

A303 Sparkford to Ilchester Dualling Scheme TR010036

9.40 Deadline 8 Response to Action Point 18 - Legal Submission

Planning Act 2008

June 2019



Infrastructure Planning

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Development Consent Order 201[X]

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Table of Contents

1	Legal Submission	4
1.1	Introduction	4
1.2	Acquisition of interests or rights in land	6
1.3	Acquisition of Rights and the Law of Property Act 1925	7
1.4	Comparable Regimes	8
1.5	Legal Definition of a Highway	9
1.6	Highways and Ownership of the subsoil	12
1.7	Creation of highway by construction	13
1.8	Maintenance at Public Expense	14
1.9	Use of Acquisition of Rights in granted DCOs	16
1.10	Approach to Compulsory Acquisition of rights in this case	16
	Appendix 1: Statutory References	18
	Appendix 2: Case Law References	19
	Appendix 3: Other Documents	20

1 Legal Submission

1.1 Introduction

- 1.1.1 Action point 18 from the hearing of 23 May 2019 (EV-039) requests that the Applicant and Somerset County Council (SCC) each set out the position regarding temporary possession and compulsory acquisition of rights. This submission is made in response to that action point.
- 1.1.2 The Applicant understands that the County Council has an objection to the use of acquisition of rights to create new highway. The Applicant also understood from the brief oral submission made on 23 May 2018 that the County Council has an objection to all compulsory acquisition of rights, not just for new highway. That objection has never been made in writing and the Applicant has no details of the basis of that submission. This submission cannot therefore respond to any detailed legal submissions on that.
- 1.1.3 The County Council has suggested that there is a fundamental point of law at stake. It is for this reason that the Applicant has set out these submissions at greater length than it would normally and has spelled out fundamental issues of highway law which it would normally take as read.
- 1.1.4 This submission responds in the following parts:
- Part 2 sets out how Development Consent Orders (DCOs) can acquire interests or rights in land without acquiring full ownership.
 - Part 3 considers the Law of Property Act 1925.
 - Part 4 considers acquisition of rights under other regimes.
 - Parts 5, 6, 7 and 8 address the definition, extent, creation and maintenance of highways.
 - Part 9 highlights the range of rights acquired in granted DCOs.
 - Part 10 considers the particular approach followed in this DCO.

Summary

- 1.1.5 Part 2: in terms of the principle of acquiring rights, including by way of creation of new rights, this is clearly available on the face of the Planning Act 2008. There are numerous instances of this under DCOs.
- 1.1.6 Part 3: the County Council made reference in the hearings to the Law of Property Act 1925 as posing some kind of fundamental impediment to the use of powers of temporary possession linked to the creation of permanent rights. The Applicant does not, in truth, understand the County Council's point, but would emphasise that it is clear from the Planning Act 2008 that new rights can be created and that, if necessary, the doctrine of implied repeal would confirm that this power is legally effective.
- 1.1.7 Part 4: there are a range of comparable regimes in which the creation of new rights are provided for. The County Council themselves have taken advantage of this power in their own highways CPOs.
- 1.1.8 Part 5: it is well established that the legal nature of a public highway is a right to pass and repass. The legal essence of all public highways (whether public footpaths or vehicular carriageways) is the same – a right to pass and repass

along a defined route. The case law has referred to the public right over a highway as being “an easement for the benefit of the public”.

- 1.1.9 Part 6: it is well established that the highway authority does not need to own the subsoil of a highway. If the highway is stopped up the full ownership reverts to the owner of the subsoil. A freeholder can dedicate a public highway in favour of a highway authority without transferring the freehold and this is commonly done in a range of scenarios. It is, in effect, this creation of highway rights which the DCO is affecting by the compulsory creation of the Public Rights of Way (PROWs) and the 5 small areas of land for turning heads for existing local roads cut off the main scheme, together with the part of the A303 currently serving the Camel Head Services.
- 1.1.10 Part 7: in a DCO the creation of the public highway (whether footpath or carriageway) is part of the legal essence of the Order given its statutory purpose under the Planning Act 2008 to authorise the construction of highways which meet the thresholds for an NSIP, together with any associated development. Formal dedication is not required to be expressed.
- 1.1.11 Part 8: the Planning Act 2008 expressly provides for maintenance to be dealt with under a DCO and the concept of adoption by the County Council of the local roads which will be passed to it, does not apply as the allocation of maintenance responsibility to the County Council is dealt with on the face of the Order.
- 1.1.12 Part 9: DCOs granted to date, including those by the Secretary of State for Transport, have included the creation of new public highway by way of the creation of new rights (e.g. M1 Junction 10a, A556 Knutsford, A160/A180).
- 1.1.13 Part 10: There is clear Planning Act 2008 policy on compulsory acquisition which obliges the promoter to minimise the interference with private rights and interests. For this reason the Applicant decided that using the creation of rights, rather than the full acquisition of the freehold interest, was the appropriate approach for the PROWs and for the 5 small turning head areas. These are local roads serving particular land, where their public highway status may be revisited in the future and where, for example, the County Council is already suggesting the possibility of this in the case of the current A303 serving the Camel Hill Services.
- 1.1.14 All of the affected landowners of the turning head land and PROWs are fully aware of these proposals and none has objected. The new rights will give rise to compensation in the normal way, taking account of the curtailment of use entailed. The Applicant has taken the freehold of the remainder of the new highway land across the scheme, but considered that, for compulsory acquisition policy reasons, it was more proportionate on these facts for the rights approach to be used in these cases. The Applicant submits there is no prejudice arising from the approach followed.
- 1.1.15 The County Council’s objection is, as a matter of law, not sustainable in the Applicant’s view. The powers of a DCO to create new rights are extremely wide. The approach used is within those powers. The County Council, as we understand it, accepts this approach for the PROWs. The County Council’s objection to the turning heads land may, perhaps, be better regarded as a

policy difference of approach regarding the expectation on promoters to minimise the interference with the interests of the relevant land owners.

1.2 Acquisition of interests or rights in land

- 1.2.1 The application before the Examining Authority is for a DCO for the construction and operation of a Nationally Significant Infrastructure Project (NSIP). It is therefore made under the Planning Act 2008 (Planning Act) and the Planning Act is the empowering statute for any provision sought in the DCO.
- 1.2.2 The Planning Act provides at section 14¹ that “(1) In this Act “nationally significant infrastructure project” means a project which consists of any of the following—... (h) highway-related development;”. Section 22 then provides the thresholds which highway related development must meet or exceed in order to constitute an NSIP.
- 1.2.3 As set out in the Case for the Scheme² this scheme is the “construction” of a highway within the meaning of section 22(1)(a).
- 1.2.4 S120 of the Planning Act sets out what may be included in order granting development consent. Subsections (3) and (4) provide:
- 1.2.5 “(3) *An order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.*”
- 1.2.6 “(4) *The provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5.*”
- 1.2.7 Schedule 5 Part 1 “The Matters” includes the following matters relevant to this submission:
1. *The acquisition of land, compulsorily or by agreement.*
 2. *The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement.*
 20. *The specification of the classes of traffic authorised to use a highway.*
 23. *The specification of the highway authority for a highway.*
 33. *The transfer of property, rights, liabilities, or functions.*
- 1.2.8 Taken together, Section 120 and Schedule 5 Part 1 Matter 1 therefore expressly allows the inclusion of powers of compulsory acquisition within a DCO under the Planning Act. Section 120 and Matter 2 of Part 1 of Schedule 5 expressly allows the compulsory acquisition of existing interests in or rights over land and the creation of new interests in or rights over land.

¹ A copy of all sections of the Planning Act quoted or referred to in this submission are set out in Appendix 1 – statutory references.

²Examination library reference APP-149

1.2.9 S120 is in Part 7 of the Planning Act; in order to identify the full scope of the powers set out in that section it is necessary to have regard to the definition of land that applies to Part 7. That definition is set out in s159, which provides:

- “159 Interpretation: land and rights over land
- (1) This section applies for the purposes of this Part.
- (2) “Land” includes any interest in or right over land.
- (3) Acquiring a right over land includes acquiring it by the creation of a new right as well as by the acquisition of an existing one.”

1.2.10 Accordingly, Section 120 authorises the inclusion within a DCO of powers of acquisition of any right over land; which acquisition can be exercised through the creation by compulsion of a new right as well as acquisition of an existing one.

1.2.11 The Applicant does not propose to set out the historical case law in this submission, but notes that the power to acquire only rights over land was recognised as long ago as 1884³. The principle that where an authority is empowered to acquire rights under an Act it is not necessary to also acquire the freehold, has not changed since that time.

1.2.12 The Planning Act specifically provides for acquisition of rights; Matter 2 cited at paragraph 2.5 and the definition of land in that Act both provide particular powers to acquire only rights. The wording of the Planning Act and the case law on interpreting that wording entirely supports the Applicant’s position. The case law is clear that where the rights to be acquired are specified in the DCO, they can be acquired (or created through acquisition) by compulsion, without the need to acquire the freehold ownership.

1.2.13 The ability to acquire only rights is the norm in other regimes as well. For example, Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 provides that in all cases where an authority is authorised to acquire land it may be authorised to acquire only specified rights set out in the compulsory order rather than the whole ownership. In such cases, the acquisition of rights is to be treated as acquisition of land for the application of compulsory purchase procedures and compensation provisions.

1.3 Acquisition of Rights and the Law of Property Act 1925

1.3.1 The Applicant notes the County Council’s submission that the acquisition of rights or interests in land rather than the freehold is somehow contrary to the Law of Property Act 1925 (the “1925 Act”). The Applicant has not had the benefit of seeing any submissions on that point before preparing this submission. The Applicant therefore cannot respond directly given the lack of specificity in the oral submissions made.

1.3.2 The Applicant understands that the County Council submits that the acquisition of only interests or rights in land under a DCO is contrary to the 1925 Act. The Applicant does not agree. However, in any case, if it is considered that there is a conflict between the provisions of the Planning Act

³Great Western Railway Company v The Swindon and Cheltenham Extension Railway Company (1884) 9 App. Cas. 787, per Lord Watson

and the 1925 Act, it is submitted that the Planning Act would prevail through the application of the doctrine of implied repeal.

1.3.3 As a general principle, where two statutes conflict in their terms the doctrine of implied repeal will apply. Where a later Act of Parliament contradicts an earlier Act, but it does not expressly repeal the earlier Act, the doctrine provides that the earlier provisions are impliedly repealed by the latter. Parliament's continuing power to create law means that it can impliedly or expressly repeal any Act of Parliament⁴. The test as to whether implied repeal will apply is set out *West Ham (Churchwardens etc) v Fourth City Mutual Building Society*⁵:

- “The test of whether there has been a repeal by implication by subsequent legislation is this: are the provisions of a later Act so inconsistent with, or repugnant to, the provisions of an earlier act that the two cannot stand together.”

1.3.4 There are some qualifications to application of the doctrine of implied repeal⁶. The doctrine is subject to a presumption against its use which requires courts to try to reconcile the conflicting provisions where possible. Constitutional statutes are also not generally liable to implied repeal, in part because of their importance in protecting citizen's rights. The Planning Act is not a constitutional statute⁷.

1.3.5 There is also a general presumption that more specific provisions should be preferred over more general ones. The Planning Act sets out in very clear and specific terms in Matter 2 that DCO's may provide for “The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement”. The Applicant accordingly submits that, if there is any conflict between the Planning Act and the 1925 Act, the Planning Act prevails in accordance with the doctrine of implied repeal. The Planning Act provisions are clear and specific. They set out in unambiguous terms that any interest or right in land can be acquired, created or interfered with.

1.3.6 The legal definition of a highway is simply a right for the public to pass and repass; that right falls within the ambit of “any right or interest” and therefore the scope of the Planning Act. Nothing in the 1925 Act prevents the Applicant from creating highways though compulsory acquisition of the necessary rights in accordance with the Planning Act.

1.4 Comparable Regimes

Transport and Works Act Orders

1.4.1 The acquisition of rights, including through the creation of new rights, is not unique to the Planning Act. Development Consent Orders under the Planning Act have drawn from the experience of Transport and Works Act Orders (TWAOs) under the Transport and Works Act 1992 (“the 1992 Act”) and

⁴ *Vauxhall Estates Ltd v Liverpool Corporation* [1932] 1 KB 733

⁵ [1892] 1 QB 654

⁶ *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin)

⁷ *R [on the application of Brynmawr Foundation School Governors] v Welsh Ministers* [2011] EWHC 519 (Admin). *R (Buckinghamshire County Council) v Transport Secretary* [2014] 1W.L.R. 324.

comparison of the regimes can be of assistance. TWAOs may, in accordance with section 5 of the 1992 Act, include matters listed in schedule 1 of that Act, which include:

1. *The acquisition of land, whether compulsorily or by agreement.*
2. *The creation and extinguishment of rights over land (including rights of navigation over water), whether compulsorily or by agreement.*

1.4.2 It can therefore be seen that the wording of the Planning Act is more permissive than the 1992 Act in also allowing suspension or interference with interests in or rights over land as well as the creation and extinguishment of rights.

Highways Act 1980

1.4.3 The ability to specify acquisition of rights only is not only not new or novel but was also specifically allowed for in the particular case of highways under the Highways Act 1980 (“the 1980 Act”). In the 1980 Act, “land” includes “any interest or right in, over or under land”⁸. Section 250 of the 1980 Act provides that land acquisition powers extend to creation as well as acquisition of rights and provides at subsection (1) that “*A compulsory purchase order made in the exercise of highway land acquisition powers may provide for the acquisition of rights over land by creating them as well as for the acquisition of rights already in existence.*” That provision is specifically stated as being “without prejudice to...any other provision of this Act which, by virtue of the definition of “land” in section 329(1), authorises the acquisition of interests in or rights over land”.

1.4.4 Somerset County Council clearly accept the principle of inclusion of acquisition of rights without the acquisition of the freehold under the 1980 Act as they have included such provisions in their own orders made in their capacity as a highways authority. For example, SCC acquired various rights under the Council Of The County Of Somerset (Taunton Northern Inner Distributor Road A3087) Compulsory Purchase Order 2011⁹. In that order the County Council acquired the rights to “construct and maintain a bridge to carry the T33/14 public footpath” (plots 9, 11, 12), the right to construct and maintain a bridge to carry the A3087 public highway (plot 25, 27), the right to construct and maintain a retaining wall (plot 38) and a right to install surface water sewers (plot 38).

1.5 Legal Definition of a Highway

1.5.1 There is no statutory definition of a highway. The Planning Act at section 235 provides that “highway” has the meaning given by section 328 of the Highways Act 1980”; that section does not actually define a highway but reads, in its entirety:

- “328.— Meaning of “highway”.
- (1) In this Act, except where the context otherwise requires, “highway” means the whole or a part of a highway other than a ferry or waterway.

⁸ Section 329

⁹ A copy of this order is appended as appendix 3

- (2) Where a highway passes over a bridge or through a tunnel, that bridge or tunnel is to be taken for the purposes of this Act to be a part of the highway.
- (3) In this Act, “highway maintainable at the public expense” and any other expression defined by reference to a highway is to be construed in accordance with the foregoing provisions of this section.”

1.5.2 The legal definition of a highway is accordingly drawn from case law and can be summarised as a public right to pass over a defined route. That summary description is comprised of four elements:

- 1) It must be open to all the public not a defined group¹⁰ - use can be limited to a class, e.g. pedestrians, but not to specific people such as owners of a particular property, it must be open to any person;
- 2) It must be as of right¹¹; rather than simply with the permission of the landowner;
- 3) It is primarily a right of passage¹²; although ancillary rights such as parking of motor vehicles are now accepted as forming part of the public right to use a highway, the distinguishing feature is the right of the public to pass from one place to another “at their pleasure”¹³; and
- 4) It must be along a defined route¹⁴.

1.5.3 There is no ownership qualification in the definition of “highway”; the key elements are the public right to pass on a defined route. For the purposes of determining if something is legally a highway it simply does not matter who the underlying owner is. The definition can also be clearly met by ways for use by pedestrians, cyclist and on horseback as well as vehicular carriageways. There is no distinction in law between a vehicular highway and a non-vehicular highway. The public rights of way proposed under the DCO sought all fall within the legal definition of highway and are subject to the same considerations as vehicular highways.

1.5.4 The legal nature of the public right over a highway has been held to be “an easement for the benefit of the public”¹⁵. Easement are rights in or over land. They fall within the definition of “land” under the Law of Property Act 1925¹⁶. Easements may be created by statute, including by compulsory acquisition¹⁷. The Court of Appeal in Harrison v Rutland (Duke)¹⁸ considered that “The easement acquired by the public is a right to pass and re-pass at their pleasure for the purpose of legitimate travel, and the use of the soil for any other purpose, whether lawful or unlawful, is an infringement of the rights of the owner of the soil, who has, subject to this easement, precisely the same

¹⁰ Austin’s case (1672) 1 Vent 189

¹¹ Dawes v Hawkins 1860 29 LJ CP 343

¹² Goodtitle c Chester v Alker & Eames 1757 1 Burr 133

¹³ Harrison v Rutland (Duke) [1893] 1 QB 142 at 154

¹⁴ Dovaston v Payne 1795 2 H Bl 527

¹⁵ *ibid*

¹⁶ Section 205

¹⁷ See section 2 of this note.

¹⁸ As foot note 13, at 154, per Lopes LJ

estate in the soil as he had previously to any easement being acquired by the public”.

- 1.5.5 In most cases, an easement requires there to be an identified landholding which benefits from the easement (the dominant tenement), but that requirement is absent for the public right to pass over highways as the right accrues to the public, not to a particular landholding. The evolution of the case law has therefore led to the public right to pass over a highway being considered as a *sui generis* right. It is not necessary to establish who is benefitted by the right as it belongs to the public.
- 1.5.6 A highway accordingly exists where there are public rights of passage over a defined route. The creation through the DCO of the public right of passage over the defined routes shown in the rights of way and classification of roads plans accordingly creates the necessary legal rights. The status of highway follows the creation of the public right and construction, not any further administrative process.
- 1.5.7 The Applicant notes the County Council’s submission that PRowS are of a different nature to highways. The Applicant disagrees. The Applicant notes that the legal definition of a highway is a defined route over which the public at large can pass and repass; that clearly includes the subset of highways which the term PRow refers to. Legally there is no difference between a vehicular highway, a pedestrian highway, a cycle highway or a bridleway highway; they are all simply forms of highway¹⁹. The 1980 Act for example includes the following definitions²⁰:
- “bridleway” means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway;”*
- “footpath” means a highway over which the public have a right of way on foot only, not being a footway;*
- 1.5.8 The Applicant therefore maintains the position previously set out in written submissions that the County Council is being inconsistent in its approach by singling out vehicular highways and attempting to treat them differently for the purposes of compulsory acquisition from other forms of highway.
- 1.5.9 It is uncontroversial that a freeholder can dedicate a public highway in favour of a highway authority without transferring the freehold and this is commonly done in a range of scenarios. It is, in effect, this creation of highway rights which the DCO is effecting by the compulsory creation of the PRowS and the 5 small areas of land for turning heads for existing local roads cut off of the main scheme, together with the part of the A303 currently serving the Camel Head Services.

¹⁹ See for example; Highways Law, Stephen Sauvain QC at chapter 1, which discusses carriageway highways (1.29) and non carriageway highways (footpaths and bridleways, 1.44) and notes that a bridleway is a highway over which the public have a right of way on foot, on horse or leading a horse (1.46) and that footpaths are highways which carry only a public right of way on foot (1.48)

²⁰ Section 329

1.6 Highways and Ownership of the subsoil

- 1.6.1 As set out above, a highway is a right of the public over land. It does not carry with it any right of the public to any further interference in the subsoil of the land over which it runs. It is legally incorrect to say that vesting of the subsoil is necessary to create a public highway. This principle was established as long ago as 1757 when Lord Mansfield held that “the King has nothing but the passage for himself and all his people, but the freehold and all profits belong to the owner of the soil”²¹. The High Court also held in 1871 that “The owner who dedicates to public use as a highway a portion of his land, parts with no other right than a right of passage to the public over the land so dedicated, and may exercise all other rights of ownership, not inconsistent therewith”²². The rights of subsoil owners to minerals are also unaffected by creation of highway²³. The highway right only applies to part of the land, it does not require ownership on behalf of the public of the subsoil.
- 1.6.2 To have legal status as a highway does not require the highway authority to own the subsoil of the highway. Given that many highways in public use today follow old, even ancient routes, and that the public right has been created over time, there are innumerable highways where the underlying ownership is unknown. It is not necessary for a highway authority to own all of the land under a highway and there are innumerable instances where the underlying ownership of land under public highways vests in others, most often the adjoining landowner. In the area of the scheme, for example the ownership under parts of the existing A303 is unknown and legal presumptions have to be applied²⁴. The Book of Reference²⁵ also demonstrates that the County Council has no recorded title to the subsoil under some of its highways; the B3151 public road (plot 2/4c) is presumed to be owned by the adjoining private landowners, not the County Council, as are plots 4/1c and 4/1i which are public highway at Downhead, plots 5/3d and 5/3e being Steart Lane, and the public highway known as Howell Hill (see plot 5/3f).
- 1.6.3 A highway is a right over land. There is no requirement in law to specify a depth for a highway right. The precise depth of a highway will depend on the ground conditions at each location. Case law provides that the public highway status goes as deep as is necessary to ensure the protection and support of the highway²⁶. This was supported in the recent Supreme Court case of *Southwark LBC v TfL*²⁷, which described the “zone of ordinary use” as being the road surface, airspace and subsoil required for the operation, maintenance and repair of the highway. The depth of a highway is therefore a matter of fact and is location specific²⁸.
- 1.6.4 The County Council does not appear to be saying that land on which any public rights of way will be located must be permanently acquired, only those

²¹ Goodtitle c Chester v Alker & Eames 1757 1 Burr 133, as footnote 12

²² St Mary, Newington, Vestry v Jacobs 1871 LR QB 53

²³ Coverdale v Charlton 1899 1 Ch 474

²⁴ See Applicant’s response to action point 16 in REP7-027 at Deadline 7

²⁵ Examination Library reference REP7-018

²⁶ Tunbridge Wells Corporation v Baird (1896) AC 434

²⁷ [2018] UKSC 63

²⁸ Schweder v Worthing Gas Light and Coke Company (no2) (1913) 1 Ch 118

forming part of vehicular rights of way. If SCC's position were correct, then it would also be the case that all land on which public rights of way (which are themselves "highway" within the legal definition) were located would need to be owned by the County Council as local highway authority. That is simply not the case and this further demonstrates why SCC is not correct in asserting that the local highway authority must own the subsoil to any public highway.

1.7 Creation of highway by construction

- 1.7.1 Highways authorities are empowered as part of their statutory roles to create new highway. The construction of highways which are NSIPs must be authorised under the development consent process instituted by the Planning Act. As set out at section 2 above, the consent sought by the Applicant is for construction of highway. The ability to create new highway under this consent is plain, the DCO would not serve its purpose if it could not create highway.
- 1.7.2 The DCO creates a public right to pass over certain defined routes – that results in the legal creation of highways. The DCO also classifies the routes created, either through classification of roads or through the specification of rights over public rights of way. These are all legally highways and, for the purposes of establishment of highway rights, there is no legal difference at all between a footway and a vehicular route. The interference with landowners' rights caused by that creation is considered below as it is not relevant to whether or not a highway is created.
- 1.7.3 It is not proposed to 'dedicate' the land as public highway – that is an unnecessary step. The DCO allows land to be designated as highway and the classification of that highway to be specified in the DCO. The status as a highway is created directly by the DCO and a further step (of dedication) is not required.
- 1.7.4 The Applicant suggests that the County Council continues to confuse the creation of highway under statute through the DCO with dedication. The process of dedication by the landowner of highway and acceptance of that highway by the public are not necessary for highways created under statute. The DCO can create highways without any separate dedication being required. Once constructed under statutory provisions and opened, a road or way becomes a highway of the class intended by the Applicant as the constructing authority²⁹. There is no further requirement of formal dedication³⁰. Where a highway is created under a statutory process there is also no need for any demonstrated acts of acceptance on behalf of the public³¹.
- 1.7.5 The power sought in the DCO is included within the scope of compulsory acquisition of rights at Schedule 5 of the DCO in order to create a public right to pass over it. The Planning Act 2008 specifically allows for the acquisition of any interest³², the public right can be acquired through creation under this provision. As it is clear that the highway interest and the underlying ownership

²⁹ R v Lyon 1825 Dow & Ry KV 497

³⁰ Buckland v Secretary of State for the Environment [2000] 1 WLR 1949

³¹ R v French (1879) QBD 507

³² Section 159(2) "Land" includes any interest in or right over land.

of the subsoil are different interests, there is no justification to acquire the underlying subsoil when all that is required is the creation of the public right.

1.8 Maintenance at Public Expense

- 1.8.1 The legal definition of highway addresses only the need for a public right, it does not require that the public right will carry with it any obligation for the highway to be maintained at public expense. That can result in highways open to the public being privately maintainable by the underlying landowner. In this situation, that outcome would be inequitable and would not reflect modern practice that public highways are maintained by highways authorities at the public expense.
- 1.8.2 Section 36(2) of the 1980 Act provides that “the following highways ... shall for the purposes of this Act be highways maintainable at the public expense - (a) a highway constructed by a highway authority, otherwise than on behalf of some other person who is not a highway authority”.
- 1.8.3 The Applicant is a highway authority, the highways to be formed as part of the scheme are to be constructed by a highway authority on its own behalf and not for a person who is not a highway authority. Every highway formed therefore becomes publicly maintainable by the relevant highway authority. For trunk roads the relevant highway authority is the Applicant and for other highways it is the County Council. The obligation to maintain highways created under the DCO at public expense follows their status as highways and their construction by the strategic highways company; once they are highways they become publicly maintainable by operation of section 36 and no further process such as adoption is required.
- 1.8.4 Where highway becomes maintainable at public expense that highway vests in the highway authority for the specific, limited purposes of maintenance of the highway and the protection of its structure and the public rights over it. The interest so vested is an interest in land which is limited in duration and extent³³. It is legally a determinable fee simple in the top two spits which gives the highway authority a right to possession of the highway surface³⁴.
- 1.8.5 Section 263 of the 1980 Act provides that: “every highway maintainable at the public expense, together with the materials and scrapings thereof, vests in the authority who are for the time being the highway authority for the highway”. Once the highway has been created and classified pursuant to the DCO, the highway itself (including any materials and scrapings) automatically vests in the highway authority by virtue of section 263 Highways Act 1980). That right is separate from and in addition to the right of the public to pass which exists whether or not the highway has become vested in the highway authority. The landowner also retains an interest ownership of the subsoils (and air space above that needed for the operation of the highway) and is entitled to resume his full interest when the highway ceases to exist.
- 1.8.6 Article 13 and Schedule 5 of the DCO provide that maintenance of the new specified highway created by the DCO is to be transferred to the County

³³ Tithe Redemption Commissioners v Runcorn UDC 1954 2 WLR 518

³⁴ Wiltshire CC v Frazer 1984 82 LGR 313

Council. The wording in Schedule 5 “To transfer responsibility of maintenance of the way to Somerset County Council” or “To transfer responsibility for maintenance of the public highway so designated to Somerset County Council” is not strictly necessary but does not harm and is considered to add clarity. This therefore ensures that the DCO is comprehensive and transparent.

- 1.8.7 The Applicant notes the repeated references by the County Council to ‘adopting’ or refusing to ‘adopt’ highway formed under the DCO. The Applicant again notes, as it has previously submitted, that adoption is not a process which is required under the DCO as it is dealt with by Article 13. Dedication (which is often mixed up with adoption) is, in effect, achieved by the DCO and maintenance (which is what adoption strictly relates to) is dealt with in Article 13.
- 1.8.8 In response to the County Council’s submissions, the Applicant noted that it does not consider the scenario posited by the County Council where it refuses to ‘adopt’ the areas of new highway created on land within Schedule 5 is legally credible. Under the DCO, highway to be transferred to or back to the County Council does so by operation of the DCO. It would be entirely within SCC’s ability to raise a query on that, however there is no mechanism to refuse to adopt because adoption is not required. Any challenge to the lawfulness of this aspect of the DCO would have to be done by way of judicial review at the point of grant of the DCO.
- 1.8.9 In summary, the Applicant advises that the process whereby new areas of local highway are created is as follows:
- (b) The Applicant takes possession of the land under the DCO and constructs the highway.
 - (c) The public right of passage is created through Schedule 5 and acquisition (including through creation) of the necessary right.
 - (d) The highway is classified by the DCO.
 - (e) The highway is opened to the public.
 - (f) The highway is now a highway within the legal definition.
 - (g) The highway becomes maintainable at public expense through the operation of the 1980 Act and that responsibility is allocated to the County Council under Article 13 of the DCO.
 - (h) The surface of the highway now vests in the highway authority by operation of law through the 1980 Act.
 - (i) The landowner is entitled to compensation for the new highway rights created in his land as well as the temporary possession taken to construct the highway.

1.9 Use of Acquisition of Rights in granted DCOs

1.9.1 The Applicant considers that it is clear from the wording of the Planning Act that rights or interests in land can be acquired by compulsion, including new rights created by compulsion in DCOs. Some illustrative examples are given in Table 1.1 below:

Table 1.1: Examples of acquisition of rights only under granted DCOs

Order	Example rights acquired or created
Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013	Right to construct, keep and maintain a bridge to carry the Heysham to M6 Link Road and a footpath and cycle track.
The M1 Junction 10a (Grade Separation) Order 2013	Provision of diverted public right of way.
The A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014	New rights for creation of a public right of way and private rights of way and for it to be laid out and maintained for the benefit of Cheshire East Council and the Secretary of State.
The Willington C Gas Pipeline Order 2014	Right of access to construct, place and use the pipeline together with all necessary ancillary equipment, works and apparatus
The A160/A180 (Port of Immingham Improvement) Development Consent Order 2015	Right to lay out new Public Right of Way diversion of the existing Footpath 91. Right to construct, operate, access and maintain the new section of road under the new rail bridge.
A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016	New right to construct, use and maintain a new permissive non-motorised user route for the benefit of Cambridgeshire County Council.
The M20 Junction 10a Development Consent Order 2017	Right to construct, operate and maintain Church Road overbridge. New right to construct, use and maintain environmental mitigation measures including access with or without vehicles plant and machinery

1.10 Approach to Compulsory Acquisition of rights in this case

1.10.1 In line with the guidance³⁵ on use of compulsory acquisition powers, the Applicant has sought to minimise the interference with private rights and interests. The acquisition of rights is a lesser interference than acquisition of full ownership. The acquisition of rights only has therefore been preferred where it is possible in accordance with the guidance that compulsory powers should seek to cause the minimum level of interference which is necessary to deliver the scheme. The acquisition of rights creates a right to compensation for the affected landowner commensurate with the level of interference without acquiring all of their interest.

1.10.2 The specification of rights in Schedule 5 ensures that the owner is entitled to the proper compensation by making it clear what level of interference is

³⁵ Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land, Ministry of Housing, Communities & Local Government, September 2013

caused to their interest. It is not necessary to transfer any right in land once it is designated as public highway as the highway authority has all the rights they need to maintain and control it without requiring the underlying ownership to be interfered with. This means that easements for private rights could still subsist under the highway, for example for a pipe.

1.10.3 Acquisition of rights only also prevents any need to re-convey the land should the highway use be stopped up. The difference between the main carriageways and the turning head plots (which the Council are concerned with) are that it is very unlikely that the new main carriageways would stop being highways at any foreseeable time. The local highway authority has however expressed concern regarding dead-end roads and turning heads being used as unauthorised encampments and it is therefore possible that these will be altered in the foreseeable future should a problem arise in which case it is reasonable and appropriate for the landowner to retain underlying ownership.

1.10.4 On the facts of this case, it was thought to be disproportionate to permanently acquire the identified plots for minor additions to longstanding highway which will become turning heads. Permanent acquisition of land was thought to be proportionate for the remainder of the new or altered carriageway for the scheme in the circumstances. In addition to minimise interference with the owners' rights, acquiring only highway rights over the turning heads matches the position on most of the roads which the turning head adjoin. In those cases, the subsoil of the local highway does not vest in Somerset County Council as local highway authority. To acquire the freehold of these areas would create a difference between these small pieces of turning head and the local highway which they connect with. The Applicant, on these facts, does not consider that the level of interference caused by obtaining the freehold is justified where that will not match the situation of ownership of the subsoil of the highway in to which these areas connect.

Appendix 1: Statutory References

Relevant excerpts from the following acts referred to in this submission are provided in this Appendix:

- 1) Planning Act 2008
- 2) Transport and Works Act 1992
- 3) Highways Act 1980

PLANNING ACT 2008

Planning Act 2008 c. 29

Part 3 NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

General

This version partially in force from: **January 9, 2019**

(version 4 of 4)

14 Nationally significant infrastructure projects: general

(1) In this Act “*nationally significant infrastructure project*” means a project which consists of any of the following—

- (a) the construction or extension of a generating station;
- (b) the installation of an electric line above ground;
- (c) development relating to underground gas storage facilities;
- (d) the construction or alteration of an LNG facility;
- (e) the construction or alteration of a gas reception facility;
- (f) the construction of a pipe-line by a gas transporter;
- (g) the construction of a pipe-line other than by a gas transporter;
- (h) highway-related development;
- (i) airport-related development;
- (j) the construction or alteration of harbour facilities;
- (k) the construction or alteration of a railway;
- (l) the construction or alteration of a rail freight interchange;
- (m) the construction or alteration of a dam or reservoir;
- (n) development relating to the transfer of water resources;
- [
- (na) the construction or alteration of a desalination plant;

] ¹

(o) the construction or alteration of a waste water treatment plant [or of infrastructure for the transfer or storage of waste water] ² ;

(p) the construction or alteration of a hazardous waste facility [;] ³

[

(q) development relating to a radioactive waste geological disposal facility.

] ³

(2) Subsection (1) is subject to [sections 15 to 30A] ⁴.

(3) The Secretary of State may by order—

(a) amend subsection (1) to add a new type of project or vary or remove an existing type of project;

(b) make further provision, or amend or repeal existing provision, about the types of project which are, and are not, within subsection (1).

(4) An order under subsection (3)(b) may amend this Act.

(5) The power conferred by subsection (3) may be exercised to add a new type of project to subsection (1) only if—

(a) a project of the new type is a project for the carrying out of works in one or more of the fields specified in subsection (6), and

(b) the works are to be carried out wholly in one or more of the areas specified in subsection (7).

(6) The fields are—

(a) energy;

(b) transport;

(c) water;

(d) waste water;

(e) waste.

(7) The areas are—

(a) England;

Planning Act 2008 c. 29

Part 3 NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

Transport

This version in force from: **February 12, 2015 to present**

(version 3 of 3)

[

22.— Highways

- (1) Highway-related development is within section 14(1)(h) only if the development is—
- (a) construction of a highway in a case within subsection (2),
 - (b) alteration of a highway in a case within subsection (3), or
 - (c) improvement of a highway in a case within subsection (5).
- (2) Construction of a highway is within this subsection only if—
- (a) the highway will (when constructed) be wholly in England,
 - (b) the Secretary of State [or a strategic highways company] ² will be the highway authority for the highway, and
 - (c) the area of development is greater than the relevant limit set out in subsection (4).
- (3) Alteration of a highway is within this subsection only if—
- (a) the highway is wholly in England,
 - (b) the Secretary of State [or a strategic highways company] ² is the highway authority for the highway, and
 - (c) the area of development is greater than the relevant limit set out in subsection (4).
- (4) For the purposes of subsections (2)(c) and (3)(c) the relevant limit —
- (a) in relation to the construction or alteration of a motorway, is 15 hectares,
 - (b) in relation to the construction or alteration of a highway, other than a motorway, where the speed limit for any class of vehicle is expected to be 50 miles per hour or greater, is 12.5 hectares, and

(c) in relation to the construction or alteration of any other highway is 7.5 hectares.

(5) Improvement of a highway is within this subsection only if—

(a) the highway is wholly in England,

(b) the Secretary of State [or a strategic highways company] ² is the highway authority for the highway, and

(c) the improvement is likely to have a significant effect on the environment.

(6) Highway-related development does not fall within section 14(1)(h) if—

(a) an order mentioned in section 33(4) has been made in relation to the development before 1 March 2010,

(b) a further order is needed in relation to the development, and

(c) not more than 7 years have elapsed since the making of the earlier order.

(7) Alteration of a highway is not within section 14(1)(h) if

(a) planning permission has been granted for a development,

(b) the alteration is necessary as a result of the development, and

(c) the developer has asked for the alteration to be made to the highway.

(8) Alteration of a highway is not within section 14(1)(h) if—

(a) an order mentioned in section 33(4) has been made in relation to local highway works,

(b) the alteration is necessary as a result of the local highway works, and

(c) the local highway authority responsible for the local highway works has asked for the alteration to be made to the highway.

(9) In this section—

“area of development”—

(a) in relation to construction of a highway, means the land on which the highway is to be constructed and any adjoining land expected to be used in connection with its construction;

Planning Act 2008 c. 29

Part 7 ORDERS GRANTING DEVELOPMENT CONSENT

Chapter 1 CONTENT OF ORDERS

General

This version in force from: **April 1, 2012 to present**

(version 2 of 2)

120 What may be included in order granting development consent

(1) An order granting development consent may impose requirements in connection with the development for which consent is granted.

(2) The requirements may in particular include [—]¹

[

(a) requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which (but for section 33(1)) would have been required for the development;

(b) requirements to obtain the approval of the Secretary of State or any other person, so far as not within paragraph (a).

]¹

(3) An order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.

(4) The provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5.

(5) An order granting development consent may—

(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;

(b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the [Secretary of State]² to be necessary or expedient in consequence of a provision of the order or in connection with the order;

(c) include any provision that appears to the [Secretary of State]² to be necessary or expedient for giving full effect to any other provision of the order;

(d) include incidental, consequential, supplementary, transitional or transitory provisions and savings.

(6) In subsection (5) “*statutory provision*” means a provision of an Act or of an instrument made under an Act.

Planning Act 2008 c. 29
Part 12 FINAL PROVISIONS

General

This version in force from: **January 9, 2019 to present**

(version 3 of 3)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England and Wales](#) | [Scotland](#)

England and Wales

[

235 Interpretation

(1) In this Act (except in Part 11)—

“airport” has the meaning given by section 82(1) of the Airports Act 1986 (c. 31);

“alteration”, in relation to an airport, must be read in accordance with section 23(6);

“alteration”, in relation to a highway, includes stopping up the highway or diverting, improving, raising or lowering it;

“appropriate Crown authority” has the meaning given by section 227;

“building” has the meaning given by section 336(1) of TCPA 1990;

“construction”, in relation to so much of a generating station as comprises or is to comprise renewable energy installations, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (c. 20) (see section 104 of that Act) (and related expressions must be read accordingly);

“construction”, in relation to a pipe-line, includes placing (and related expressions must be read accordingly);

“cross-country pipe-line” has the same meaning as in the Pipe-lines Act 1962 (c. 58) (see section 66 of that Act);

“Crown land” has the meaning given by section 227;

“deployable output” means, in relation to a given facility, the annual average volume of water that can be produced per day from that facility under drought conditions, having regard in particular (where applicable) to—

(a) the hydrological yield of the facility;

(b) the quantity of water licensed for abstraction;

(c) the state of the local environment;

(d) the properties of any—

- (i) pumping plant;
- (ii) well;
- (iii) aquifer;
- (iv) raw water main;
- (v) aqueduct;
- (vi) transfer main;
- (vii) output main;

(e) any water treatment processes;

(f) any requirements relating to water quality;

"desalination plant" means a facility for the extraction of mineral components from saline water;

"development" has the meaning given by section 32;

"development consent" has the meaning given by section 31;

[*"drought conditions"* means conditions resulting from a shortage of precipitation that has a 0.5% chance of occurring within a 12 month period;]⁴

"electric line" has the same meaning as in Part 1 of the Electricity Act 1989 (c. 29) (see section 64(1) of that Act);

"extension", in relation to a generating station, has the meaning given by section 36(9) of the Electricity Act 1989 (and *"extend"* must be read accordingly);

"gas" includes natural gas;

"gas reception facility" must be read in accordance with section 19(3);

"gas transporter" has the same meaning as in Part 1 of the Gas Act 1986 (c. 44) (see section 7(1) of that Act);

"generating station" has the same meaning as in Part 1 of the Electricity Act 1989 (see section 64(1) of that Act);

"goods" has the meaning given by section 83(1) of the Railways Act 1993 (c. 43);

"Green Belt land" has the meaning given by section 2(1) of the Green Belt (London and Home Counties) Act 1938 (c. xciii);

"harbour" and *"harbour authority"* have the meanings given by section 57(1) of the Harbours Act 1964 (c. 40);

"highway" has the meaning given by section 328 of the Highways Act 1980 (c. 66);

"highway authority" has the same meaning as in the Highways Act 1980 (c. 66) (see sections 1 to 3 of that Act);

“improvement”, in relation to a highway, has the meaning given by section 329(1) of the Highways Act 1980;

“inland waters” has the same meaning as in the Water Resources Act 1991 (c. 57) (see section 221(1) of that Act);

“land” includes buildings and monuments, and land covered with water, and in relation to Part 7 must be read in accordance with section 159;

“LNG facility” must be read in accordance with section 18(3);

“local planning authority” has the same meaning as in TCPA 1990 (see section 336(1) of that Act);

“monument” has the same meaning as in the Ancient Monuments and Archaeological Areas Act 1979 (c. 46) (see section 61 of that Act);

“nationally significant infrastructure project” has the meaning given by Part 3;

“national policy statement” has the meaning given by section 5(2);

“natural gas” means any gas derived from natural strata (including gas originating outside the United Kingdom);

“navigable watercourse” has the same meaning as in Part 6 of the Highways Act 1980 (see section 111(1) of that Act);

“non-navigable watercourse” means a watercourse that is not a navigable watercourse;

“pipe-line” has the meaning given by section 65 of the Pipe-lines Act 1962 (c. 58);

“planning permission” means permission under Part 3 of TCPA 1990;

“prescribed” means prescribed by regulations made by the Secretary of State (except in relation to matters authorised or required by this Act to be prescribed in another way);

“rail freight interchange” means a facility for the transfer of goods between railway and road, or between railway and another form of transport;

“railway” has the meaning given by section 67(1) of the Transport and Works Act 1992 (c. 42);

“renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (c. 20) (see section 104 of that Act);

“Renewable Energy Zone” has the meaning given by section 84(4) of the Energy Act 2004;

“special road” means a highway which is a special road in accordance with section 16 of the Highways Act 1980 or by virtue of an order granting development consent;

“standard”, in relation to a volume of gas, means the volume of gas at a pressure of 101.325 kiloPascals and a temperature of 273 Kelvin;

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

(a) section 10(1) or 19 of the Highways Act 1980,

(b) an order or direction under section 10 of that Act, or

(c) an order granting development consent,

or under any other enactment;

“underground gas storage facilities” must be read in accordance with section 17(6);

“use” has the meaning given by section 336(1) of TCPA 1990.

(2) A reference in this Act to a right over land includes a reference to a right to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) Subsection (4) applies to the question of which parts of waters up to the seaward limits of the territorial sea—

(a) are adjacent to Wales (and, in consequence, are not adjacent to England), or

(b) are not adjacent to Wales (and, in consequence, are adjacent to England).

(4) The question is to be determined by reference to an order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (c. 32) (apportionment of sea areas) if, or to the extent that, the order or Order in Council is expressed to apply—

(a) by virtue of this subsection, for the purposes of this Act, or

(b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

(5) Subsection (6) applies to the question of which parts of waters up to the seaward limits of the territorial sea—

(a) are adjacent to Scotland (and, in consequence, are not adjacent to England), or

(b) are not adjacent to Scotland (and, in consequence, are adjacent to England).

(6) The question is to be determined by reference to an Order in Council made under section 126(2) of the Scotland Act 1998 (c. 46) if, or to the extent that, the Order in Council is expressed to apply—

(a) by virtue of this subsection, for the purposes of this Act, or

(b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

] ³

[\[Back to Top\]](#)

Scotland

235 Interpretation

(1) In this Act (except in Part 11)—

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“alteration”, in relation to an airport, must be read in accordance with section 23(6);

“alteration”, in relation to a highway, includes stopping up the highway or diverting, improving, raising or lowering it;

“appropriate Crown authority” has the meaning given by section 227;

“building” has the meaning given by section 336(1) of TCPA 1990;

[...] ¹

“construction”, in relation to so much of a generating station as comprises or is to comprise renewable energy installations, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (c. 20) (see section 104 of that Act) (and related expressions must be read accordingly);

“construction”, in relation to a pipe-line, includes placing (and related expressions must be read accordingly);

[...] ²

“cross-country pipe-line” has the same meaning as in the Pipe-lines Act 1962 (c. 58) (see section 66 of that Act);

“Crown land” has the meaning given by section 227;

[...] ²

“development” has the meaning given by section 32;

“development consent” has the meaning given by section 31;

“electric line” has the same meaning as in Part 1 of the Electricity Act 1989 (c. 29) (see section 64(1) of that Act);

“extension”, in relation to a generating station, has the meaning given by section 36(9) of the Electricity Act 1989 (and *“extend”* must be read accordingly);

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“gas transporter” has the same meaning as in Part 1 of the Gas Act 1986 (c. 44) (see section 7(1) of that Act);

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“Green Belt land” has the meaning given by section 2(1) of the Green Belt (London and Home Counties) Act 1938 (c. xciii);

“harbour” and *“harbour authority”* have the meanings given by section 57(1) of the Harbours Act 1964 (c. 40);

“highway” has the meaning given by section 328 of the Highways Act 1980 (c. 66);

“highway authority” has the same meaning as in the Highways Act 1980 (c. 66) (see sections 1 to 3 of that Act);

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“nationally significant infrastructure project” has the meaning given by Part 3;

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“natural gas” means any gas derived from natural strata (including gas originating outside the United Kingdom);

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“Renewable Energy Zone” has the meaning given by section 84(4) of the Energy Act 2004;

“special road” means a highway which is a special road in accordance with section 16 of the Highways Act 1980 or by virtue of an order granting development consent;

“standard”, in relation to a volume of gas, means the volume of gas at a pressure of 101.325 kiloPascals and a temperature of 273 Kelvin;

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

(a) section 10(1) or 19 of the Highways Act 1980,

(b) an order or direction under section 10 of that Act, or

(c) an order granting development consent,

or under any other enactment;

“underground gas storage facilities” must be read in accordance with section 17(6);

“use” has the meaning given by section 336(1) of TCPA 1990.

(2) A reference in this Act to a right over land includes a reference to a right to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) Subsection (4) applies to the question of which parts of waters up to the seaward limits of the territorial sea—

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(4) The question is to be determined by reference to an order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (c. 32) (apportionment of sea areas) if, or to the extent that, the order or Order in Council is expressed to apply—

(a) by virtue of this subsection, for the purposes of this Act, or

(b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

(5) Subsection (6) applies to the question of which parts of waters up to the seaward limits of the territorial sea—

(a) are adjacent to Scotland (and, in consequence, are not adjacent to England), or

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(6) The question is to be determined by reference to an Order in Council made under section 126(2) of the Scotland Act 1998 (c. 46) if, or to the extent that, the Order in Council is expressed to apply—

(a) by virtue of this subsection, for the purposes of this Act, or

(b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

[\[Back to Top\]](#)

Notes

[1.](#) Definitions repealed by Localism Act 2011 c. 20 Sch.25(20) para.1 (April 1, 2012)

[2.](#) Definition repealed by Localism Act 2011 c. 20 Sch.25(20) para.1 (April 1, 2012)

[3.](#) Definitions inserted by Infrastructure Planning (Water Resources) (England) Order 2019/12 art.2(6) (January 9, 2019: insertion has effect subject to transitional and savings provisions specified in SI 2019/12 arts 3-5)

[4.](#) Definition inserted by Infrastructure Planning (Water Resources) (England) Order 2019/12 art.2(6) (January 9, 2019: insertion has effect subject to transitional and savings provisions specified in SI 2019/12 arts 3-5)



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Planning Act 2008 c. 29

**Schedule 5 PROVISION RELATING TO, OR TO MATTERS ANCILLARY TO,
DEVELOPMENT**

Part 1 THE MATTERS

This version in force from: **March 1, 2010 to present**

(version 1 of 1)

1

The acquisition of land, compulsorily or by agreement.

████████████████████

██

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Planning Act 2008 c. 29

**Schedule 5 PROVISION RELATING TO, OR TO MATTERS ANCILLARY TO,
DEVELOPMENT**

Part 1 THE MATTERS

This version in force from: **March 1, 2010** to **present**

(version 1 of 1)

2

The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement.

[REDACTED]

[REDACTED]

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Planning Act 2008 c. 29

**Schedule 5 PROVISION RELATING TO, OR TO MATTERS ANCILLARY TO,
DEVELOPMENT**

Part 1 THE MATTERS

This version in force from: **March 1, 2010 to present**

(version 1 of 1)

23

The specification of the highway authority for a highway.

████████████████████

██

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Planning Act 2008 c. 29

**Schedule 5 PROVISION RELATING TO, OR TO MATTERS ANCILLARY TO,
DEVELOPMENT**

Part 1 THE MATTERS

This version in force from: **March 1, 2010 to present**

(version 1 of 1)

33

The transfer of property, rights, liabilities, or functions.

████████████████████

██

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TRANSPORT AND WORKS ACT 1990

Transport and Works Act 1992 c. 42

Part I ORDERS AUTHORISING WORKS ETC

Power to make orders

This version in force from: **July 2, 2012 to present**

(version 2 of 2)

5.— Subject-matter of orders under sections 1 and 3.

(1) Without prejudice to the generality of sections 1 and 3 above, the matters as to which provision may be made by an order under either of those sections include those set out in Schedule 1 to this Act.

(2) An order under section 1 or 3 above may make provision in relation to more than one scheme, system or mode of transport.

(3) An order under section 1 or 3 above may—

(a) apply, modify or exclude any statutory provision which relates to any matter as to which an order could be made under section 1 or, as the case may be, 3, and

(b) make such amendments, repeals and revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order;

and for the purposes of this subsection "*statutory provision*" means provision of an Act of Parliament or of an instrument made under an Act of Parliament.

(4) The provisions that may be made by an order under section 1 or 3 above include—

(a) any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to—

(i) any other provision of the order,

(ii) any provision of an earlier order under the section concerned, or

(iii) any provision which is contained in an Act of Parliament passed before the time when this Part of this Act is first wholly in force, or in an instrument made under an Act of Parliament before that time, and which is of a kind which could be included in an order under section 1 or 3 above;

(b) such supplemental and transitional provisions as appear to him to be necessary or expedient in connection with the order.

(5) A provision of an order under section 1 or 3 above relating to offences shall not authorise the imposition on persons convicted of an offence of a term of imprisonment or of a fine exceeding level 3 on the standard scale.

(6) An order under section 1 or 3 above shall not extinguish any public right of way over land

Transport and Works Act 1992 c. 42

Schedule 1 MATTERS WITHIN SECTIONS 1 AND 3

This version in force from: **January 1, 1993 to present**

(version 1 of 1)

3.

The acquisition of land, whether compulsorily or by agreement.

[REDACTED]

[REDACTED]

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Transport and Works Act 1992 c. 42

Schedule 1 MATTERS WITHIN SECTIONS 1 AND 3

This version in force from: **January 1, 1993 to present**

(version 1 of 1)

4.

The creation and extinguishment of rights over land (including rights of navigation over water), whether compulsorily or by agreement.

[REDACTED]

[REDACTED]

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HIGHWAYS ACT 1980

Highways Act 1980 c. 66

Part IV MAINTENANCE OF HIGHWAYS

Highways maintainable at public expense

This version in force from: **July 11, 2006 to present**

(version 7 of 7)

36.— Highways maintainable at public expense.

(1) All such highways as immediately before the commencement of this Act were highways maintainable at the public expense for the purposes of the Highways Act 1959 continue to be so maintainable (subject to this section and to any order of a magistrates' court under section 47 below) for the purposes of this Act.

(2) Without prejudice to any other enactment (whether contained in this Act or not) whereby a highway may become for the purposes of this Act a highway maintainable at the public expense, and subject to this section and section 232(7) below, and to any order of a magistrates' court under section 47 below, the following highways (not falling within subsection (1) above) shall for the purposes of this Act be highways maintainable at the public expense—

(a) a highway constructed by a highway authority, otherwise than on behalf of some other person who is not a highway authority;

(b) a highway constructed by a council within their own area under [Part II of the Housing Act 1985]¹, other than one in respect of which the local highway authority are satisfied that it has not been properly constructed, and a highway constructed by a council outside their own area under [the said Part II]¹, being, in the latter case, a highway the liability to maintain which is, by virtue of [the said Part II]¹, vested in the council who are the local highway authority for the area in which the highway is situated;

(c) a highway that is a trunk road or a special road; [...]²

(d) a highway, being a footpath [, bridleway or restricted byway]³, created in consequence of a public path creation order or a public path diversion order or in consequence of an order made by the Minister of Transport or the Secretary of State under [section 247 of the Town and Country Planning Act 1990 or by a competent authority under section 257 of that Act]⁴, or dedicated in pursuance of a public path creation agreement [;]⁵

[

(e) a highway, being a footpath [, bridleway or restricted byway]³, created in consequence of a rail crossing diversion order, or of an order made under section 14 or 16 of the Harbours Act 1964, or of an order made under section 1 or 3 of the Transport and Works Act 1992 [;]⁶

]⁵

[

(f) a highway, being a footpath, a bridleway, a restricted byway or a way over which the

public have a right of way for vehicular and all other kinds of traffic, created in consequence of a special diversion order or an SSSI diversion order.

] ⁶

(3) Paragraph (c) of subsection (2) above is not to be construed as referring to a part of a trunk road or special road consisting of a bridge or other part which a person is liable to maintain under a charter or special enactment, or by reason of tenure, enclosure or prescription.

[

(3A) Paragraph (e) of subsection (2) above shall not apply to a footpath [, bridleway or restricted byway] ³, or to any part of a footpath [, bridleway or restricted byway] ³, which by virtue of an order of a kind referred to in that subsection is maintainable otherwise than at the public expense.

] ⁷

(4) Subject to subsection (5) below, where there occurs any event on the occurrence of which, under any rule of law relating to the duty of maintaining a highway by reason of tenure, enclosure or prescription, a highway would, but for the enactment which abrogated the former rule of law under which a duty of maintaining highways fell on the inhabitants at large (section 38(1) of the Highways Act 1959) or any other enactment, become, or cease to be, maintainable by the inhabitants at large of any area, the highway shall become, or cease to be, a highway which for the purposes of this Act is a highway maintainable at the public expense.

(5) A highway shall not by virtue of subsection (4) above become a highway which for the purposes of this Act is a highway maintainable at the public expense unless either—

(a) it was a highway before 31st August 1835; or

(b) it became a highway after that date and has at some time been maintainable by the inhabitants at large of any area or a highway maintainable at the public expense;

and a highway shall not by virtue of that subsection cease to be a highway maintainable at the public expense if it is a highway which under any rule of law would become a highway maintainable by reason of enclosure but is prevented from becoming such a highway by section 51 below.

(6) The council of every county [, metropolitan district] ⁸ and London borough and the Common Council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.

(7) Every list made under subsection (6) above shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours and in the case of a list made by the council of a county [in England] ⁹, the county council shall supply to the council of each district in the county an up to date list of the streets within the area of the district that are highways maintainable at the public expense, and the list so supplied shall be kept deposited at the office of the district council and may be inspected by any person free of charge at all reasonable hours.

Notes

1. Words substituted by Housing (Consequential Provisions) Act 1985 (c. 71), s. 4, Sch. 2 para. 47
2. Words repealed by Transport and Works Act 1992 c. 42 Sch.4(l) para.1 (January 31, 1993 as SI 1992/3144)
3. Amended by Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006/1177 Sch.1(l) para.1 (July 11, 2006: July 2, 2006 in relation to England; July 11, 2006 otherwise)
4. Words substituted by Housing (Consequential Provisions) Act 1985 (c. 71), s. 4, Sch. 2 para. 45(3)
5. Words repealed by Transport and Works Act 1992 c. 42 Pt III s.64(2) (January 31, 1993)
6. Added by Countryside and Rights of Way Act 2000 c. 37 Sch.6(l) para.5 (July 15, 2005: insertion has effect in relation to Wales for the purposes specified in SI 2005/1314 art.3(a) on July 15, 2005 and is not in force in relation to Wales otherwise)
7. Added by Transport and Works Act 1992 c. 42 Pt III s.64(4) (January 31, 1993)
8. Words inserted by Local Government Act 1985 (c.51), s. 8, Sch. 4 para. 7
9. Words inserted by Local Government (Wales) Act 1994 c. 19 Sch.7(l) para.4 (April 1, 1996)

[REDACTED]

[REDACTED]

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Highways Act 1980 c. 66

Part XII ACQUISITION, VESTING AND TRANSFER OF LAND ETC.

Additional provisions with respect to acquisition of rights over land

This version in force from: **Date not available to present**

(version 1 of 1)

250.— Land acquisition powers to extend to creation as well as acquisition of rights.

(1) A compulsory purchase order made in the exercise of highway land acquisition powers may provide for the acquisition of rights over land by creating them as well as for the acquisition of rights already in existence.

In this Act "*highway land acquisition powers*" means powers in respect of acquisition of land which are exercisable by a highway authority under any of the following provisions of this Act, namely, sections 239, 240, 242 to 246 and 250(2).

(2) Where rights over land are, or are to be, acquired by a highway authority by means of a compulsory purchase order made in the exercise of highway land acquisition powers, and the land forms part of a common, open space or fuel or field garden allotment and other land is required for the purpose of being given in exchange for those rights, the authority may acquire by agreement or compulsorily that other land; and subsections (1) to (3) of section 247 above apply in relation to this subsection as they apply in relation to the provisions there mentioned.

(3) In section 247(1) to (4) above references to acquisition of land include references to compulsory acquisition of rights by virtue of this section.

[

(3A) Schedule 3 to the Acquisition of Land Act 1981 shall apply to the compulsory purchase of a right by virtue of this section.

] ¹

(4) The Acts of [...] ²1965 have effect with the modifications necessary to make them apply to the compulsory acquisition of a right by virtue of this section as they apply to the compulsory acquisition of land, so that, in appropriate contexts, references in those Acts to land are to be read as referring, or as including references, to the right acquired or to be acquired, or to land over which the right is, or is to be, exercisable, according to the requirements of the particular context.

(5) For the purpose of giving effect to this section, and without prejudice to the general adaptation of enactments under subsection (4) above—

[

(a) Part II of Schedule 19 to this Act has effect for the adaptation of Part I of the Act of 1965 to cases of compulsory acquisition of rights; and

] ³

(c) as respects compensation in such cases, the enactments relating to compensation for the compulsory purchase of land apply, with the necessary modifications, as they

apply to compensation on the compulsory purchase of land and interests in land.

(6) References in any enactment or instrument to the acquisition of land, in a context relating to compulsory acquisition under highway land acquisition powers, are to be construed (except in so far as the context otherwise requires) as including references to the compulsory acquisition of a right or rights by virtue of this section.

(7) The provisions of this section are without prejudice to section 242(3) above, sections 254 and 255 below and any other provision of this Act which, by virtue of the definition of “land” in section 329(1) below, authorises the acquisition of interests in or rights over land.

(8) References in this section and in sections 251 and 252 below to rights over land include references to the right to do, or to place and maintain, any thing in, on or under land, or in the air-space above its surface.

[4](#) [5](#) [6](#) [7](#)

Notes

1. S. 250(3A) inserted by Acquisition of Land Act 1981 (c.67), s. 34, Sch. 4 para. 31(6)
2. Words repealed by Acquisition of Land Act 1981 (c.67), s. 34, Sch. 6 Pt. I
3. S. 250(5)(a) substituted for s. 250(a) and (b) by Acquisition of Land Act 1981 (c.67), s. 34, Sch. 4 para. 31(7)
4. Act amended by Town and Country Planning Act 1990 (c.8), s. 54(1) Power to apply Act conferred by Town and Country Planning Act 1990 (c.8), s. 247(3) Power to exclude Act conferred by Town and Country Planning Act 1990 (c.8), s. 61(3)(b) Act modified by Town and Country Planning Act 1990 (c.8), ss. 28, 54, Sch. 2 Pt. I para. 1(2), Pt. III para. 2, Dartford-Thurrock Crossing Act 1988 (c.20), ss. 3, 19, Sch. 3 para. 9, Channel Tunnel Act 1987 (c.53), s. 35, Sch. 4 paras. 7(1), 10(1) Act amended (in part) by Town and Country Planning Act 1990 (c.8), ss. 27, 28 (1)(2) Act extended by Water Act 1989 (c.15), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 1(2)(xxv)(8), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58, Electricity Act 1989 (c.29), ss. 112(1)(3), Sch. 16 para. 2(4)(d)(6)(9), Sch. 17 paras. 33, 35(1), Gas Act 1986 (c.44), s. 67(1)(3), Sch. 7 para. 2(1)(xi), Sch. 8 para. 33 Functions of Minister of Transport, except those exercisable jointly with Secretary of State under ss. 258, 300(2), Sch. 1 paras. 7, 8, 14, 15, 18, 19, 21, now exercisable by Secretary of State: S.I. 1981/238, arts. 2(2), 3(2)(3)
5. Part XII applied by S.I. 1986/564, art. 4(2)(a)
6. S. 250(4) modified by Dartford-Thurrock Crossing Act 1988 (c.20), ss. 2, 19, Sch. 2, Pt. II para. 2(3)(a)
7. S. 250(5) modified by Dartford-Thurrock Crossing Act 1988 (c.20), ss. 2, 19, Sch. 2, Pt. II para. 2(3)(a)

Highways Act 1980 c. 66

Part XII ACQUISITION, VESTING AND TRANSFER OF LAND ETC.

Vesting of highways etc.

This version in force from: **February 12, 2015 to present**

(version 2 of 2)

263.— Vesting of highways maintainable at public expense.

(1) Subject to the provisions of this section, every highway maintainable at the public expense, together with the materials and scrapings of it, vests in the authority who are for the time being the highway authority for the highway.

(2) Subsection (1) above does not apply—

(a) to a highway with respect to the vesting of which, on its becoming or ceasing to be a trunk road, provision is made by section 265 below, or

(b) to a part of a trunk road with respect to the vesting of which provision is made by section 266 below, or

(c) to a part of a special road with respect to the vesting of which provision is made by section 267 below.

(3) Where a scheme submitted to the Minister jointly by two or more [...] ¹ highway authorities under section 16 above determines which of those authorities are to be the special road authority for the special road or any part of it (“the designated authority”) and the designated authority are not the highway authority for the road or that part of it, the road or that part of it vests in the designated authority.

(4) Where—

(a) the responsibility for the maintenance of a bridge or other part of a highway is transferred to a highway authority by means of an order under section 93 above, but the property in it is not so transferred, or

(b) the responsibility for the maintenance of a part of a highway is transferred to a highway authority in pursuance of an agreement made under section 94 above, but the property in that part is not so transferred,

the part of the highway in question does not by virtue of subsection (1) above vest in that highway authority.

(5) Notwithstanding anything in subsection (1) above, any such material as is referred to in that subsection which is removed from a highway by a [non-metropolitan] ²district council in exercise of their powers under section 42, 50 or 230(7) above vests in the district council and not in the highway authority.

Notes

1. Word repealed by Infrastructure Act 2015 c. 7 Sch.1(1) para.51 (February 12, 2015 in so far as it confers power to make regulations; March 5, 2015 otherwise)
2. Words inserted by Local Government Act 1985 (c.51), s. 8, Sch. 4 para. 37

[REDACTED]

[REDACTED]

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Highways Act 1980 c. 66

Part XIV MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Interpretation

This version in force from: **February 12, 2015 to present**

(version 23 of 23)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England](#) | [Wales](#)

England

[

329.— Further provision as to interpretation.

(1) In this Act, except where the context otherwise requires—

“*Act of 1965*” means the Compulsory Purchase Act 1965;

“*adjoining*” includes abutting on, and “*adjoins*” is to be construed accordingly;

“*advance payments code*” has the meaning provided by section 203(1) above;

“*agriculture*” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “*agricultural*” is to be construed accordingly;

“*apparatus*” includes any structure constructed for the lodging therein of apparatus;

“*approach*”, in relation to a bridge or tunnel, means the highway giving access thereto, that is to say, the surface of that highway together with any embankment, retaining wall or other work or substance supporting or protecting the surface;

“*bridge*” does not include a culvert, but, save as aforesaid, means a bridge or viaduct which is part of a highway, and includes the abutments and any other part of a bridge but not the highway carried thereby;

“*bridleway*” means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway;

“*by-pass*” has the meaning provided by section 82(6) above;

“*canal undertakers*” means persons authorised by any enactment to carry on a canal undertaking;

“*carriageway*” means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles;

“*cattle-grid*” has the meaning provided by section 82(6) above;

“*City*” means the City of London;

“classified road” means a highway or proposed highway which is a classified road in accordance with section 12 above;

“Common Council” means the Common Council of the City of London;

“contravention” in relation to a condition, restriction or requirement, includes failure to comply with that condition, restriction or requirement, and *“contravene”* is to be construed accordingly;

“council” means a county council or a local authority;

“cycle track” 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 or without a right of way on foot;

“definitive map and statement” has the same meaning as in Part III of the Wildlife and Countryside Act 1981;

“dock undertakers” means persons authorised by any enactment to carry on a dock undertaking;

[*“drainage authority”* means the Environment Agency, the Natural Resources Body for Wales or an internal drainage board;]⁶

“driver information system” has the same meaning as in Part II of the Road Traffic (Driver Licensing and Information Systems) Act 1989, and references to an “operator” of a driver information system are references to an operator licensed under that Part of that Act;

“enactment” includes an enactment in a local or private Act of Parliament and a provision of an order, scheme, regulations or other instrument made under or confirmed by a public general, local or private Act of Parliament;

“field-edge path” means a footpath or bridleway that follows the sides or headlands of a field or enclosure;

“financial year” means a year ending on 31st March;

“footpath” means a highway over which the public have a right of way on foot only, not being a footway;

“footway” means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only;

“functions” includes powers and duties;

“GLA road” shall be construed in accordance with section 14D(1) above;

“harbour undertakers” means persons authorised by any enactment to carry on a harbour undertaking;

“highway land acquisition powers” has the meaning provided by section 250(1) above;

“highway maintainable at the public expense” means a highway which by virtue of section 36 above or of any other enactment (whether contained in this Act or not) is a highway which for the purposes of this Act is a highway maintainable at the public expense;

“horse” includes pony, ass and mule, and *“horseback”* is to be construed accordingly;

“hours of darkness” means the time between half an hour after sunset and half an hour before sunrise;

“improvement” means the doing of any act under powers conferred by Part V of this Act and includes the erection, maintenance, alteration and removal of traffic signs, and the freeing of a highway or road-ferry from tolls;

“inland navigation undertakers” means persons authorised by any enactment to carry on

an inland navigation undertaking;

“land” includes land covered by water and any interest or right in, over or under land;

“lease” includes an underlease and an agreement for a lease or underlease, but does not include an option to take a lease or mortgage, and *“lessee”* is to be construed accordingly;

“lighting authority” means a council or other body authorised to provide lighting under section 161 of the Public Health Act 1875 or under section 3 of the Parish Councils Act 1957 or any corresponding local enactment;

“local authority” means the council of a district or London borough or the Common Council but, in relation to Wales, means a Welsh council;

“local highway authority” means a highway authority other than the Minister [or a strategic highways company] ¹³ ;

“local planning authority” has the same meaning as in the Town and Country Planning Act 1990;

“lorry area” means an area provided under section 115 above;

“made-up carriageway” means a carriageway, or a part thereof, which has been metalled or in any other way provided with a surface suitable for the passage of vehicles;

“maintenance” includes repair, and *“maintain”* and *“maintainable”* are to be construed accordingly;

“maintenance compound” means an area of land (with or without buildings) used or to be used in connection with the maintenance of highways, or a particular highway;

“the Minister”, subject to subsection (5) below, means as respects England, the Minister of Transport and as respects Wales, the Secretary of State; and in section 258 of, and paragraphs 7, 8(1) and (3), 14, 15(1) and (3), 18(2), 19 and 21 of Schedule 1 to, this Act, references to the Minister and the Secretary of State acting jointly are to be construed, as respects Wales, as references to the Secretary of State acting alone;

“navigation authority” means persons authorised by any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

“owner”, in relation to any premises, means a person, other than a mortgagee not in possession, who, whether in his own right or as trustee or agent for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if the premises were so let;

“pier undertakers” means persons authorised by any enactment to carry on a pier undertaking;

“premises” includes land and buildings;

“private street works code” has the meaning provided by section 203(1) above;

“proposed highway” means land on which, in accordance with plans made by a highway authority, that authority are for the time being constructing or intending to construct a highway shown in the plans;

“proprietor”, in relation to a school, has the same meaning as in the Education Act 1996;

“public general enactment” means an enactment in an Act treated as a public general Act under the system of division of Acts adopted in the regnal year 38 George 3, other than an Act for confirming a provisional order;

“public path creation agreement” means an agreement under section 25 above;

“public path creation order” means an order under section 26 above;

“public path diversion order” means an order under section 119 above;

“*public path extinguishment order*” means an order under section 118 above;

“*public utility undertakers*” means persons authorised by any enactment to carry on any of the following undertakings, that is to say, an undertaking for the supply of gas, or hydraulic power;

“*rack rent*”, in relation to any premises, means a rent which is not less than two-thirds of the rent at which the premises might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses (if any) necessary to maintain the same in a state to command such rent;

“*rail crossing diversion order*” means an order under section 119A above;

“*rail crossing extinguishment order*” means an order under section 118A above;

“*railway*” includes a light railway;

“*railway undertakers*” means persons authorised by any enactment to carry on a railway undertaking;

“*reconstruction*”, in relation to a bridge, includes the construction of a new bridge and approaches thereto in substitution for the existing bridge and the approaches thereto;

[“*restricted byway*” has the same meaning as in Part II of the Countryside and Rights of Way Act 2000;]⁵⁴

“*road-ferry*” means a ferry connecting the termination of a highway which is, or is to become, a highway maintainable at the public expense with the termination of another highway which is, or is to become, such a highway;

“*road hump*” has the meaning provided by section 90F(1);

“*school*” has the same meaning as in the Education Act 1996;

“*service area*” means an area of land adjoining, or in the vicinity of, a special road, being an area in which there are, or are to be, provided service stations or other buildings or facilities to be used in connection with the use of the special road;

“*special diversion order*” means an order under section 119B(4) above;

“*special enactment*” means any enactment other than a public general enactment;

“*special extinguishment order*” means an order under section 118B(4) above;

“*special road*” means a highway, or a proposed highway, which is a special road in accordance with section 16 above [or by virtue of an order granting development consent under the Planning Act 2008]²⁵ ;

“*special road authority*” has the meaning provided by section 16(4) above;

“*SSSI diversion order*” means an order under section 119D above;

“*statutory undertakers*” means persons authorised by any enactment to carry on any of the following undertakings:—

(a) a railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or

(b) an undertaking for the supply of hydraulic power,

and “*statutory undertaking*” is to be construed accordingly;

[“*strategic highways company*” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015;]²⁸

“*street*” has the same meaning as in Part III of the New Roads and Street Works Act 1991;

“*street works licence*” means a licence under section 50 of the New Roads and Street Works Act 1991, and “*licensee*” in relation to such a licence, has the meaning given by subsection (3) of that section;

“*swing bridge*” includes any opening bridge operated by mechanical means;

“*traffic*” includes pedestrians and animals;

[“*traffic calming works*”, in relation to a highway, means works affecting the movement of vehicular or other traffic for the purpose of—

(a) promoting safety (including avoiding or reducing, or reducing the likelihood of, danger connected with terrorism within the meaning of section 1 of the Terrorism Act 2000 (c. 11)), or

(b) preserving or improving the environment through which the highway runs;

] ³¹

“*traffic sign*” has the same meaning as in section 64 of the Road Traffic Regulation Act 1984;

“*tramway undertakers*” means persons authorised by any enactment to carry on a tramway undertaking;

“*transport undertakers*” means persons authorised by any enactment to carry on any of the following undertakings, that is to say, a railway, canal, inland navigation, dock, harbour or pier undertaking, and “*transport undertaking*” is to be construed accordingly;

“*trunk road*” means a highway, or a proposed highway, which is a trunk road by virtue of section 10(1) or section 19 above or by virtue of an order or direction under section 10 above [or an order granting development consent under the Planning Act 2008,] ³³ or under any other enactment;

“*trunk road picnic area*” has the meaning provided by section 112(1) above;

“*universal service provider*” has the same meaning as in [Part 3 of the Postal Services Act 2011] ³⁵ ; and references to the provision of a universal postal service shall be construed in accordance with [that Part] ³⁶;

[“*water undertakers*” means the Environment Agency, the Natural Resources Body for Wales or a water undertaker;] ³⁷

“*Welsh council*” means the council of a Welsh county or county borough.

(2) A highway at the side of a river, canal or other inland navigation is not excluded from the definition in subsection (1) above of [“*bridleway*”, “*footpath*” or “*restricted byway*”] ⁵⁴ , by reason only that the public have a right to use the highway for the purposes of navigation, if the highway would fall within that definition if the public had no such right thereover.

(2A) In this Act—

(a) any reference to a county shall be construed in relation to Wales as including a reference to a county borough;

(b) any reference to a county council shall be construed in relation to Wales as including a reference to a county borough council; and

(c) section 17(4) and (5) of the Local Government (Wales) Act 1994 (references to counties and districts to be construed generally in relation to Wales as references to counties and county boroughs) shall not apply.

(3) In a case where two or more parishes are grouped under a common parish council, references in this Act to a parish are to be construed as references to those parishes.

(3A) In a case where two or more communities are grouped under a common community council, references in this Act to a community are to be construed as references to those communities.

(4) Any reference in this Act to property of railway undertakers, canal undertakers, inland navigation undertakers, dock undertakers, harbour undertakers pier undertakers is, where the undertakers are a body to which this subsection applies, to be taken as a reference to property of that body held or used by them wholly or mainly for the purposes of so much of their undertaking as consists of the carrying on of a railway undertaking or, as the case may be, of a canal undertaking, an inland navigation undertaking, a dock undertaking, a harbour undertaking or a pier undertaking.

This subsection applies to the following bodies, namely, the British Railways Board, the British Transport Docks Board, [Canal & River Trust]⁴², [Transport for London]⁴³, any wholly-owned subsidiary (within the meaning of the Transport Act 1968) or joint subsidiary (within the meaning of section 51(5) of that Act) of any of those bodies [other than Transport for London, or any of its subsidiaries (within the meaning of the Greater London Authority Act 1999)]⁴⁶.

(4A) Any reference in this Act to apparatus belonging to, or used or maintained by the operator of [an electronic communications code network]⁴⁸ shall have effect as a reference to [electronic communications apparatus]⁴⁹ kept installed for the purposes of that [network]⁵⁰.

(5) In relation to that part of the road constructed by the Minister of Transport along the line described in Schedule 1 to the North of Almondsbury—South of Haysgate Trunk Road Order 1947 and referred to in that Order as “the new road” which lies to the east of the most easterly point before reaching the River Wye at which eastbound traffic of Classes I and II (as specified in Schedule 4 to this Act) can leave that road by another special road, the functions of the Minister under this Act shall be exercisable by the Secretary of State for Transport.

[

(6) Subsection (5) is subject to the specification of those roads as ones for which a strategic highways company is highway authority under Part 1 of the Infrastructure Act 2015.

] ⁵²

] ⁵³

[\[Back to Top\]](#)

Wales

329.— Further provision as to interpretation.

(1) In this Act, except where the context otherwise requires—

[...] ¹

“Act of 1965” means the Compulsory Purchase Act 1965;

“adjoining” includes abutting on, and “adjoins” is to be construed accordingly;

“advance payments code” has the meaning provided by section 203(1) above;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” is to be construed accordingly;

“apparatus” includes any structure constructed for the lodging therein of apparatus;

“approach”, in relation to a bridge or tunnel, means the highway giving access thereto, that is to say, the surface of that highway together with any embankment, retaining wall or other work or substance supporting or protecting the surface;

“bridge” does not include a culvert, but, save as aforesaid, means a bridge or viaduct which is part of a highway, and includes the abutments and any other part of a bridge but not the highway carried thereby;

“bridleway” means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway;

“by-pass” has the meaning provided by section 82(6) above;

“canal undertakers” means persons authorised by any enactment to carry on a canal undertaking;

“carriageway” means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles;

“cattle-grid” has the meaning provided by section 82(6) above;

“City” means the City of London;

“classified road” means a highway or proposed highway which is a classified road in accordance with section 12 above;

“Common Council” means the Common Council of the City of London;

“contravention” in relation to a condition, restriction or requirement, includes failure to comply with that condition, restriction or requirement, and “contravene” is to be construed accordingly;

“council” means a county council² or a local authority;

“cycle track” 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] ⁴)] ³ with or without a right of way on foot;

[“definitive map and statement” has the same meaning as in Part III of the Wildlife and Countryside Act 1981;]⁵

“dock undertakers” means persons authorised by any enactment to carry on a dock undertaking;

[“drainage authority” means the Environment Agency, the Natural Resources Body for Wales or an internal drainage board;]⁶

[“driver information system” has the same meaning as in Part II of the Road Traffic (Driver Licensing and Information Systems) Act 1989, and references to an “operator” of a driver

information system are references to an operator licensed under that Part of that Act;]⁷

[...]⁸

“enactment” includes an enactment in a local or private Act of Parliament and a provision of an order, scheme, regulations or other instrument made under or confirmed by a public general, local or private Act of Parliament;

[*“field-edge path”* means a footpath or bridleway that follows the sides or headlands of a field or enclosure;]⁹

“financial year” means a year ending on 31st March;

“footpath” means a highway over which the public have a right of way on foot only, not being a footway;

“footway” means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only;

“functions” includes powers and duties;

[...]¹⁰

[*“GLA road”* shall be construed in accordance with section 14D(1) above;]¹¹

“harbour undertakers” means persons authorised by any enactment to carry on a harbour undertaking;

“highway land acquisition powers” has the meaning provided by section 250(1) above;

“highway maintainable at the public expense” means a highway which by virtue of section 36 above or of any other enactment (whether contained in this Act or not) is a highway which for the purposes of this Act is a highway maintainable at the public expense;

“horse” includes pony, ass and mule, and *“horseback”* is to be construed accordingly;

“hours of darkness” means the time between half an hour after sunset and half an hour before sunrise;

“improvement” means the doing of any act under powers conferred by Part V of this Act and includes the erection, maintenance, alteration and removal of traffic signs, and the freeing of a highway or road-ferry from tolls;

“inland navigation undertakers” means persons authorised by any enactment to carry on an inland navigation undertaking;

“land” includes land covered by water and any interest or right in, over or under land;

“lease” includes an underlease and an agreement for a lease or underlease, but does not include an option to take a lease or mortgage, and *“lessee”* is to be construed accordingly;

“lighting authority” means a council or other body authorised to provide lighting under section 161 of the Public Health Act 1875 or under section 3 of the Parish Councils Act 1957 or any corresponding local enactment;

“local authority” means the council of a district or London borough or the Common Council [but, in relation to Wales, means a Welsh council] ¹² ;

“local highway authority” means a highway authority other than the Minister [or a strategic highways company] ¹³ ;

“local planning authority” has the same meaning as in [the Town and Country Planning Act 1990] ¹⁴;

“lorry area” means an area provided under section 115 above;

“made-up carriageway” means a carriageway, or a part thereof, which has been metalled or in any other way provided with a surface suitable for the passage of vehicles;

“maintenance” includes repair, and *“maintain”* and *“maintainable”* are to be construed accordingly;

“maintenance compound” means an area of land (with or without buildings) used or to be used in connection with the maintenance of highways, or a particular highway;

[...] ¹⁵

“the Minister”, subject to subsection (5) below, means as respects England, the Minister of Transport and as respects Wales, the Secretary of State; and in section 258 of, and paragraphs 7, 8(1) and (3), 14, 15(1) and (3), 18(2), 19 and 21 of Schedule 1 to, this Act, references to the Minister and the Secretary of State acting jointly are to be construed, as respects Wales, as references to the Secretary of State acting alone;

“navigation authority” means persons authorised by any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

“owner”, in relation to any premises, means a person, other than a mortgagee not in possession, who, whether in his own right or as trustee or agent for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if the premises were so let;

[...] ¹⁶

“pier undertakers” means persons authorised by any enactment to carry on a pier undertaking;

“premises” includes land and buildings;

“private street works code” has the meaning provided by section 203(1) above;

“proposed highway” means land on which, in accordance with plans made by a highway authority, that authority are for the time being constructing or intending to construct a highway shown in the plans;

[*“proprietor”*, in relation to a school, has the same meaning as in the Education Act 1996;] ⁵

“public general enactment” means an enactment in an Act treated as a public general Act under the system of division of Acts adopted in the regnal year 38 George 3, other than an Act for confirming a provisional order;

“public path creation agreement” means an agreement under section 25 above;

“public path creation order” means an order under section 26 above;

“public path diversion order” means an order under section 119 above;

“public path extinguishment order” means an order under section 118 above;

“public utility undertakers” means persons authorised by any enactment to carry on any of the following undertakings, that is to say, an undertaking for the supply of [...] ¹⁷ gas, [...] ¹⁸ or hydraulic power;

“rack rent”, in relation to any premises, means a rent which is not less than two-thirds of the rent at which the premises might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes [...] ¹⁹, and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses (if any) necessary to maintain the same in a state to command such rent;

[*“rail crossing diversion order”* means an order under section 119A above; *“rail crossing*

extinguishment order” means an order under section 118A above;]²⁰

“railway” includes a light railway;

“railway undertakers” means persons authorised by any enactment to carry on a railway undertaking;

“reconstruction”, in relation to a bridge, includes the construction of a new bridge and approaches thereto in substitution for the existing bridge and the approaches thereto;

[*“restricted byway”* has the same meaning as in Part II of the Countryside and Rights of Way Act 2000;]²¹

“road-ferry” means a ferry connecting the termination of a highway which is, or is to become, a highway maintainable at the public expense with the termination of another highway which is, or is to become, such a highway;

[*“road hump”* has the meaning provided by section 90F(1);]²²

[*“school”* has the same meaning as in the Education Act 1996;]⁵

“service area” means an area of land adjoining, or in the vicinity of, a special road, being an area in which there are, or are to be, provided service stations or other buildings or facilities to be used in connection with the use of the special road;

[...]²³

[*“special diversion order”* means an order under section 119B(4) above;]²⁴

“special enactment” means any enactment other than a public general enactment;

“special road” means a highway, or a proposed highway, which is a special road in accordance with section 16 above [or by virtue of an order granting development consent under the Planning Act 2008]²⁵ ;

“special road authority” has the meaning provided by section 16(4) above;

[*“SSSI diversion order”* means an order under section 119D above;]²⁴

“statutory undertakers” means persons authorised by any enactment to carry on any of the following undertakings:—

(a) a railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or

(b) an undertaking for the supply of [...] ¹⁷[...] ²⁶[...] ²⁷hydraulic power,

and *“statutory undertaking”* is to be construed accordingly;

[*“strategic highways company”* means a company for the time being appointed under Part 1 of the Infrastructure Act 2015;]²⁸

[*“street”* has the same meaning as in Part III of the New Roads and Street Works Act 1991;]²⁹

[*“street works licence”* means a licence under section 50 of the New Roads and Street Works Act 1991, and *“licensee”* in relation to such a licence, has the meaning given by subsection (3) of that section;]³⁰

“swing bridge” includes any opening bridge operated by mechanical means;

“traffic” includes pedestrians and animals;

[“*traffic calming works*”, in relation to a highway, means works affecting the movement of vehicular or other traffic for the purpose of—

(a) promoting safety (including avoiding or reducing, or reducing the likelihood of, danger connected with terrorism within the meaning of section 1 of the Terrorism Act 2000 (c. 11)), or

(b) preserving or improving the environment through which the highway runs;

] ³¹

“*traffic sign*” has the same meaning as in [section 64 of the Road Traffic Regulation Act 1984] ³²;

“*tramway undertakers*” means persons authorised by any enactment to carry on a tramway undertaking;

“*transport undertakers*” means persons authorised by any enactment to carry on any of the following undertakings, that is to say, a railway, canal, inland navigation, dock, harbour or pier undertaking, and “*transport undertaking*” is to be construed accordingly;

“*trunk road*” means a highway, or a proposed highway, which is a trunk road by virtue of section 10(1) or section 19 above or by virtue of an order or direction under section 10 above [or an order granting development consent under the Planning Act 2008,] ³³ or under any other enactment;

“*trunk road picnic area*” has the meaning provided by section 112(1) above;

[“*universal service provider*” has the same meaning as in [Part 3 of the Postal Services Act 2011] ³⁵ ; and references to the provision of a universal postal service shall be construed in accordance with [that Part] ³⁶ ,] ³⁴

[“*water undertakers*” means the Environment Agency, the Natural Resources Body for Wales or a water undertaker;] ³⁷

[“*Welsh council*” means the council of a Welsh county or county borough.] ³⁸

(2) A highway at the side of a river, canal or other inland navigation is not excluded from the definition in subsection (1) above of [“*bridleway*”, “*footpath*” or “*restricted byway*”] ²¹ , by reason only that the public have a right to use the highway for the purposes of navigation, if the highway would fall within that definition if the public had no such right thereover.

[

(2A) In this Act—

(a) any reference to a county shall be construed in relation to Wales as including a reference to a county borough;

(b) any reference to a county council shall be construed in relation to Wales as including a reference to a county borough council; and

(c) section 17(4) and (5) of the Local Government (Wales) Act 1994 (references to counties and districts to be construed generally in relation to Wales as references to counties and county boroughs) shall not apply.

] ³⁹

(3) In a case where two or more parishes are grouped under a common parish council, references in this Act to a parish are to be construed as references to those parishes.

[

(3A) In a case where two or more communities are grouped under a common community council, references in this Act to a community are to be construed as references to those communities.

] ⁴⁰

(4) Any reference in this Act to property of railway undertakers, canal undertakers, inland navigation undertakers, dock undertakers, harbour undertakers [...] ⁴¹ pier undertakers is, where the undertakers are a body to which this subsection applies, to be taken as a reference to property of that body held or used by them wholly or mainly for the purposes of so much of their undertaking as consists of the carrying on of a railway undertaking or, as the case may be, of a canal undertaking, an inland navigation undertaking, a dock undertaking, a harbour undertaking or a pier undertaking.

This subsection applies to the following bodies, namely, the British Railways Board, the British Transport Docks Board, [Canal & River Trust] ⁴², [Transport for London] ⁴³, [...] ⁴⁴ [...] ⁴⁵ any wholly-owned subsidiary (within the meaning of the Transport Act 1968) or joint subsidiary (within the meaning of section 51(5) of that Act) of any of those bodies [other than Transport for London, or any of its subsidiaries (within the meaning of the Greater London Authority Act 1999)] ⁴⁶.

[

(4A) Any reference in this Act to apparatus belonging to, or used or maintained by the operator of [an electronic communications code network] ⁴⁶ shall have effect as a reference to [electronic communications apparatus] ⁴⁹ kept installed for the purposes of that [network] ⁵⁰.

] ⁴⁷

(5) In relation to that part of the road constructed by the Minister of Transport along the line described in Schedule 1 to the North of Almondsbury—South of Haysgate Trunk Road Order 1947 and referred to in that Order as “the new road” which lies to the east of the most easterly point before reaching the River Wye at which eastbound traffic of Classes I and II (as specified in Schedule 4 to this Act) can leave that road by another special road, the functions of the Minister under this Act shall be exercisable [by the Secretary of State for Transport] ⁵¹.

[

(6) Subsection (5) is subject to the specification of those roads as ones for which a strategic highways company is highway authority under Part 1 of the Infrastructure Act 2015.

] ⁵²

[\[Back to Top\]](#)

Notes

1. Definition of the “Act of 1946” repealed by Acquisition of Land Act 1981 (c.67), s. 34, Sch. 6 Pt. I
2. Words repealed by Local Government Act 1985 (c.51), s. 102, Sch. 17

3. Words inserted by Cycle Tracks Act 1984 (c.38), s. 1(1)(2)
4. Words substituted by Road Traffic (Consequential Provisions) Act 1988 (c.54), s. 4, Sch. 3 para. 21(2)
5. Amended by Countryside and Rights of Way Act 2000 c. 37 Sch.6(I) para.20 (May 31, 2005 as SI 2005/1314)
6. Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.167 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
7. Definition inserted by Road Traffic (Driver Licensing and Information Systems) Act 1989 (c.22), s. 13(1), Sch. 4 para 3(13)
8. Definition of "electricity undertakers"; repealed by Electricity Act 1989 (c.29), s. 112(3), (4), Sch. 17 para. 35(1), Sch. 18
9. Definition inserted by Rights of Way Act 1990 (c.24), s. 2
10. Definition of "gas undertakers"; repealed by Gas Act 1986 (c.44), s. 67(4) Sch. 9 Pt. I
11. Definition added by Greater London Authority Act 1999 c. 29 Pt IV c.XIII s.263(6) (July 3, 2000 as SI 2000/801)
12. Words inserted by Local Government (Wales) Act 1994 c. 19 Sch.7(I) para.27(2)(a) (April 1, 1996)
13. Words inserted by Infrastructure Act 2015 c. 7 Sch.1(1) para.60(2)(a) (February 12, 2015 in so far as it confers power to make regulations; March 5, 2015 otherwise)
14. Words substituted by Planning (Consequential Provisions) Act 1990 (c.11), s. 4, Sch. 2 para. 45(17)
15. Definition of "metropolitan road"; repealed by Local Government Act 1985 (c.51), s. 102, Sch. 17
16. Definition repealed by Access to Justice Act 1999 c. 22 Sch.15(V)(1) para.1 (September 27, 1999 except for repeals specified in 1999 c.22 s.108(4); not yet in force otherwise)
17. Word repealed by Electricity Act 1989 (c.29), s. 112(3), (4), Sch. 17 para. 35(1), Sch. 18
18. Word repealed by Water Act 1989 (c. 15), ss. 58(7), 101(1), 141(6), 160(1), (2), (4), 163, 189(4)‐(10), 190, 193(1), Sch. 26 paras. 3(1), (2), 17, 40(4), 41(1), 57(6), 58, Sch. 27 Pt. I
19. Words repealed by Statute Law (Repeals) Act 1993 c. 50 Sch.1(XIV) para.1 (November 5, 1993)
20. Definitions inserted by Transport and Works Act 1992 c. 42 Sch.2 para.9 (December 22, 1992 for the purpose of making regulations; January 31, 1993 otherwise)
21. Amended by Countryside and Rights of Way Act 2000 c. 37 Sch.5(II) para.16 (May 11, 2006 as SI 2006/1279)
22. Definition inserted by Transport Act 1981 (c.56), s. 32, Sch. 10 Pt. I para. 3
23. Definition of "sewerage authority"; repealed by Water Act 1989 (c.15), ss. 58(7), 101(1), 141(6), 160(1), (2), (4), 163, 189(4)‐(10), 190, 193(1), Sch. 26 paras. 3(1), (2), 17, 40(4), 41(1), 57(6), 58, Sch. 27, Pt. I
24. Amended by Countryside and Rights of Way Act 2000 c. 37 Sch.6(I) para.20 (July 15, 2005: amendment has effect on July 15, 2005 for purposes specified in SI 2005/1314 art.3(d))
25. Words inserted by Planning Act 2008 c. 29 Sch.2 para.29(2) (March 1, 2010)
26. Word repealed by Gas Act 1986 (c.44), s. 67(4), Sch. 9 Pt. I
27. Word repealed by Water Act 1989 (c. 15), ss. 58(7), 101(1), 141(6), 160(1), (2), (4), 163, 189(4)‐(10), 190, 193(1), Sch. 26 paras.

3(1)(2), 17, 40(4), 41(1), 57(6), 58, Sch. 27 Pt. I

- [28](#) . Definition inserted by Infrastructure Act 2015 c. 7 Sch.1(1) para.60(2)(b) (February 12, 2015 in so far as it confers power to make regulations; March 5, 2015 otherwise)
- [29](#) . Definition substituted by New Roads and Street Works Act 1991 c. 22 Sch.8(l) para.15(2) (January 1, 1993: represents law in force as at date shown)
- [30](#) . Definition inserted by New Roads and Street Works Act 1991 c. 22 Sch.8(l) para.15(3) (January 1, 1993: represents law in force as at date shown)
- [31](#) . Definition substituted by Civil Contingencies Act 2004 c. 36 Sch.2(3) para.15(2) (January 19, 2005)
- [32](#) . Words substituted by Road Traffic Regulation Act 1984 (c.27), s. 146, Sch. 13 para. 47
- [33](#) . Words inserted by Planning Act 2008 c. 29 Sch.2 para.29(3) (March 1, 2010)
- [34](#) . Definition inserted by Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001/1149 Sch.1(1) para.49(10) (March 26, 2001)
- [35](#) . Words substituted by Postal Services Act 2011 c. 5 Sch.12(3) para.104(a) (October 1, 2011)
- [36](#) . Words substituted by Postal Services Act 2011 c. 5 Sch.12(3) para.104(b) (October 1, 2011)
- [37](#) . Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.167 (April 1, 2013: substitution has effect subject to transitional provisions specified in SI 2013/755 Sch.7)
- [38](#) . Definition inserted by Local Government (Wales) Act 1994 c. 19 Sch.7(l) para.27(2)(b) (April 1, 1996)
- [39](#) . Added by Local Government (Wales) Act 1994 c. 19 Sch.7(l) para.27(3) (April 1, 1996)
- [40](#) . Added by Local Government (Wales) Act 1994 c. 19 Sch.7(l) para.27(4) (October 1, 1995)
- [41](#) . Word repealed by London Regional Transport Act 1984 (c.32), s. 71(3)(b), Sch. 7
- [42](#) . Words substituted by British Waterways Board (Transfer of Functions) Order 2012/1659 Sch.3(1) para.6(5) (July 2, 2012 subject to transitional provisions and savings specified in SI 2012/1659 arts 5 and 6)
- [43](#) . Words substituted by Transport for London (Consequential Provisions) Order 2003/1615 Sch.1(1) para.7(7)(a) (July 15, 2003)
- [44](#) . Words repealed by Statute Law (Repeals) Act 1989 (c.43), s. 1(1), Sch. 1 Pt. X
- [45](#) . Words repealed by London Regional Transport Act 1984 (c.32), s. 71(3)(a), Sch. 6 para. 21(b)
- [46](#) . Words substituted by Transport for London (Consequential Provisions) Order 2003/1615 Sch.1(1) para.7(7)(b) (July 15, 2003)
- [47](#) . S. 329(4A) inserted by Telecommunications Act 1984 (c.12), s. 109, Sch. 4 para. 76(13), Sch. 5 para. 45
- [48](#) . Words substituted by Communications Act 2003 c. 21 Sch.17 para.56(2)(a) (July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2))
- [49](#) . Words substituted by Communications Act 2003 c. 21 Sch.17 para.56(2)(c) (July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2))
- [50](#) . Word substituted by Communications Act 2003 c. 21 Sch.17 para.56(2)(e) (July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI

2003/3142 art.3(2))

[51](#) . Words substituted by S.I. 1981/238, art. 3(1)

[52](#) . Added by Infrastructure Act 2015 c. 7 Sch.1(1) para.60(3) (February 12, 2015 in so far as it confers power to make regulations; March 5, 2015 otherwise)

[53](#) . Amended by Countryside and Rights of Way Act 2000 c. 37 Sch.6(I) para.20 (February 12, 2003 as SI 2003/272)

[54](#) . Amended by Countryside and Rights of Way Act 2000 c. 37 Sch.5(II) para.16 (May 2, 2006 as SI 2006/1172)

[REDACTED]

[REDACTED]

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Appendix 2: Case Law References

Copies of the cases referred to in this submission are provided in this Appendix at the request of the Examining Authority for use by the Examining Authority only as they are subject to copyright:

1. Great Western Railway Company v The Swindon and Cheltenham Extension Railway Company (1884) 9 App. Cas. 787
2. Vauxhall Estates Ltd v Liverpool Corporation [1932] 1 KB 733
3. West Ham (Churchwardens etc) v Fourth City Mutual Building Society [1892] 1 QB 654
4. Thoburn v Sunderland City Council [2002] EWHC 195 (Admin)
5. R [on the application of Brynmawr Foundation School Governors] v Welsh Ministers [2011] EWHC 519 (Admin)
6. R (Buckinghamshire County Council) v Transport Secretary [2014] 1W.L.R. 324
7. Austin's case (1672) 1 Vent 189
8. Dawes v Hawkins 1860 29 LJ CP 343
9. Goodtitle Chester v Alker & Eames 1757 1 Burr 133
10. Harrison v Rutland (Duke) [1893] 1 QB 142 at 154
11. Dovaston v Payne 1795 2 H Bl 527
12. St Mary, Newington, Vestry v Jacobs 1871 LR QB 53
13. Coverdale v Charlton 1878 4 QBD 104
14. Tunbridge Wells Corporation v Baird (1896) AC 434
15. Southwark LBC v TfL [2018] UKSC 63
16. Schweder v Worthing Gas Light and Coke Company (no2) (1913) 1 Ch 118
17. R v Lyon 1825 Dow & Ry KV 497 (see (1824) Ryan & Moody 151)
18. Buckland v Secretary of State for the Environment [2000] 1 WLR 1949
19. R v French (1879) 4 QBD 507
20. Tithe Redemption Commissioners v Runcorn UDC 1954 2 WLR 518
21. Wiltshire County Council v Frazer 1984 82 LGR 31

Appendix 3: Other Documents

Council Of The County Of Somerset (Taunton Northern Inner Distributor Road A3087) Compulsory Purchase Order 2011

Council Of The County Of Somerset (Taunton Northern Inner Distributor Road A3087) Compulsory Purchase Order 2011 Plan

THE COUNTY OF SOMERSET (TAUNTON NORTHERN INNER DISTRIBUTOR ROAD) COMPULSORY PURCHASE ORDER 2011

The Highways Act 1980

And the Acquisition of Land Act 1981

The Council of the County of Somerset (in this order called "the acquiring authority") makes the following Order:-

1. Subject to the provisions of this Order, the acquiring authority is under sections 239, 240, 246 and 250 of the Highways Act 1980 hereby authorised to purchase compulsorily the land and the new rights over land described in paragraph 2.

2. 2.1 The land and new rights authorised to be purchased compulsorily under this order for the following purposes:

(1) The construction of a highway from a point on the east side of Staplegrove Road railway bridge running parallel to the railway to Station Approach to a point of 1150 metres to the east, which will include the replacement of the footbridge over the railway at Chip Lane (known as Chip Lane Footbridge) and the replacement of the former railway bridge to allow the highway to cross over Station Road (known as Kingston Loop Bridge) and;

from a point on the eastern end of Station Approach in an easterly direction through the former East Goods Yard (already built) before turning south to cross the River Tone and the Taunton and Bridgwater Canal via a new flyover bridge known as Firepool Bridge, terminating at the junction of Priory Bridge Road, Priory Avenue and Priory Park, a total distance of 700 metres;

(2) The improvement and re-alignment of Staplegrove Road (part), Chip Lane (part) and Station Approach (part);

(3) The improvement of the junctions of Higher Palmerston Road and Chip Lane with Staplegrove Road and Priory Avenue and Priory Park with Priory Bridge Road;

(4) The construction of other highways, improvement of existing highways and the provision of new means of access to premises in the vicinity of the route of the above-mentioned highway in pursuance of The Council of the County of Somerset (Taunton Northern Inner Distributor Road A3087) (Side Roads and other Works) Order 2011;

- (5) Mitigating the adverse effects which the existence or use of the highways proposed to be constructed or improved as aforesaid will have on the surrounding thereof;
- (6) The use by the acquiring authority in connection with the construction and improvement of highways as aforesaid; and
- ~~(7) The giving in exchange for land forming part of an Open Space.~~

are the land described in Schedule 1 and which is delineated and shown coloured pink on the map herein after mentioned and the new rights which are specified in the said schedule over the land which is described therein and is delineated and shown coloured blue on the said map.

MRE

MRE



- 2.2 The land authorised to be purchased compulsorily under this Order for the purpose of giving in ~~part~~ exchange for the land numbered as plot 31 in Schedule 1, is the land described in Schedule 2 and delineated and shown coloured green on the said map.
- 2.3 The map aforesaid is a map consisting of 2 sheets numbered 1 of 2 and 2 of 2 respectively, prepared in duplicate, sealed with the common seal of the acquiring authority and marked "Map referred to in the County of Somerset (Taunton Northern Inner Distributor Road) Compulsory Purchase Order 2011"
3. Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 are hereby incorporated with this Order subject to the modifications that references in the said Parts II and III to the undertaking shall be construed as references to any building or works constructed or to be constructed on the land hereby authorised to be purchased.
4.
 - (1) In this paragraph "the order land" means the land numbered as plot 31 in Schedule 1 and the "exchange land" means the land described in Schedule 2.
 - (2) As from the latest of the dates mentioned in sub-paragraph (3) of this paragraph, the exchange land shall vest in the persons in whom the order land was vested immediately before it was vested in the acquiring authority, subject to the like rights, trusts and incidents as attached to the order land; and the order land shall thereupon be discharged from all rights, trusts and incidents to which it was previously subject.
 - (3) The dates referred to in sub-paragraph (2) of this paragraph are:
 - (i) the date on which this Order becomes operative;
 - (ii) the date on which the plot of the order land is vested in the acquiring authority;
 - (iii) the date on which the corresponding plot of the exchange land is vested in the acquiring authority.


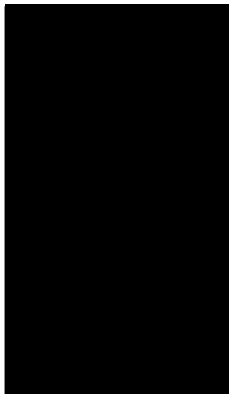
SCHEDULE 1

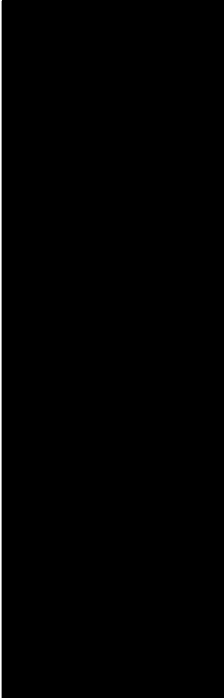
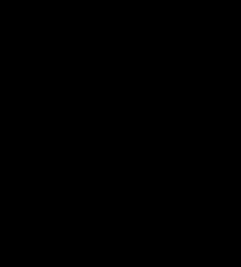

LAND TO BE PURCHASED (EXCEPT EXCHANGE LAND) AND NEW RIGHTS

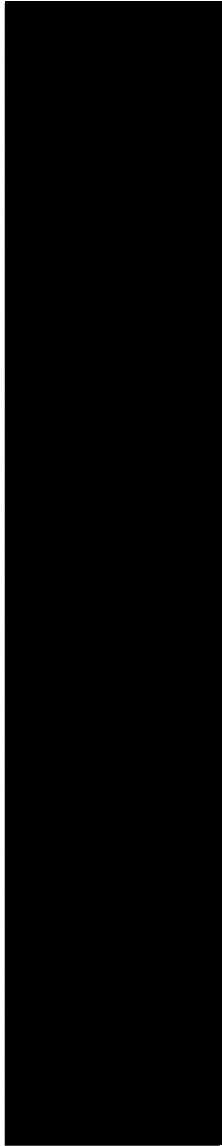

Table 1

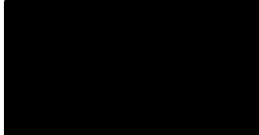

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
1	All interests in 326 square metres of land adjacent to Staplegrove Road, north west of its junction with Chip Lane, being grass embankment with shrubbery (Map sheet 1)	Network Rail Infrastructure Limited Kings Place 90 York Way London N1 9AG	-	-	Unoccupied
2	All interests in 3038 square metres of land north of Staplegrove Road and Chip Lane, forming part of a retail land premises and parking area (Map sheet 1)	J Gliddon & Sons Limited Bank Street Williton Taunton TA4 4NH	-	-	Lessees
3	All interests in 507 square metres of land south of Chip Lane, east of its junction with Staplegrove Road, forming part of a landscape area (Map sheet 1)	J Gliddon & Sons Limited Bank Street Williton Taunton TA4 4NH	-	-	Unoccupied
4	All interests in 22 square metres of land east of and adjacent to Staplegrove Road south of its junction with Chip Lane, forming part of a footway (Map sheet 1)	-	Clear Channel UK Ltd 33 Golden Square London W1F 9JT	-	Unoccupied
5	All interests in 111 square metres of land south of Chip Lane to the north of the entrance to No 4 Chip Lane, forming part of a vehicular access area and footway (Map sheet 1)	Unknown	-	-	Unoccupied
6	All interests in 33 square metres of land north of Chip Lane east of the entrance to Chip Lane Retail Park car park, being a grassed verge area and hard standing (Map sheet 1)	J Gliddon & Sons Limited Bank Street Williton Taunton TA4 4NH	Home Services Furniture Trust C/O	-	Unoccupied
6 (Cont)			-		


Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
			 <p>Charity Commissioners PO Box 1227 Liverpool L69 3UG</p> <p>FW Bed Store Unit 1 Chip Lane. Taunton. TA1 1DU</p>  <p>The Bicycle Chain Limited Salmon Parade Bridgwater TA6 5PY</p>		

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
			and 		
7	All interests in 101 square metres of land south of 31 to 37 Cyril Street, being footpath and being the north abutment for Chip Lane Footbridge and landscape area (Map sheet 1)	Unknown and Network Rail Infrastructure Limited Kings Place 90 York Way London N1 9AG	-	-	Unoccupied
8	All interests in 1264 square metres of land south of properties in Cyril Street and Cyril Street West, Taunton, being railway sidings (Map sheet 1)	Network Rail Infrastructure Limited Kings Place 90 York Way London N1 9AG	-	-	Owner
9	The right to demolish the existing footbridge and construct and maintain a new footbridge to carry the T33/14 public footpath over 707 square metres of the railway and sidings north west of the Post Office Sorting Office, Chip Lane, Taunton (Map sheet 1)	Network Rail Infrastructure Limited Kings Place 90 York Way London N1 9AG	-	-	Owner
10	All interest in 40 square metres of land north of Chip Lane and west of the Post Office Sorting Office car park, Chip Lane, Taunton (Map sheet 1)	J Gliddon & Sons Limited Bank Street Williton Taunton TA4 4NH	Home Services Furniture Trust C/O Mary Whitmarsh Elms Green Chipstable Nr Wiveliscombe Taunton TA4 2PX and 	-	Lessees

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
10 (cont)			<p>and</p>  <p>Charity Commissioners PO Box 1227 Liverpool L69 3UG</p> <p>FW Bed Store Unit 1 Chip Lane, Taunton, TA1 1DU</p>  <p>The Bicycle Chain Limited Salmon Parade BridgwaterTA6 5PY</p> <p>and</p> 		

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
11	The right to construct and maintain a bridge to carry the T33/14 public footpath over 66 square metres of land west of the Post Office Sorting Office, Chip Lane, Taunton (Map sheet 1)	J Gliddon & Sons Limited Bank Street Williton TauntonTA4 4NH	Home Services Furniture Trust C/O Mary Whitmarsh Elms Green Chipstable Nr Wiveliscombe TauntonTA4 2PX and  Charity Commissioners PO Box 1227 Liverpool L69 3UG FW Bed Store Unit 1 Chip Lane, Taunton, TA1 1DU  and	-	Lessees

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
11 (cont)			 The Bicycle Chain Limited Salmon Parade Bridgwater TA6 5PY and 		
12	The right to demolish the existing footbridge and construct and maintain a new footbridge to carry the T33/14 public footpath over 140 square metres of land west of the Post Office Sorting Office, Chip Lane, Taunton (Map sheet 1)	J Gliddon & Sons Limited Bank Street Williton Taunton TA4 4NH and Network Rail Infrastructure Limited Kings Place 90 York Way London N1 9AG	Royal Mail Group PLC 100 Victoria Embankment London EC4Y 0HQ	-	Lessee
13	All interests in 982 square metres of land north of Chip Lane and west of the Post Office Sorting Office, forming a private car park, Chip Lane, Taunton (Map sheet 1)	J Gliddon & Sons Limited Bank Street Williton Taunton TA4 4NH	Royal Mail Group PLC 100 Victoria Embankment London EC4Y 0HQ	-	Lessee
14	All interests in 14 square metres of footbridge across land west of the Post Office Sorting Office, Chip Lane, Taunton (Map sheet 1)	Network Rail Infrastructure Limited Kings Place 90 York Way London N1 9AG	-	-	Unoccupied
15	All interests in 119 square metres of land south of Chip Lane, north of 24 The Avenue, Taunton being the south abutment for Chip Lane footbridge, footpath, steps and landscape area (Map sheet 1)	Unknown and Network Rail Infrastructure Limited Kings Place 90 York Way London N1 9AG	-	-	Unoccupied
16	All interests in 9205 square metres of land to the south of the Paddington to	Network Rail Infrastructure Limited	-	-	Owner

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
16 (cont)	Penzance main railway line north of Chip Lane, Albemarle Industrial Estate and Whitehall, being railway sidings (Map sheet 1)				
17	All interests in 229 square metres of land and bridge above Station Road, Taunton being a former railway bridge (Map sheet 1)	Network Rail Infrastructure Limited Kings Place 90 York Way London N1 9AG	-	-	Owner
18	All interests in 1382 square metres of land south of Station Approach, Taunton forming part of former railway sidings and embankment (Map sheet 1)	Network Rail Infrastructure Limited Kings Place 90 York Way London N1 9AG	-	-	Owner
20	All interests in 163 square metres of land south of Station Approach, Taunton being a former vehicle storage area (Map sheet 1)	Taunton Deane Borough Council The Deane House Belvedere Road Taunton TA1 1HE	-	-	Unoccupied
22	All interests in 22 square metres of land south of Station Approach, Taunton being a former vehicle storage area (Map sheet 1)	Taunton Deane Borough Council The Deane House Belvedere Road Taunton TA1 1HE	-	-	Unoccupied
23	All interests in 301 square metres of land south of Station Approach, Taunton being a former railway engine shed (Map sheet 1)	Taunton Deane Borough Council The Deane House Belvedere Road Taunton TA1 1HE	-	-	Unoccupied
24	All interests in 78 square metres of land south of Station Approach, Taunton forming part of a landscape area (Map sheet 1)	Abbey Manor Developments Limited The Abbey Preston Road Yeovil BA20 2EN	-	-	Unoccupied
25	The right to construct and maintain a bridge to carry the A3087 Taunton Northern Inner Distributor Road over 690 square metres of the Bridgwater and Taunton Canal and associated towpath, Taunton (Map sheet 2)	British Waterways 64 Clarendon Road Watford Hertfordshire WD17 1DA	Taunton Deane Borough Council The Deane House Belvedere Road Taunton TA1 1HE	-	Unoccupied
26	All interests in 75 square metres of land north of the River Tone, east of the area known as Firepool, Taunton, being a landscape area (Map sheet 2)	British Waterways 64 Clarendon Road Watford Hertfordshire WD17 1DA	Taunton Deane Borough Council The Deane House Belvedere Road Taunton TA1 1HE	-	Unoccupied
27	The right to construct and maintain a bridge to carry the A3087 Taunton Northern Inner Distributor Road over 729 square	Environment Agency Millbank Tower 25th Floor 21/24 Millbank	Taunton Deane Borough Council The Deane House Belvedere Road Taunton TA1 1HE	-	Unoccupied

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
27 (cont)	metres of river bank and landscaping area to the north of the River Tone in the vicinity of Priory Park, Taunton (Map sheet 2)	London SW1P 4XL			
28	All interests in 75 square metres of land south of the River Tone, north of Priory Park, Taunton, being a landscape area (Map sheet 2)	Environment Agency Millbank Tower 25 th Floor 21/24 Millbank London SW1P 4XL	Taunton Deane Borough Council The Deane House Belvedere Road Taunton TA1 1HE	-	Unoccupied
29	All interests in 1 square metre of land south of the River Tone, north of Priory Park, Taunton, being a public footpath area (Map sheet 2)	Environment Agency Millbank Tower 25 th Floor 21/24 Millbank London SW1P 4XL	-	-	Unoccupied
30	All interests in 39 square metres of land south of the River Tone, in the vicinity of Priory Park, Taunton being a public footpath and landscape area (Map sheet 2)	Environment Agency Millbank Tower 25 th Floor 21/24 Millbank London SW1P 4XL	-	-	Unoccupied
31	All interests in 276 square metres of land (Open Space) north west of the Service Yard access to Priory Fields Retail Park, Taunton being landscape area, footpath (Map sheet 2)	Taunton Deane Borough Council The Deane House Belvedere Road Taunton TA1 1HE	-	-	Unoccupied
32	All interests in 24 square metres of land north of the service yard access to Priory Fields Retail Park, Taunton being landscape area (Map sheet 2)	AXA Sun Life PLC 5 Old Broad Street London EC2N 1AD	Dunelm (Soft Furnishings) Limited Fosse Way Syston Leicester LE7 1NF Carpwright PLC Harris House Purfleet Essex RM19 1TT Homestyle Operations Limited Steinhoff Business Park Northway Lane Ashchurch Tewkesbury Gloucestershire GL20 8GY TJX UK 50 Clarendon Road Watford Hertfordshire WD17 1TX Pets at Home Limited Epson Avenue Stanley Green Trading Estate Handforth Cheshire SK9 3RN	-	Unoccupied

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
32 (cont)			Wickes Building Supplies Limited Lodge Way House Lodge Way Harleston Road Northampton NN5 7UG		
33	All interests in 220 square metres of land north west of the Service Yard access to Priory Fields Retail Park, Taunton being landscape area, footpath (Map sheet 2)	Taunton Deane Borough Council The Deane House Belvedere Road Taunton TA1 1HE	-	-	Unoccupied
34	All interests in 2 square metres of land north of the Priory Park residential estate access east of electricity substation, Taunton being landscape area with occasional hedges. (Map sheet 2)	Crest Nicholson (South West) Limited Crest House Pycroft Road Chertsey Surrey KT16 9GN	-	-	Unoccupied
35	All interests in 281 square metres of land east of Priory Park, Taunton being a grassed verge area. (Map sheet 2)	AXA Sun Life PLC 5 Old Broad Street London EC2N 1AD	Dunelm (Soft Furnishings) Limited Fosse Way Syston Leicester LE7 1NF Carpwright PLC Harris House Purfleet Essex RM19 1TT Homestyle Operations Limited Steinhoff Business Park Northway Lane Ashchurch Tewkesbury Gloucestershire GL20 8GY TJX UK 50 Clarendon Road Watford Hertfordshire WD17 1TX Pets at Home Limited Epson Avenue Stanley Green Trading Estate Handforth Cheshire SK9 3RN Wickes Building Supplies Limited Lodge Way House Lodge Way Harleston Road Northampton NN5 7UG	-	Unoccupied
36	All interests in 32 square metres of land north of 1 Priory Park, Taunton being existing carriageway.	Crest Nicholson (South West) Limited Crest House	-	-	Unoccupied

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
36 (cont)	(Map sheet 2)	Pyrcroft Road Chertsey Surrey KT16 9GN			
37	All interests in 1241 square metres of land west of Priory Park, Taunton being a grassed verge and landscaped area (Map sheet 2)	Taunton Deane Borough Council The Deane House Belvedere Road Taunton TA1 1HE			Unoccupied
38	The right to construct and maintain a retaining wall to support the Taunton Northern Inner Distributor Road over 71 square metres of grassed verge area east of Priory Park, Taunton and the right to lay a surface water sewer (Map sheet 2)	AXA Sun Life PLC 5 Old Broad Street London EC2N 1AD	Dunelm (Soft Furnishings) Limited Fosse Way Syston Leicester LE7 1NF Carpwright PLC Harris House Purfleet Essex RM19 1TT Homestyle Operations Limited Steinhoff Business Park Northway Lane Ashchurch Tewkesbury Gloucestershire GL20 8GY TJX UK 50 Clarendon Road Watford Hertfordshire WD17 1TX Pets at Home Limited Epson Avenue Stanley Green Trading Estate Handforth Cheshire SK9 3RN Wickes Building Supplies Limited Lodge Way House Lodge Way Harleston Road Northampton NN5 7UG		Unoccupied
39	All interests in 4 square metres of land west of Priory Park, Taunton being paved fenced off area adjacent to Mike Roberts Carpets (Map sheet 2)		Mike Roberts Carpets Limited Unit 1 Priory Trading Estate Priory Bridge Road Taunton TA1 1QB		Unoccupied
40	All interests in 142 square metres of land east of Priory Park, Taunton and north of junction into Priory Fields Retail Park, Taunton being a grassed verge area	AXA Sun Life PLC 5 Old Broad Street London EC2N 1AD	Dunelm (Soft Furnishings) Limited Fosse Way Syston Leicester LE7 1NF		Unoccupied

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
40 (cont)	with occasional trees (Map sheet 2)		<p>Carpetright PLC Harris House Purfleet Essex RM19 1TT</p> <p>Homestyle Operations Limited Steinhoff Business Park Northway Lane Ashchurch Tewkesbury Gloucestershire GL20 8GY</p> <p>TJX UK 50 Clarendon Road Watford Hertfordshire WD17 1TX</p> <p>Pets at Home Limited Epson Avenue Stanley Green Trading Estate Handforth Cheshire SK9 3RN</p> <p>Wickes Building Supplies Limited Lodge Way House Lodge Way Harlestone Road Northampton NN5 7UG</p>		
41	All interests in 69 square metres of land north of Priory Bridge Road, Taunton being grassed verge (Map sheet 2)	The County Tyre (Holdings) Limited 16-17 Victoria Road, St Philips, Bristol BS2 0UX	<p>Bathwick Tyres Ltd Bath Road Industrial Estate, Bath Road, Chippenham, Wiltshire SN14 0AB</p> <p>Roman Glass Company 65 Lower Bristol Road Bath BA2 3BE</p>	-	Unoccupied
42	All interests in 1086 square metres of land east of Priory Park and north of Priory Avenue, Taunton being a grassed verge, landscape/planting area, part of retail car park area and public urban footpath associated with Priory Fields Retail Park, Taunton (Map sheet 2)	AXA Sun Life PLC 5 Old Broad Street London EC2N 1AD	<p>Dunelm (Soft Furnishings) Limited Fosse Way Syston Leicester LE7 1NF</p> <p>Carpetright PLC Harris House Purfleet Essex RM19 1TT</p> <p>Homestyle Operations Limited Steinhoff Business Park Northway Lane Ashchurch Tewkesbury Gloucestershire GL20 8GY</p> <p>TJX UK 50 Clarendon Road Watford Hertfordshire WD17 1TX</p>	-	Lessees

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
42 (cont)			Pets at Home Limited Epton Avenue Stanley Green Trading Estate Handforth Cheshire SK9 3RN Wickes Building Supplies Limited Lodge Way House Lodge Way Harleston Road Northampton NN5 7UG		

Table 2

Number on Map (4)	Other Qualifying Persons under Section 12(2A)(a) of the Acquisition of Land Act 1981 (5)		Other Qualifying Persons under Section 12(2A)(b) of the Acquisition of Land Act 1981 - not otherwise shown in Table 1 and 2 (6)	
	Name and address	Description of interest to be acquired	Name and address	Description of land for which the person in adjoining column is likely to make a claim and the reasons for the likely claim
2	Nationwide Building Society Nationwide House Pipers Way Swindon SN38 1NW	Mortgagee	British Railways Board Limited One Kemble Street London WC2B 4AN	Land to the north of Chip Lane, Taunton is subject to mineral rights, drainage rights, rights of entry for maintenance, rights of light and air and rights of support
			St Modwen Securities Limited Sir Stanley Clarke House 7 Ridgeway Quinton Business Park Birmingham B32 1AF	Land to the north of Chip Lane, Taunton is subject to existing and future drainage rights
3			Western Power Distribution Avonbank, Feeder Road, Bristol BS2 0TB	Wayleave
5			British Railways Board limited One Kemble Street London WC2B 4AN	Land on the east side of Staplegrove Road, Taunton is subject to mineral rights, drainage rights, rights of entry for maintenance, rights of light and air and rights of support
6	Nationwide Building Society Nationwide House Pipers Way Swindon SN38 1NW	Mortgagee	British Railways Board One Kemble Street London WC2B 4AN	Land to the north of Chip Lane, Taunton is subject to mineral rights, drainage rights, rights of entry for maintenance, rights of light and air and rights of support
			St Modwen Securities Limited Sir Stanley Clarke House 7 Ridgeway Quinton Business Park Birmingham B32 1AF	Land to the north of Chip Lane, Taunton is subject to existing and future drainage rights
10	Nationwide Building Society Nationwide House Pipers Way Swindon SN38 1NW	Mortgagee	British Railways Board Limited One Kemble Street London WC2B 4AN	Land to the north of Chip Lane, Taunton is subject to mineral rights, drainage rights, rights of entry for maintenance, rights of light and air and rights of support
			St Modwen Securities Limited Sir Stanley Clarke House, 7 Ridgeway Quinton Business Park Birmingham B32 1AF	Land to the north of Chip Lane, Taunton is subject to existing and future drainage rights

Number on Map (4)	Other Qualifying Persons under Section 12(2A)(a) of the Acquisition of Land Act 1981 (5)		Other Qualifying Persons under Section 12(2A)(b) of the Acquisition of Land Act 1981 - not otherwise shown in Table 1 and 2 (6)	
	Name and address	Description of interest to be acquired	Name and address	Description of land for which the person in adjoining column is likely to make a claim and the reasons for the likely claim
11	Nationwide Building Society Nationwide House Pipers Way Swindon SN38 1NW	Mortgagee	British Railways Board Limited One Kemble Street London WC2B 4AN	Land to the north of Chip Lane, Taunton is subject to mineral rights, drainage rights, rights of entry for maintenance, rights of light and air and rights of support
			St Modwen Securities Limited Sir Stanley Clarke House 7 Ridgeway Quinton Business Park Birmingham B32 1AF	Land to the north of Chip Lane, Taunton, is subject to existing and future drainage rights
12	Nationwide Building Society Nationwide House Pipers Way Swindon SN38 1NW	Mortgagee	British Railways Board Limited One Kemble Street London WC2B 4AN	Land to the north of Chip Lane, Taunton is subject to mineral rights, drainage rights, rights of entry for maintenance, rights of light and air and rights of support
			St Modwen Securities Limited Sir Stanley Clarke House 7 Ridgeway Quinton Business Park Birmingham B32 1AF	Land to the north of Chip Lane, Taunton is subject to existing and future drainage rights
13	Nationwide Building Society Nationwide House Pipers Way Swindon SN38 1NW	Mortgagee	British Railways Board limited One Kemble Street London WC2B 4AN	Land to the north of Chip Lane, Taunton is subject to mineral rights, drainage rights, rights of entry for maintenance, rights of light and air and rights of support
			St Modwen Securities Limited Sir Stanley Clarke House 7 Ridgeway Quinton Business Park Birmingham B32 1AF	Land to the north of Chip Lane, Taunton is subject to existing and future drainage rights
20	St Modwen Properties PLC Sir Stanley Clarke House 7 Ridgeway Quinton Business Park Quinton Birmingham B32 1AF	Unilateral Notice		
22	St Modwen Properties PLC Sir Stanley Clarke House 7 Ridgeway Quinton Business Park Quinton Birmingham B32 1AF	Unilateral Notice		
23	St Modwen Properties PLC Sir Stanley Clarke House 7 Ridgeway Quinton Business Park Quinton Birmingham B32 1AF	Unilateral Notice		
24			Network Rail Infrastructure Limited Kings Place 90 York Way London N1 9AG	Land at Taunton East Yard, Taunton is subject to rights of support and drainage
25				Land being part of the Bridgwater and Taunton

Number on Map (4)	Other Qualifying Persons under Section 12(2A)(a) of the Acquisition of Land Act 1981 (5)		Other Qualifying Persons under Section 12(2A)(b) of the Acquisition of Land Act 1981 - not otherwise shown in Table 1 and 2 (6)	
	Name and address	Description of interest to be acquired	Name and address	Description of land for which the person in adjoining column is likely to make a claim and the reasons for the likely claim
25 (cont)				Canal is subject to the benefits of rights in a Fishing Agreement
27				Land being part of the River Tone is subject to the benefits of rights in a Fishing Agreement
32			Western Power Distribution LLP Feeder Road Bristol BS2 0TB	Land at Priory Field Retail Park, Taunton is subject to an easement for cables
			Bishop Of Winchester Wolvesey Winchester SO23 9ND	Land forming part of Priory Fields Retail Park, Taunton is subject to powers for opening and working mines and minerals
35			Western Power Distribution LLP Feeder Road Bristol BS2 0TB	Land at Priory Field Retail Park, Taunton is subject to an easement for cables
			Bishop Of Winchester Wolvesey Winchester SO23 9ND	Land forming part of Priory Fields Retail Park, Taunton is subject to powers for opening and working mines and minerals
37			British Telecom BT Group plc. BT Centre, 81 Newgate Street, London EC1A 7AJ	Wayleave
38			Western Power Distribution LLP Feeder Road Bristol BS2 0TB	Land at Priory Fields Retail Park, Taunton is subject to an easement for cables
			Bishop of Winchester Wolvesey Winchester S023 9ND	Land forming part of Priory Fields Retail Park, Taunton is subject to powers for opening and working mines and minerals
39			British Rail Pension Trustee Company	Land on the west side of Priory Bridge Road, Taunton is subject to rights to erect and

Number on Map (4)	Other Qualifying Persons under Section 12(2A)(a) of the Acquisition of Land Act 1981 (5)		Other Qualifying Persons under Section 12(2A)(b) of the Acquisition of Land Act 1981 - not otherwise shown in Table 1 and 2 (6)	
	Name and address	Description of interest to be acquired	Name and address	Description of land for which the person in adjoining column is likely to make a claim and the reasons for the likely claim
39 (cont)			Limited 2nd Floor Camomile Court 23 Camomile Street London EC3A 7LL	maintain a sign
			Tile Wise Limited Unit 2 Priory Trading Estate Priory Bridge Road Taunton Somerset (Lessee)	Land on the west side of Priory Bridge Road, Taunton is subject to rights of drainage
			Western Power Distribution LLP Feeder Road Bristol BS2 0TB	Land at Priory Fields Retail Park, Taunton subject to rights of access, rights to erect and maintain boundary walls and fences, easement for cables
40			Western Power Distribution LLP Feeder Road Bristol BS2 0TB	Land at Priory Fields Retail Park, Taunton is subject to an easement for cables
			Bishop of Winchester Wolvesey Winchester S023 9ND	Land forming part of Priory Fields Retail Park, Taunton is subject to powers for opening and working mines and minerals
42			Western Power Distribution LLP Feeder Road Bristol BS2 0TB	Land at Priory Fields Retail Park, Taunton is subject to an easement for cables
			Bishop of Winchester Wolvesey Winchester S023 9ND	Land forming part of Priory Fields Retail Park, Taunton is subject to powers for opening and working mines and minerals

SCHEDULE 2

THE EXCHANGE LAND TO BE PURCHASED AND VESTED

Table 1

Number on Map (1)	Extent, description and situation of the land (2)	Qualifying Persons under Section 12(2)(a) of the Acquisition of Land Act 1981 - name and address (3)			
		Owners or Reputed Owners	Lessees or reputed Lessees	Tenants or reputed Tenants (other than Lessees)	Occupiers
19 (Exchange Land)	All interests in 195 square metres of land south of Station Approach, Taunton forming part of former railway siding and embankment (Map sheet 1)	Network Rail Infrastructure Limited Kings Place 90 York Way London N1 9AG	-	-	Unoccupied
21 (Exchange Land)	All interests in 233 square metres of land south of Station Approach, Taunton forming part of former vehicle storage area (Map sheet 1)	Taunton Deane Borough Council The Deane House Belvedere Road Taunton Somerset TA1 1HE	-	-	Unoccupied
43 (Exchange land)	All interests in 353 square metres of land to the immediate west of existing public open space forming part of former car park	Taunton Deane Borough Council The Deane House Belvedere Road Taunton Somerset TA1 1HE			Unoccupied MRF

Table 2

Number on Map (4)	Other qualifying persons under section 12 (2A) (a) of the Acquisition of Land Act 1981 (5)		Other qualifying persons under section 12 (2A) (b) of the Acquisition of Land Act 1981 – not otherwise shown in Tables 1 & 2 (6)		In exchange for (7)
	Name and address	Description of interest to be acquired	Name and address	Description of the land for which the person in adjoining column is likely to make a claim	
21 (exchange land)	St Modwen Properties PLC Sir Stanley Clark House 7 Ridgeway Quinton Business Park Birmingham B32 1AF	Unilateral Notice			31

This order includes land falling within special categories to which section 17 (2), 18 or 19 of the Acquisition of Land Act applies, namely -

Number on Map	Special Category	Description	Exchange Plots
31	Section 19 Acquisition of Land Act 1981	Open Space	19,21, 43

AKF

Dated the *24TH* day of *MAY* 2011

THE COMMON SEAL of
SOMERSET COUNTY COUNCIL)
was hereunto affixed and this)
ORDER thereby executed as a)
DEED in the presence of:-)



Deputy County Solicitor

Number in Register *22035*

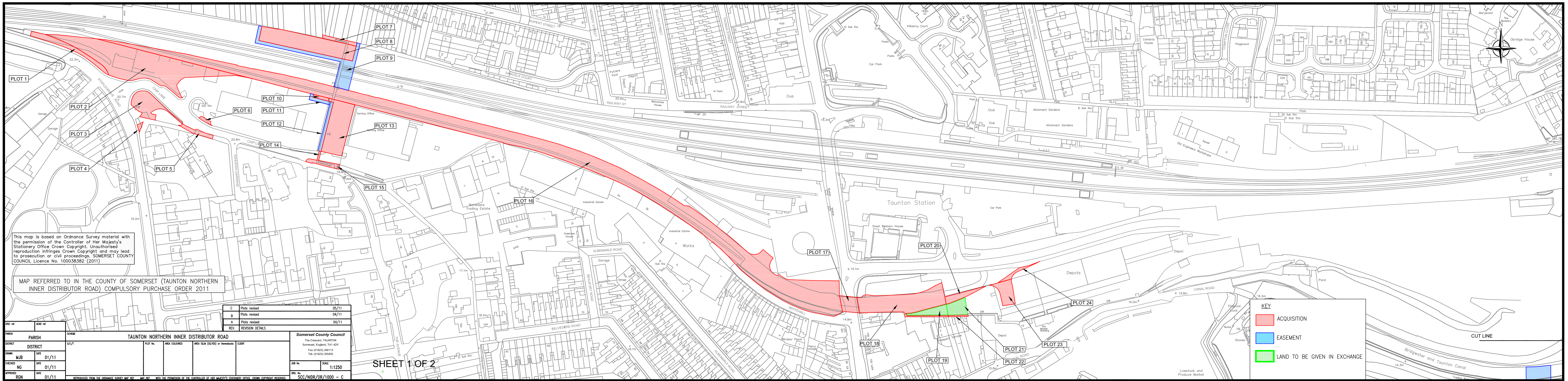
THE COUNTY OF SOMERSET (TAUNTON NORTHERN INNER DISTRIBUTOR
ROAD) COMPULSORY PURCHASE ORDER 2011

The Secretary of State for Transport hereby confirms the foregoing Order with modifications shown by red ink alterations and which bear the initials of the person whose signature appears below.

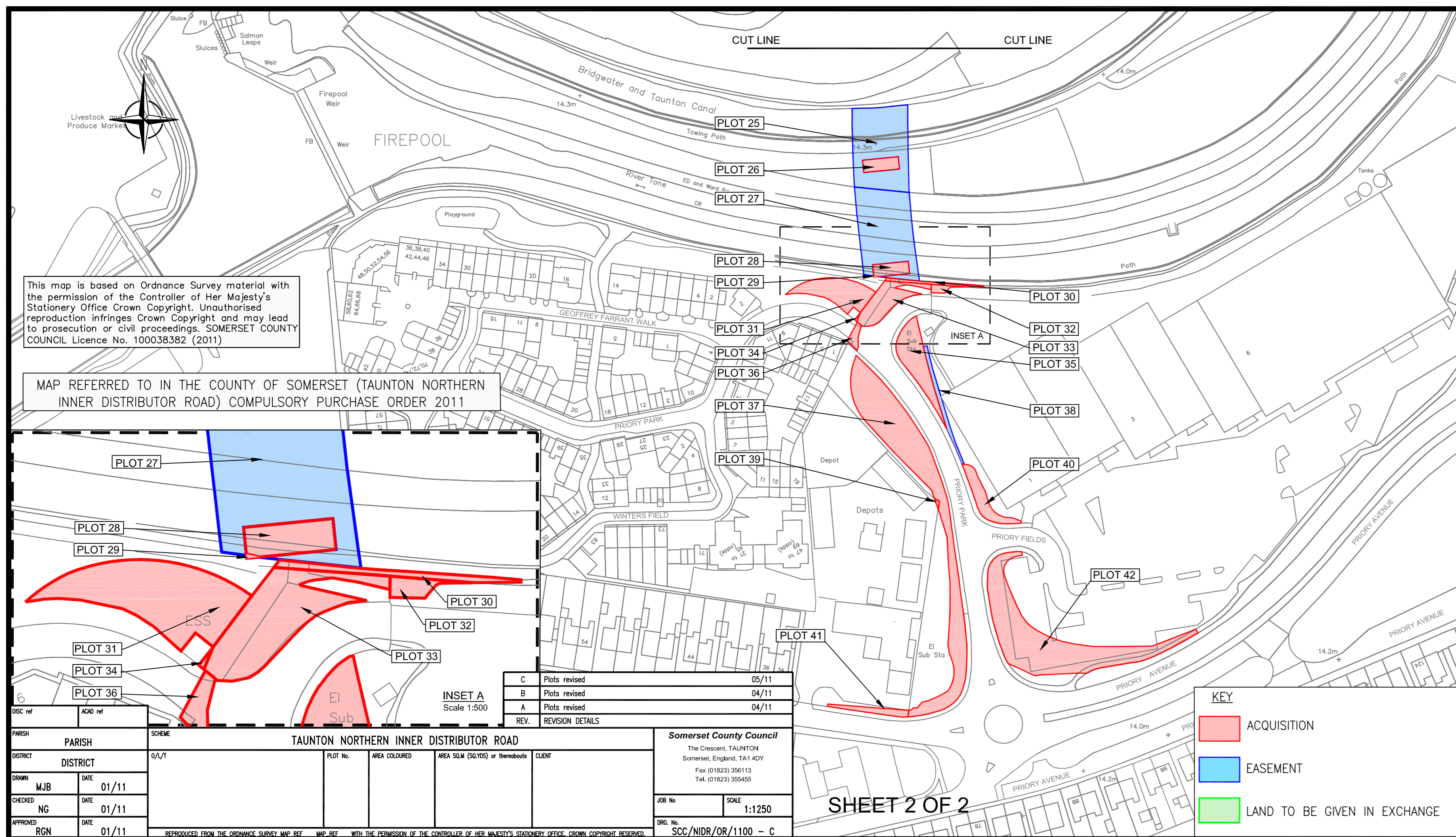


Signed by Authority
of the Secretary of State
 2013

M R FAWCETT
A senior civil servant in the
Department for Transport



SHEET 1 OF 2



SHEET 2 OF 2