of the streets, rights of way and access plans	New footpath connection point 2/5 to point 2/8, new combined footway/cycleway with equestrian use between point 2/8 and point 2/6 and new footpath between 2/6 and 2/4 on Sheet 2 of the streets, rights of way and access plans.
Footpath LON/51/20	For a distance of 100 metres between points 2/3 and 2/4 on Sheet 2 of the streets, rights of way and access plans	New combined footway/cycleway with equestrian use connecting point 2/3 to point 2/6 and new footpath between 2/6 and 2/4 on Sheet 2 of the streets, rights of way and access plans.
Footpath LON/50/10	For a distance of 160 metres between points 1/42 and 1/44 on Sheet 1 of the streets, rights of way and access plans	New footpath link provided to new combined footway/cycleway with equestrian use between points 1/42 and 1/43.

<i>(1) Public right of way or highway to be stopped up</i>	<i>(2) Extent of stopping up</i>	<i>(3) New highway to be substituted/provided</i>
		The new combined footway/cycleway with equestrian use will connect 1/43 and 1/7, a diversion will then use the new combined footway/cycleway provision at the M67 Junction 4, leaving at point 1/19 and then using the existing footway to reach point 1/8 of the new combined footway/cycleway with equestrian use, which then links back to point 1/44. An alternative is to travel along the new bridleway between points 1/43 and 2/8 using the proposed Old Mill underpass and travelling past point 2/6 to 1/44.
Footpath LON/52/20	For a distance of 380 metres between points 1/45 on Sheet 1 and point 2/4 on Sheet 2 of the streets, rights of way and access plans	New footpath link provided between 2/7 and 2/6 with the new combined footway/cycleway with equestrian use connecting point 2/6 on Sheet 2, point 1/44 on Sheet 1 and point 1/8 on Sheet 1 of the streets, rights of way and access plans.
Footway along north eastern corner of the M67 Junction 4 roundabout	For a distance of 135 metres between points 1/4 and 1/19 on Sheet 1 of the streets, rights of way and access plans	New combined footway/cycleway from point 1/4 to 1/1 to 1/26 to 1/25 to 1/24 to 1/23 to 1/21 and 1/19 on Sheet 1 of the streets, rights of way and access plans.
Footway/Shared User Path/crossing along the southern edge of the M67 Junction 4 roundabout	For a distance of 49 metres between points 1/17 and 1/16 on Sheet 1 of the streets, rights of way and access plans	New combined footway/cycleway from points 1/15 to 1/14 on Sheet 1 of the streets, rights of way and access plans.
Footway/Shared User Path/crossing along the western edge of the M67 Junction 4 roundabout	For a distance of 52 metres between points 1/38 and 1/37 on Sheet 1 of the streets, rights of way and access plans	New combined footway/cycleway from point 1/1 to 1/27 on Sheet 1 of the streets, rights of way and access plans
Footway/crossing	For a distance of 25 metres between points 1/6 and 1/19 on Sheet 1 of the Street, Rights of Way and Access Plans	New combined footway/cycleway from point 1/20 to 1/21 to 1/19 on Sheet 1 of the streets, rights of way and access plans

<i>(1)</i> <i>Public right of way or highway to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted/provided</i>
Footway/crossing	For a distance of 340 metres between point 4/15 on Sheet 4 and point 8/10 on Sheet 8 of the streets, rights of way and access plans	New combined footway/cycleway from point 4/21 to 4/22 to 4/23 on Sheet 4 of the streets, rights of way and access plans and new combined footway/cycleway with equestrian use from point 4/23 to 4/17 and then on combined footway cycleway from point 4/17 to point 8/10 on Sheet 8 of the streets, rights of way and access plans
Footway/crossing	For a distance of 45 metres between points 4/13 to 4/12 on Sheet 4 of the streets, rights of way and access plans	New combined footway/cycleway from point 4/19 to point 4/9 on the streets, rights of way and access plans.

## PART 2

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

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New private means of access to be substituted</i>
Carrhouse Lane	For a distance of approximately 70 metres shown between points 5/3 and 5/4 on Sheet 5 on the Streets, Rights of Way and Access Plan	Work No. 23
Informal field access off Edge Lane	Vehicular access point 2/4 on Sheet 2 on the Streets, Rights of Way and Access Plan	Work No. 7(v)
Existing maintenance track (multi user)	For a distance of approximately 60 metres shown between points 6/4 and 6/5 on Sheet 6 on the Streets, Rights of Way and Access Plan.	Work No. 25(i), 25(iii)
Field access	Vehicular track access point close to point 1/9 on Sheet 1 on the Streets, Rights of Way and Access Plan	Work number 7(i)

## PART 3

### ALTERATIONS TO PRIVATE MEANS OF ACCESS

<i>(1)</i> <i>Private Means of Access to be altered</i>	<i>(2)</i> <i>Extent of Alteration</i>
Realignment of existing private maintenance	As shown on Sheet 1 of the works plans, the



<i>(1)</i> <i>Private Means of Access to be altered</i>	<i>(2)</i> <i>Extent of Alteration</i>
access to an electricity pylon from southern point of Edge Lane/ northern access of the M67 Junction 4	extent of Work No. 7(i)
Realignment of existing private means of access into agricultural fields.	As shown on Sheet 1 and 2 of the works plans, the extent of Work No. 7(i), 7(ii), 7(iii), 7(iv), 7(v), 9(i) and 9(ii)
Realignment of existing private means of access into agricultural fields and current Showground	As shown on Sheet 3 of the works plans, the extent of Work No. 11(i) and 11(ii)
Realignment of existing private means of access into agricultural fields	As shown on Sheet 5 of the works plans, the extent of Work No. 24
Realignment of existing private means of access to Tara Brook Farm	As shown on Sheet 6 of the works plans, the extent of Work No. 25(iii)
Realignment of existing private means of access to Hope Farm to be created within farmer's own land.	As shown on the Sheet 6 of the works plans, the extent of Work No. 25(iv).
Provision of gated field access to land west of the River Etherow	As shown on Sheet 6 of the works plans the extent of Work No. 30(i)
Realignment of private means of access to Carrhouse Farm to be created.	As shown on Sheet 5 and 6 of the works plans the extent of Work No.56

SCHEDULE 5

Article 25(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Relevant part of the authorised development</i>
<b>Land Plans – Sheet 1</b>		
1/6c	Required for access to culvert for structural inspections and maintenance	Work No. 36
1/9a	Required for access to culvert for structural inspections and maintenance	Work No. 36
1/9b	Required for maintenance and access to existing water distribution main and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 60
<b>Land Plans – Sheet 2</b>		
2/1a	Required for maintenance and access to existing water distribution main and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 60
2/1g	Required to create access and egress points serving land situated south of Edge Lane, access to culvert for structural inspections and maintenance, and the establishment of environmental mitigation and enhancement	Work No. 9, 36, 49
2/1i	Required for access to culvert for structural inspections and maintenance, and the establishment of environmental mitigation and enhancement	Work No. 36, 50
<b>Land Plans – Sheet 3</b>		
3/3c	Required for the establishment of environmental mitigation and enhancement	Work No. 50
<b>Land Plans – Sheet 4</b>		
4/3b	Required for the establishment of environmental mitigation and enhancement	Work No. 50
4/4m	Required to allow access for maintenance of pond	Work No. 20
4/12a	Required for access to culvert for structural inspections and maintenance	Work No. 36
4/13b	Required for access to culvert for structural inspections and maintenance	Work No. 36
4/13g	Required for maintenance and access to utilities and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 59
4/13j	Required for the establishment of environmental mitigation and enhancement	Work No. 50
4/21	Required to allow access for maintenance of pond	Work No. 20
4/22a	Required for maintenance and access to utilities	Work No. 59

	equipment and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	
<b>Land Plans – Sheet 5</b>		
5/1b	Required for maintenance and access to utilities and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 63
5/1f	Required for construction of realigned Carrhouse Lane and for maintenance and access to utilities and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 34, 63
5/1i	Required for maintenance and access to utilities and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 63
5/1j	Required for use of the realigned Carrhouse Lane	Work No. 23
5/4	Required for maintenance and access to utilities and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 63
5/7d	Required for use of the realigned Carrhouse Lane	Work No. 23
5/7f	Required for the establishment of environmental mitigation and enhancement	Work No. 50
5/9d	Required for the establishment of environmental mitigation and enhancement and for maintenance and access to utilities equipment and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 50, 64
<b>Land Plans – Sheet 6</b>		
6/1b	Required for the establishment of environmental mitigation and enhancement and for maintenance and access to utilities equipment and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 50, 64
6/1d	Required for maintenance and access to utilities equipment and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 65
6/1f	Required for the establishment of environmental mitigation and enhancement including for flood storage	Work No. 50, 55
6/2a	Required for the establishment of environmental mitigation and enhancement including for flood storage, plus maintenance and access to utilities equipment and to include restrictive covenants for	Work No. 50, 55, 65

	protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	
6/2d	Required to facilitate a new access to Tara Brook Farm	Work No. 25
6/2i	Required for the establishment of flood storage	Work No. 55
6/2j	Required for structures to facilitate the proposed River Etherow Bridge	Work No. 35, 50
6/2l	Required for the establishment of environmental mitigation and enhancement	Work No. 50
6/2n	Required for the establishment of flood storage	Work No. 55
6/3b	Required for maintenance and access to utilities equipment and to include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 65
<b>Land Plans – Sheet 7</b>		
7/1d	Required for the establishment of environmental mitigation and enhancement	Work No. 50
<b>Land Plans – Sheet 8</b>		
8/6	Rights required to undertake and maintain works associated with the detruking of the existing A57 (T) between the M67 Junction 4 and Mottram Moor Junction including associated traffic calming measures and signage	Work No. 51
8/8c	Required for the establishment of environmental mitigation and enhancement and a new footpath between Mottram Moor Junction and existing LON 87/10	Work No. 21, 49, 50
<b>Land Plans – Sheet 9</b>		
9/3	Rights are required for Tameside MBC for maintenance and structural inspections of the underpass at Carrhouse Lane	Work No. 34
9/5	Rights are required for Tameside MBC for maintenance and structural inspections of the underpass at Carrhouse Lane	Work No. 34
9/7c	Rights are required for Tameside MBC for maintenance and structural inspections of the underpass at Carrhouse Lane	Work No. 34
9/9c	Rights are required for Tameside MBC for maintenance and structural inspections of the underpass at Carrhouse Lane	Work No. 34
<b>Land Plans – Sheet 10</b>		
none		

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

*Compensation enactments*

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

**2.—(1)** Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modifications 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 purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the A57 Link Roads Development Consent Order 202[ ] (“the A57 Link Roads Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the A57 Link Roads Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

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

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

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

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

*Application of Part 1 of the 1965 Act*

**4.—(1)** Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 27 (modification of part 1 the 1965 Act)) to the acquisition of land under article 22 (compulsory acquisition of land), applies to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 25 (compulsory acquisition of rights and restrictive covenants)—

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

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(a) 1973 c. 26.

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

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

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

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

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

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

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

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

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, 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; and sections 11A(b) (powers of entry; further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (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.

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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), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
  - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
  - (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.
  - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs 2 and 4 of Schedule 16 to the Housing and Planning Act 2016.
  - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
  - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 27(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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

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

### *Introduction*

**1.** This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a 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 1981 Act as applied by article 28 (application of the 1981 Act) of the A57 Link Roads Development Consent Order 2022 in respect of the land to which the notice to treat relates.

**(2)** But see article 30 (acquisition of subsoil and airspace only) of the A57 Link Roads Development Consent Order 2022 which excludes the acquisition of subsoil or airspace only from this Schedule.

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

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

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

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

### *Response to counter-notice*

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

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

**6.** The acquiring authority must serve notice of its 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 the 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.

**15.** Any dispute as to the compensation is to be determined by the Upper Tribunal.”



SCHEDULE 7

Article 32

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Plot Reference</i> <i>Number shown on</i> <i>Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may</i> <i>be taken</i>	<i>(3)</i> <i>Relevant part of the</i> <i>authorised development</i>
<b>Land Plans – Sheet 1</b>		
1/1h	Required for works to improve the M67 Junction 4 roundabout, the construction of a drainage ditch, and the creation of a new public right of way.	Work No. 3, 7, 40
1/6a	Required for works to improve the M67 Junction 4 roundabout, the construction of a drainage ditch, and the creation of a new public right of way.	Work No. 3, 7, 40
1/9c	Required for access to and creation of new culverts for structural inspections and maintenance and the construction of new drainage ditches to the north of the A57 link between M67 and Roe Cross Road.	Work No. 36, 40
<b>Land Plans – Sheet 2</b>		
2/1c	Required for works to culverted watercourses and to create new watercourse	Work No. 36, 41
2/1d	Required for the creation of access and egress points serving land situated south of Edge Lane and for works to culverted watercourses and to create new watercourse	Work No. 9, 36, 41
2/1e	Required for the creation of new public rights of way, north and south of the proposed new dual carriageway	Work No. 7
2/1h	Required for the creation of new public rights of way, north and south of the proposed new dual carriageway and for the diversion of Hurstclough Brook	Work No. 7, 43
2/1j	Required for the construction of new drainage ditches	Work No. 40
2/2a	Required for the construction of the proposed Roe Cross Road Bridge and retaining walls to Mottram Underpass and for the creation of drainage ditches	Work No. 32, 40
2/2d	Required for the construction of the proposed Roe Cross Road Bridge and retaining walls to Mottram Underpass	Work No. 32
2/2f	Required for the construction of the proposed Roe Cross Road Bridge and retaining walls to Mottram Underpass	Work No. 32
<b>Land Plans – Sheet 3</b>		
3/2x	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
3/2aa	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/2bb	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/2cc	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/3e	Required for the construction of a new section of the eastbound A57 dual carriageway, new watercourses and utility diversions.	Work No. 5, 44, 58
3/3f	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/3h	Required for the construction of a new section of the eastbound A57 dual carriageway, new watercourse and the diversion of buried power cables	Work No. 5, 44, 61
3/14	Required for the realignment of Old Hall Lane and the creation of a means of access and egress to the south of land currently known as the Showground	Work No. 10, 11
3/15b	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/16b	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/17a	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/18	Required for the realignment of Old Hall Lane	Work No. 10
3/20a	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/22b	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11, 66
3/22c	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/22d	Required for the construction of new watercourses to manage local drainage	Work No. 44
3/22e	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11, 66
3/24	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
3/25	Required for the construction of new watercourses to manage local drainage	Work No. 44
3/27b	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/27c	Required for the construction of a new section of the eastbound A57 dual carriageway, the diversion of a water sewerage pipe, the construction of new watercourses to manage local drainage and	Work No. 5, 44, 58
3/27d	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/28a	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/28b	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
3/29	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
<b>Land Plans – Sheet 4</b>		
4/3a	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
4/8b	Required for the construction of an earthworks screening bund	Work No. 48
4/9	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
4/10a	Required for the creation of means of access and egress to the south of the land currently known as the Showground	Work No. 11
4/10c	Required for the diversion of buried power cables	Work No. 61
4/12c	Required for the creation of means of access and egress to the south of the land currently known as the Showground and the development of a short cul de sac to the west of the proposed Mottram Moor Junction	Work No. 11, 17, 66
4/12d	Required for the diversion of buried power cables	Work No. 61
4/13a	Required for the creation of a footpath between the Mottram Moor Junction and the existing footpath, the creation of a culvert to carry an unnamed watercourse and a diversion of Tara Brook south	Work No. 21, 36, 45
4/13c	Required for the creation of a footpath between the Mottram Moor Junction and the existing footpath the creation of a culvert to	Work No. 21, 36, 45, 48

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	carry Tara Brook, a diversion of Tara Brook and the construction of an earthworks screening bund	
4/13f	Required for the creation of a private access track for the maintenance of a pond	Work No. 20
4/13h	Required for the creation of a culvert to carry Tara Brook, a diversion of Tara Brook and the construction of various drainage ditches	Work No. 36, 45, 46
4/13i	Required for the construction of a drainage retention pond, the diversion of Tara Brook and the diversion of existing water main	Work No. 38, 45, 59
4/13k	Required for the construction of various drainage ditches and the construction of an earthworks screening bund	Work No. 46, 48
4/14b	Required for the diversion of buried power cables	Work No. 61
4/20	Required for the creation of a private access track for the maintenance of a pond	Work No. 20
4/22b	Required for the diversion of existing water main and the diversion of Tara Brook.	Work No. 59, 45
<b>Land Plans – Sheet 5</b>		
5/1a	Required for the construction of various drainage ditches and the construction of an earthworks screening bund	Work No. 46, 48
5/1c	Required for the realignment of Carrhouse Lane and the construction of various drainage ditches	Work No. 23, 46
5/1e	Required for the creation of a new bridleway, the construction of the A57 Link Road and the realignment of Carrhouse Lane,	Work No. 14, 22, 23
5/1g	Required for the construction of the A57 Link Road and the realignment of Carrhouse Lane,	Work No. 22, 23
5/1h	Required for the realignment of Carrhouse Lane,	Work No. 23
5/1k	Required for the realignment of Carrhouse Lane and the construction of various drainage ditches	Work No. 23, 46
5/2	Required for the construction of the A57 Link Road and the creation of a private, field access track from Carrhouse Lane to a field east of Carrhouse Lane	Work No. 22, 24
5/3	Required for the realignment of Carrhouse Lane, together with a new access track and public footpath, including associated earthworks and drainage	Work No. 23
5/6a	Required for the creation of a private, field access track from Carrhouse Lane to a field east of Carrhouse Lane	Work No. 24
5/6d	Required for the realignment of Carrhouse Lane, together with a new access track and public footpath, including associated	Work No. 23

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	earthworks and drainage	
5/7b	Required for the construction of various drainage ditches	Work No. 46
5/7c	Required for the realignment of Carrhouse Lane, together with a new access track and public footpath, including associated earthworks and drainage	Work No. 23
5/7e	Required for the creation of a new access track to Carrhouse Lane Farm	Work No. 56
5/7g	Required for the creation of a new access track to Carrhouse Lane Farm	Work No. 56
5/7h	Required for the creation of a new access track to Carrhouse Lane Farm	Work No. 56
5/8	Required for the construction of various drainage ditches	Work No. 46
5/9a	Required for the creation of a private, field access track from Carrhouse Lane to a field east of Carrhouse Lane and the construction of various drainage ditches	Work No. 24, 46, 66
5/9c	Required for the creation of a new access track to Carrhouse Lane Farm	Work No. 56
5/9e	Required for the creation of a new access track to Carrhouse Lane Farm	Work No. 56
5/9f	Required for the creation of a new access track to Carrhouse Lane Farm	Work No. 56
5/9g	Required for the creation of a new access track to Carrhouse Lane Farm	Work No. 56
<b>Land Plans – Sheet 6</b>		
6/1a	Required for the diversion of a footpath facilitating a private access track to Pond 3 and access to an existing maintenance track, the creation of a culvert to carry a drainage ditch and the construction of various drainage ditches	Work No. 25, 36, 46
6/1c	Required for the construction of various drainage ditches	Work No. 46, 66
6/2c	Required for the diversion of a footpath facilitating a private access track to Pond 3 and access to an existing maintenance track, plus the construction of various drainage ditches	Work No. 25, 46, 66
6/2e	Required for the diversion of a footpath and the creation of new access tracks, the construction of the proposed River Etherow bridge, the creation of a culvert to carry drainage ditch and the construction of various drainage ditches	Work No. 25, 35, 36, 46,
6/2f	Required for the construction of the proposed River Etherow bridge, the construction of various drainage ditches and the establishment of environmental mitigation	Work No. 35, 46, 50

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	and enhancement	
6/2h	Required for the construction of various drainage ditches	Work No. 46
6/2k	Required for the construction of the proposed River Etherow bridge and the construction of various drainage ditches	Work No. 35, 46
6/2m	Required for the construction of various drainage ditches	Work No. 46
6/2p	Required for the construction of an at grade signalised T-Junction	Work No. 27
6/2q	Required for the creation of a bridleway along the south side of A57 Link Road and road widening and resurfacing	Work No. 26, 28
6/2r	The creation of a bridleway along the south side of A57 Link Road, the construction of an at grade signalised T-Junction and the construction of a new private access	Work No. 26, 27, 30
6/3a	Required for the construction of various drainage ditches	Work No. 46, 66
6/3d	Required for the diversion of a footpath and creation of an access track	Work No. 25
6/5	Required for the construction of an at grade signalised T-Junction and the creation of controlled pedestrian/cycle crossing	Work No. 27, 29
6/6	Required for the construction of an at grade signalised T-Junction and the creation of controlled pedestrian/cycle crossing	Work No. 27, 29
<b>Land Plans – Sheet 7</b>		
7/1a	Required for the establishment of a construction compound and the undertaking of associated construction activities	All works
7/1c	Required for the establishment of a construction compound and the undertaking of associated construction activities	All works
<b>Land Plans – Sheet 8</b>		
8/7a	Required for the creation of an earthwork screening bund	Work No. 48
8/8a	Required for the creation of a footpath between the new Mottram Moor Junction and existing footpath, creation of a culvert to carry Tara Brook, the diversion of Tara Brook and the location of bat boxes installed on existing trees.	Work No. 21, 36, 45, 50
8/8d	Required for the creation of a footpath between the new Mottram Moor Junction and existing footpath and the diversion of Tara Brook	Work No. 21, 45
<b>Land Plans – Sheet 9</b>		
9/7a	Required for the realignment of Carrhouse Lane and the construction of various drainage	Work No. 23, 46

<i>(1) Plot Reference Number shown on Land Plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
	ditches.	
9/7e	Required for the realignment of Carrhouse Lane, together with a new access track and public footpath, including associated earthworks and drainage	Work No.23
9/9a	Required for the realignment of Carrhouse Lane and the construction of various drainage ditches.	Work No. 23, 46
9/16	Required for the realignment of Carrhouse Lane, together with a new access track and public footpath, including associated earthworks and drainage	Work No. 23
<b>Land Plans – Sheet 10</b>		
None		

## SCHEDULE 8

Articles 36 and 38

### HEDGEROWS AND TREES

#### PART 1

#### HEDGEROWS

<i>(1)</i> <i>Hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>	<i>(4)</i> <i>Important Hedgerow</i>
H1 – Defunct – Species Poor – 93 metres	Partial removal	Works no. 7(i) & 40	No
H3 – Defunct – Species Poor – 87 metres	Full removal	Works no. 5 & 6	No
H5 – Defunct – Species Poor – 310 metres	Partial removal	Works no. 5 & 6	No
H7 – Intact – Species Poor – 104 metres	Full removal	Works no. 15 & 16	No
H8 – Defunct – Species Poor – 119 metres	Full removal	Work no. 6	No
H9 – Hedgerows with Trees – Species Poor – 64 metres	Full removal	Work no. 6	No
H10 – Hedgerow with tree species – Species Poor – 66 metres	Full removal	Works no. 5 & 6	No
H11 – Defunct – Species Poor – 66 metres	Full removal	Work no. 6	No
H12 – Intact – Species Poor – 247 metres	Partial removal	Works no. 5 & 6	No
H13 – Intact – Species Poor – 93 metres	Full removal	Work no. 12	No
H14 – Intact – Species Poor – 173 metres	Full removal	Work no. 12	No
H15 – Defunct – Species Poor – 56 metres	Full removal	Work no. 5	No
H16 – Hedgerow with tree species – Species Poor –	Partial removal	Works no. 44 & 58	No



145 metres			
H17 – Intact – Species Poor – 119 metres	Partial removal	Works no. 61 & 44	No
H24 – Hedgerow with tree species – Species Rich – 131 metres	Partial removal	Works no. 61 & 5	Yes
H28 – Defunct – Species Poor – 159 metres	Partial removal	Work no. 56	No
H29 – Hedgerows with Trees – Species Poor – 252 metres	Partial removal	Work no. 22	No
H31 – Intact – Species Poor – 183 metres	Full removal	Work no. 27	No
H32 – Intact – Species Rich – 140 metres	Partial removal	Work no. 22	No
H33 – Defunct – Species Poor – 371 metres	Partial removal	Work no. 22	No
H36 – Intact – Species Poor – 67 metres	Full removal	Work no. 22	No
H37 – Hedgerows with Trees – Species Poor – 157 metres	Partial removal	Work no. 22	No
H39 – Hedgerows with Trees – Species Poor – 101 metres	Partial removal	Work no. 22 & 23	No
H42 – Hedgerows with Trees – Species Poor – 42 metres	Full removal	Work no. 35	No
H43 – Line of Trees – 326 metres	Partial removal	Works no. 47(iii) & 6	No
H45 – Intact Species Rich – 192 metres	Full removal	Works no. 5 & 6	No
H46 – Line of Trees – 115 metres	Full removal	Works no. 5 & 6	No
H47 – Line of Trees – 146 metres	Partial removal	Work no. 56	No
H48 – Hedgerow	Partial removal	Work no. 35	No

Species Poor – 29 metres			
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## PART 2

### TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> Type of tree	<i>(2)</i> Work to be carried out	<i>(3)</i> Relevant part of the authorised development	<i>(4)</i> Tree Preservation Order (TPO) reference
W042 – Beech (Fagus sylvatica) , Sycamore (Acer pseudoplatanus), Elm (Ulmus spp.), Horse Chestnut (Aesculus hippocastanum), Ash (Fraxinus excelsior)	Felling (part of Group)	Work no. 33	L13-W2
W042 – Beech (Fagus sylvatica) , Sycamore (Acer pseudoplatanus), Elm (Ulmus spp.), Horse Chestnut (Aesculus hippocastanum), Ash (Fraxinus excelsior)	Partial felling (part of Group that sits within the Red Line Boundary)	Works no. 5 & 6	L15-W1

## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

**1.**—(1) For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise identified in another Part of this Schedule or agreed in writing between the undertaker and the utility undertaker concerned.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and the utility undertaker concerned, where the benefit of this Order is transferred or granted to another person under article 9 (consent to transfer benefit of Order), any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between the utility undertaker concerned and the transferee or grantee (as the case may be).

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to the utility undertaker concerned (but see paragraph 11(3)(b)).

**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 utility undertaker for the purposes of electricity supply;
- (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 utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility 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)(d) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104(e) (agreement to adopt sewers, drains or sewage disposal works at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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

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(a) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27)

(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 sections 3(2) and 76 of, and paragraphs 1 and 4 of Schedule 6 and Schedule 8 to, the Utilities Act 2000.

(c) 1991 c. 56.

(d) Section 102 was amended by sections 96(1)(c) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37) and section 56 of, and paragraph 90 of Schedule 7 to the Water Act 2014 (c. 21).

(e) Section 104 was amended by sections 96(4) of the Water Act 2003, section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(2) of the Water Act 2014.

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; and

“utility undertaker” means—

(e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(g) a water undertaker within the meaning of the Water Industry Act 1991; and

(h) 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 utility undertaker to whom it belongs or by whom it is maintained.

#### *On street apparatus*

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

#### *Apparatus in stopped up streets*

4.—(1) Where any street is stopped up under article 15 (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 alteration, diversion prohibition, or restriction of the use of any highway under the powers conferred by article 14 (temporary alteration, diversion, prohibition and restriction of the 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 temporary alteration, diversion, prohibition or restriction of the use of any highway was in that highway.

#### *Protective works to buildings*

5. The undertaker, in the case of the powers conferred by article 20 (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 a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question 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 45 (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 45 (arbitration), 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 45 (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) are to 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 it 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) The value of any apparatus removed under the provisions of this Part of this Schedule must be deduced from any sum payable under sub-paragraph (1), 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 45 (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 utility undertaker,
- (c) 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—

- (a) 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, or
- (b) any part of the authorised development carried out by a utility undertaker in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 9 (consent to transfer benefit of Order).

(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 part 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 its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of 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 in land belonging to the undertaker on the date on which this Order is made.

## PART 2

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

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

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

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

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

“the electronic communications code” has the same meaning as in section 106(b) (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

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

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

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

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

**16.** The exercise of the powers conferred by article 33 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

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

- (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 the authorised development), 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.

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(a) 2003 c. 21.

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



(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 45 (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 (street works in England and Wales) 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 DRAINAGE AUTHORITIES

**18.** The provisions of this Part have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

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

“construction” includes execution, placing, altering, replacing, relaying and removal, and “construct” is to be construed accordingly;

“drainage authority” means—

- (a) the drainage board concerned within the meaning of section 23(a) (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; or
- (b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010(b);

“drainage work” means any watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence which is the responsibility of the drainage authority subject to such changes as notified to the undertaker;

“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

“plans” includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse; or
- (c) affect the conservation, distribution or use of water resources.

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(a) 1991 c. 59. The definition of “drainage board” is in section 23(8), which was amended by paragraph 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29)

(b) 2010 c. 29.

**20.**—(1) Not less than 2 months before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) The undertaker must not commence construction of the specified work until 2 months' notice of the commencement of the specified work has been given to the drainage authority and approval, unconditionally or conditionally, has been given as provided in this paragraph.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 28.

(4) Any approval of the drainage authority required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later, and may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, for the protection of any navigation work, for the protection of water resources, for the prevention of pollution or in the discharge of its environmental functions.

(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

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

(a) to safeguard any drainage work against damage by reason of any specified work; or

(b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.

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

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the drainage authority, and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than 7 days after the date of completion.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

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

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

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

**23.—**(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of the work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule, provided that any obstruction is removed as soon as reasonably practicable.

**24.** If by reason of the construction of a specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

**25.** The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably incur, have to pay or sustain—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and

- (c) in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

**26.**—(1) Without limiting the other provisions of this Part of this Schedule, the undertaker must indemnify the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work;
- (b) any raising or lowering of the water table in land adjoining the authorised project or in any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such lands,

caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

**27.** The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

**28.** Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 45 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Business, Energy and Industrial Strategy acting jointly on a reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.

## PART 4

### FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

#### **Application**

**29.**—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 9 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 39(3)(b)).

#### **Interpretation**

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

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in paragraph 38, 39 and 41 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

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

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

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

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 35(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 35(2) or otherwise.

**31.** Except for paragraphs 32 (*apparatus in stopped up streets*), 37 (*retained apparatus: protection*) and 39 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in stopped up streets**

**32.**—(1) Where any street is stopped up under article 15 (*permanent stopping up, restriction of use of highways, streets and private means of access*), if National Grid has any apparatus in

the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 35 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 37.

(2) Notwithstanding the temporary alteration, diversion, prohibition or restriction of the use of any highway under the powers of article 14 (*temporary alteration, diversion prohibition and restriction of the use of streets*), National Grid is at liberty at all times to take all necessary access across any such altered, diverted, prohibited or restricted 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 alteration, diversion, prohibition or restriction of the use was in that highway.

### **Protective works to buildings**

**33.**—(1) The undertaker must exercise the powers conferred by article 20 (*protective work to buildings*) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld)

### **Acquisition of land**

**34.**—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 37 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**35.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain

that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 36(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or secured by, the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

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

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

**36.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker under paragraph 36(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 15 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

**37.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.



(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 35(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) "emergency works" means works whose execution at the time when they are executed is required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

## **Expenses**

**38.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 35(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 43 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

## **Indemnity**

**39.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

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

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 9 (consent to transfer benefit of Order).

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

### **Enactments and agreements**

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

### **Co-operation**

**41.**—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 35(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 37, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

### **Access**

**42.** If in consequence of the agreement reached in accordance with paragraph 34(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

43. Save for differences or disputes arising under paragraph 35(2), 35(4) and 36(1), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 45 (*arbitration*).

## **Notices**

44. Notwithstanding article 44 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 37 must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# **PART 5**

## **FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER**

## **Application**

45. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

## **Interpretation**

46. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” has the same meaning as in article 2(1) of the Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground conditions, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions,;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” for the purposes of this Part of the Schedule shall have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use, improve, landscape, preserve, decommission, refurbish or replace;

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

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“specified works” means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 51(2) (removal of apparatus) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 51(2) (removal of apparatus) or otherwise; or

### **On Street Apparatus**

**47.**—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act except for

- (a) paragraphs 48 (apparatus of Cadent in stopped up streets), 53 (retained apparatus: protection of Cadent), 54 (expenses) and 55 (indemnity); and
- (b) where sub-paragraph (2) applies, paragraphs 51 (removal of apparatus) and 52 (facilities and rights for alternative apparatus).

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) Paragraph 27 (expenses) does not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

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

### **Apparatus of Cadent in stopped up streets**

**48.**—(1) Where any street is stopped up under article 15 (*permanent stopping up and restriction of use of highways, streets, and private means of access*), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 51 (removal of apparatus).

(2) Notwithstanding the temporary alteration, diversion prohibition or restriction of the use of any street under the powers of article 14 (*temporary alteration, diversion, prohibition and restriction of the use of streets*), Cadent will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion prohibition or restriction of use of any such street in respect of any apparatus which at the time of the alteration, diversion prohibition or restriction of the use of any street was in that street.

### **Protective works to buildings**

**49.**—(1) The undertaker, must exercise the powers conferred by article 20 (*protective work to buildings*) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent such consent not to be unreasonably withheld or delayed.

### **Acquisition of land**

**50.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 53 (retained apparatus: protection of Cadent) or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or

other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 51 (removal of apparatus) do not apply, the undertaker must, unless Cadent agrees otherwise:

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

### **Removal of apparatus**

**51.**—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with article 22 (acquisition of land), the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 52(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights:

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.
- (c) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(3) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(4) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

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

**52.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter may be referred to arbitration in accordance with paragraph 59 (*arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## **Retained apparatus: protection of Cadent**

**53.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) ; and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.



(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 45 to 47 and 50 to 52 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 51(2) (removal of apparatus).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan (and ground monitoring scheme if required), instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan (and ground monitoring scheme if required).

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 54 (expenses).

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

## **Expenses**

**54.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 51(3) (removal of apparatus) if it elects to do so; or
  - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 53(6) (retained apparatus: protection of Cadent).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 45 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

## **Indemnity**

**55.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 18 (protective work to buildings)) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

(2) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

- (a) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

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

(4) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 8; and
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1).

(5) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

**56.** Except where in this Part of this Schedule provides otherwise or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**57.—**(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 24(2) (removal of apparatus) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 26 (retained apparatus: protection of Cadent), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

### **Access**

**58.** If in consequence of any agreement reached in accordance with sub-paragraph 22(1) (acquisition of land) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

## Arbitration

**59.** Save for differences or disputes arising under sub-paragraphs 51(2) 51(4) (removal of apparatus) and 53(11) (retained apparatus protection of Cadent) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 45 (*arbitration*).

## Notices

**60.** Notwithstanding article 44 (service of notices) the plans submitted to Cadent by the undertaker pursuant to sub-paragraph 53(1) (retained apparatus protection of Cadent) must be sent to Cadent Gas Limited Plant Protection via email to **plantprotection@cadentgas.com** as well as by post to Plant Protection Limited, Cadent Gas limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PART 6

### ENVIRONMENT AGENCY

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

(2) In this part of this Schedule—

“the Agency” means the Environment Agency;

“emergency” means a situation which—

- (a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;
- (b) is a serious event presenting a risk of harm or damage to people, property or the environment; and
- (c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

“relevant watercourse” ~~has the same meaning as in article (powers in relation to relevant watercourses)~~ means so much of the River Etherow as the context requires.

**62.**—(1) Where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Agency to a relevant watercourse, it must give the Agency 56 days’ written notice of that requirement.

(2) Except in cases of emergency where the undertaker interferes with or obstructs access by the Agency to a relevant watercourse and it is not possible for the undertaker to give the Agency the notice required under sub-paragraph (1), a suitable alternative access must be provided prior to and for the duration of any such interference.

**63.** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest of the Agency in any land or proposes to interfere with, or remove, any of the Agency’s apparatus it must give the Agency 56 days’ written notice before any such interest is acquired or any apparatus is interfered with or removed.

**64.** The undertaker must indemnify the Agency in respect of all costs, charges and expenses which it may reasonably incur or which it may sustain in the examination of approval of plans or other matters under this Part of this Schedule.

**65.** Any dispute arising between the undertaker and the Agency under this Part of this Schedule is to be determined in accordance with Article 45 (arbitration) of this Order.

SCHEDULE 10

Article 43

DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Book of reference – Regulation 5(2)(d)	TR010034/APP/4.3	4
Classification of roads plans – Regulation 5(2)(o)	TR010034/APP/2.11	2
Engineering drawings and sections – Regulations 5(2)(o), 5(4) and 6(2)	TR010034/APP/2.7	2
Environmental statement ( <u>including the Register of Environmental Statement Changes</u> ) – Regulation 5(2)(a)	TR010034/APP/6.1 – 6.3	Chapter and figure revisions are detailed in the Register of Environmental Statement Changes (reference TR010034/REP7/9.61)
First iteration environmental management plan (including the Register of Environmental Actions and Commitments-) – Regulation 5(2)(q)	TR010034/APP/7.2 - 7.3	2
Flood risk assessment – Regulation 5(2)(e)	TR010034/APP/5.5	3
Habitat regulation assessment – Regulation 5 (2)(g)	TR010034/APP/5.3	2
Land plans – Regulation 5(2)(i)	TR010034/APP/2.2	2
Location plan – Regulation 5(2)(o)	TR010034/APP/2.1	1
Scheme layout plan – Regulation 5(2)(o)	TR010034/APP/2.6	2
Speed limits and traffic regulations plans - Regulation 5(2)(o)	TR010034/APP/2.5	2
Streets, rights of way and access plans	TR010034/APP/2.4	2
Temporary works plan Regulation 5(2)(o)	TR010034/APP/2.8	2
TPO and hedgerow plans – Regulation 5(2)(o)	TR010034/APP/2.13	1
Water framework directive assessment – Regulation 5(2)(a)	TR010034/APP/5.4	2
Works plans – Regulation 5(2)(j)	TR010034/APP/2.3	2

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises National Highways to undertake works to construct the A57 Link Roads scheme and carry out all associated works.

The Order permits National Highways to acquire, compulsorily or by agreement, land and rights in land and to use the land for this purpose.

The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the book of reference, plans, engineering drawings and sections, the environmental statement, the habitat regulation assessment report, the register of environmental actions and commitments, the first iteration EMP, and the Water framework directive assessment mentioned in this Order and certified in accordance with article 42 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at National Highways, Piccadilly Gate Store Street, Manchester, M1 2WD.

**201[ ] No. [ ]**

**INFRASTRUCTURE PLANNING**

The A57 Link Roads Development Consent Order 20[ ]

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