

# A47/A11 Thickthorn Junction

**Scheme Number: TR010037**

## **Volume 3** **3.1 Draft Development Consent Order**

Regulation 5(2)(q)

Planning Act 2008

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

~~December 2021~~ January 2022

Infrastructure Planning

Planning Act 2008

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

A47/A11 Thickthorn Junction  
Development Consent Order 202[x]

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**DRAFT DEVELOPMENT CONSENT ORDER**

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**202X No. XX**

**INFRASTRUCTURE PLANNING**

**The A47/A11 Thickthorn Junction Development Consent Order  
202X**

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

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

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

The *single appointed person*, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act has submitted a report and recommendation to the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

The Secretary of State, having considered the representations made and not withdrawn, and the report and recommendation of the *single appointed person*, has decided to make an Order granting development consent for the development described in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

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

## PART 1 PRELIMINARY

### Citation and commencement

1. This Order may be cited as the A47/A11 Thickthorn Junction Development Consent Order 202[X] and comes into force on [XX].

### Interpretation

2.—(1) In this Order except where provided otherwise—

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

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

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

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

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

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- (a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).  
 (b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/2381, S.I. 2015/377, S.I. 2017/ 572; modified by S.I. 2012/1659.  
 (c) S.I. 2010/103, amended by S.I. 2012/635.  
 (d) 1961 c. 33.  
 (e) 1965 c. 56.  
 (f) 1980 c. 66.  
 (g) 1981 c. 66.

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

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

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

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

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

“Anglian water” means Anglian Water Services Limited (company number 2366656), whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire, United Kingdom, PE29 6XU (or a related subsidiary company);

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

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order,

“the Book of Reference ” means the document of that description certified by the Secretary of State as the Book of Reference for the purposes of the Order;

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

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

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

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

“the classification of roads plans” means the plans of that description certified by the Secretary of State as the classification of roads plans for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, ecological surveys and pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant, equipment, welfare facilities and temporary buildings, site clearance, and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act**(f)** and for the purposes of this Order includes a right of way on foot;

“electronic transmission” means a communication transmitted—

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

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

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

“the engineering drawings and sections” means the drawings of that description certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

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(a) 1984 c. 27.

(b) 1990 c. 8.

(c) 1991 c. 22.

(d) 2008 c. 29.

(e) S.I. 2017/3.

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

(g) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210

“EMP (First Iteration)” means the first iteration of the environmental management plan produced in accordance with the DMRB during the preliminary design stage and certified by the Secretary of State as the environmental management plan for the purposes of the Order;

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

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

“the general arrangement plans” means the plans of that description certified by the Secretary of State as the general arrangement plans for the purposes of this Order;

“hedgerow plans” means the plans of that description certified as the hedgerow plans by the Secretary of State for the purposes of this Order;

“highway” has the same meaning as in the 1980 Act and includes part of a highway;

“the highway authority” means the undertaker;

“the land plans” means the plans of that description certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 8 (limits of deviation);

“the local highway authority” means Norfolk County Council;

“maintain” includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, remove, replace or reconstruct in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

“Openreach” means Openreach Limited (company number 10690039), whose registered office is at Kelvin House, 123 Judd Street, London WC1H 9NP;

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

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

“outline traffic management plan” means the document of that description certified by the Secretary of State as the outline traffic management plan for the purposes of this Order;

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

“relevant highway authority” means the local highway authority for the land in question;

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

“the rights of way and access plans” means the plans of that description certified as the rights of way and access plans by the Secretary of State for the purposes of this Order;

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

[“section 106 agreement” means the agreement made under section 106 of the 1990 Act dated 20 May 2014 between South Norfolk District Council \(1\), Norfolk County Council \(2\), Lloyds Bank Plc \(3\), William David Winslow Barr, Kate Alice Paul and David Edward Brown \(4\), Simon Henry Back \(5\), Carl Andrew Soames Baker and David John Soames Baker \(6\), Nicholas Evans-Lombe, Giles Richard Lovell Spackman and James Peter Needham Learmond \(7\), KB Interests Limited \(8\), and Charles Jonathan Watt, The Right Honourable John Clive Third Viscount Mackintosh of Halifax, The Honourable Graham Charles Mackintosh and Susan Mary Shenkman \(9\);](#)

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



“the special category land plans” means the plans of that description certified by the Secretary of State as the special category land plans for the purposes of this Order;

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

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

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

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

“traffic regulation plans” means the plans of that description certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

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

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

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

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

“UKPN” means Networks (Operations) Limited (company number 0387028), whose registered office is at Newington House, 37 Southwark Bridge Road, London SE1 6NP;

“Virgin Media” means Virgin Media Limited (company number 02591237), whose registered office is at 500 Brook Drive, Reading RG2 6UU;

“Vodafone” means Vodafone Limited (company number 01471587), whose registered office is at Vodafone House, The Connection, Newbury, Berkshire RG14 2FN;

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

“the works plans” means the plans of that description certified as the works plans by the Secretary of State for the purposes of this Order.

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

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

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

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

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(a) This section was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22); and brought into force by S.I. 1991/2288.

(b) As amended by section 22(2) of the 1991 Act and paragraph 22 of Schedule 2 to the 2008 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

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

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

(7) The expression “includes” may be construed without limitation.

### **Disapplication of legislative provisions [and modifications to section 106 agreement](#)**

**3.**—(1) The provisions of the Neighbourhood Planning Act 2017(**a**) insofar as they relate to temporary possession of land under articles 34 (temporary use of land for carrying out the authorised development) and 35 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development.

(2) Section 32 (variation of awards) of the Land Drainage Act 1991(**b**) does not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development.

(3) Schedule 1 to the 2017 Regulations is modified as follows—

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

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

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

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

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

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

**(4) [The section 106 agreement is to be amended for the purposes of this Order only as follows—](#)**

**(a) [Delete paragraph 2.6 of Part 9 \(Highways\) of The Schedule.](#)**

**(b) [Delete paragraph 3 of Part 15 \(Park & Ride Owners Obligations of The Schedule.](#)**

### **Maintenance of drainage works**

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

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

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(a) 2017 c. 20.

(b) 1991 c. 59, as amended by paragraph 323, Part 1 of Schedule 2 of S.I. 2013/755 (W.55), section 100 of the Environment Act 1995 (c. 25) and paragraph 39, Schedule 2 of the Flood Water Management Act 2010 (c. 29).

(c) 1991 c. 59, as amended by paragraph 323, Part 1 of Schedule 2 of S.I. 2013/755 (W.55), section 100 of the Environment Act 1995 (c. 25) and paragraph 39, Schedule 2 of the Flood Water Management Act 2010 (c. 29).

## PART 2

### PRINCIPAL POWERS

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

5.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out and operated within the Order limits.

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

#### **Construction and maintenance of authorised development**

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

#### **Planning permission**

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

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

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

#### **Limits of deviation**

8.—(1) In carrying out the authorised development the undertaker must construct any such work within the lateral limits of deviation or extents of work shown on the works plans for the relevant work.

(2) In carrying out any work comprised in the authorised development the undertaker may deviate vertically from the levels of the authorised development shown on the engineering drawings and sections, to a maximum of 1 metre upwards or 1 metre downwards, except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects from those reported in the environmental statement.

#### **Benefit of Order**

9.—(1) Subject to article 10 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

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

## Consent to transfer benefit of Order

10.—(1) Subject to paragraph (11) the undertaker may with the written consent of the Secretary of State—

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

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker, save where those benefits or rights are exercised by a statutory undertaker or by an owner or occupier of land pursuant to paragraph (2) of article 27 (compulsory acquisition of rights and imposition of restrictive covenants) of this Order, in which case liability for the payment of compensation remains with the undertaker.

(4) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application and the Secretary of State must provide a response within four weeks of receipt of the notice.

(5) The Secretary of State must determine an application for consent made under this article within a period of eight weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker.

(6) Where the Secretary of State is minded to refuse an application for consent made under this article and notifies the undertaker accordingly, or the Secretary of State fails to determine the application for consent under this article within the period prescribed in paragraph (5), the undertaker may refer the matter for determination in accordance with article ~~51~~52 (arbitration).

(7) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to the exercise of powers in their area, to the relevant planning authority.

(8) The notice required under paragraphs (4) and (7) must—

- (a) state—
  - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
  - (ii) subject to paragraph (10), the date on which the transfer will take effect;
  - (iii) the provisions to be transferred or granted; and
  - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (3), will apply to the person exercising the powers transferred or granted; and
  - (v) confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) be accompanied by—
  - (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
  - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(9) The date specified under paragraph (8)(a)(ii) must not be earlier than the expiry of five days from the date of the receipt of the notice.

(10) The notice given under paragraph (8) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

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

- (a) Cadent for the purposes of undertaking any works relating to its apparatus set out in Work No. 40;
- (b) Anglian water for the purposes of undertaking any works relating to its apparatus set out in Work Nos. 34, 37, 38, 40, 47, 49;
- (c) UKPN for the purposes of undertaking any works relating to its apparatus set out in Work Nos. 36, 37, 38, 40, 42, 48;
- (d) Openreach for the purposes of undertaking any works relating to its apparatus set out in Work Nos. 1, 37, 38, 40;
- (e) Virgin Media for the purposes of undertaking any works relating to its apparatus set out in Work Nos. 40, 41;
- (f) Vodafone for the purposes of undertaking any works relating to its apparatus set out in Work No. 46.

## PART 3 STREETS

### Application of the 1991 Act

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

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

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

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

- (a) section 56(d) (power to give directions as to timing of street works);
- (b) section 56A(e) (power to give directions as to placing of apparatus);
- (c) section 58(f) (restrictions following substantial road works);
- (d) section 58A(g) (restriction on works following substantial street works);
- (e) section 73A (power to require undertaker to re-surface street);
- (f) section 73B (power to specify timing etc. of re-surfacing);

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- (a) 1991 c. 22, to which are amendments not relevant to section 86 in the act.
  - (b) As amended by relevant instruments which are section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
  - (c) As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 18 of and Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22).
  - (d) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c. 18).
  - (e) Inserted by section 44 of the Traffic Management Act 2004 (c. 18).
  - (f) As amended by section 51 of the Traffic Management Act 2004 (c. 18).
  - (g) Inserted by section 52 of the Traffic Management Act 2004 (c. 18).

- (g) section 73C (materials, workmanship and standard of re-surfacing);
- (h) section 78A (contributions to costs of re-surfacing by undertaker); and
- (i) Schedule 3A(a) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 16 (temporary alteration, diversion, prohibition and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

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

- (a) section 54(c) (advance notice of certain works), subject to paragraph (6);
- (b) section 55(d) (notice of starting date of works), subject to paragraph (6);
- (c) section 57(e) (notice of emergency works);
- (d) section 59(f) (general duty of street authority to co-ordinate works);
- (e) section 60 (g) (general duty of undertakers to co-operate);
- (f) section 68 (h) (facilities to be afforded to street authority);
- (g) section 69 (i) (works likely to affect other apparatus in the street);
- (h) section 75(j) (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route).

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

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

(7) Nothing in article 12 (construction and maintenance of new, altered or diverted streets and other structures)—

- (a) affects the operation of section 87(k) (prospectively maintainable highways) of the 1991 Act;
- (b) means that the undertaker is by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

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

**12.—(1)** Any highway (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway

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(a) Inserted by section 52 and Schedule 4 of the Traffic Management Act 2004 (c. 18).  
 (b) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).  
 (c) As also amended by section 49(1) of the Traffic Management Act 2004.  
 (d) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.  
 (e) As also amended by section 52(3) of the Traffic Management Act 2004.  
 (f) As amended by section 41 of the Traffic Management Act 2004.  
 (g) As amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).  
 (h) As amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).  
 (i) As amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).  
 (j) As amended by section 58 of the Traffic Management Act 2004 (c. 18).  
 (k) 1991 c. 22.

lies and, unless otherwise agreed in writing with the local highway authority, the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

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

(3) Where a footpath, cycle track or bridleway is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

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

(5) Where a highway is de-trunked under this Order—

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

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

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

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

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

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(a) The following provisions have been inserted into the section by paragraph 52, Schedule 1 of the Infrastructure Act 2015 (c.7).

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

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

**13.**—(1) From the date on which the roads described in Part 1 (trunk roads) of Schedule 3 and identified on the classification of roads plans are completed and open for traffic, they are to become trunk roads as if they had become so by virtue of an order under section 10(2)(a) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(2) From the date on which the roads described in Part 2 (classified roads) of Schedule 3 and identified on the classification of roads plans are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

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

(4) Unless otherwise agreed in writing with the relevant highway authority, the footpaths, cycle tracks, footways and bridleways set out in Part 4 (footpaths, cycle tracks, footways and bridleways) of Schedule 3 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.

(5) The application of paragraphs (1) to (4) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

### **Power to alter layout etc. of streets**

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

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

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

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

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

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

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(a) As amended by section 22 of the 1991 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).



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

### **Street Works**

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street; or carry out works to strengthen or repair the carriageway;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in or under the street;
- (e) maintain, renew or alter apparatus in the street or change its position;
- (f) demolish, remove, replace and relocate any street furniture;
- (g) execute any works to provide or improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;
- (j) remove and install temporary and permanent signage; and
- (k) execute any works required for, or incidental to, any works referred to in subparagraphs (a) to (j).

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

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

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

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

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

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

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

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

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

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(a) 1991 c. 21. There are amendments to section 48(3) and 51(1) but none is relevant to this Order.

(b) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

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

### **Permanent stopping up and restriction of use of streets and private means of access**

17.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Part 1, 2, 3 and 4 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and identified on the rights of way and access plans the extent specified and described in column (3) of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Part 2 or Part 3 of Schedule 4 (being a highway or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new highway or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the highway or private means of access until the completion and opening of the new highway or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Part 1 or Part 4 of Schedule 4 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street or private means of access concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

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

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

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

(7) This article is subject to article 37 (apparatus and rights of statutory undertakers in stopped up streets).

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(a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

## Access to works

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

## Clearways, prohibitions and restrictions

19.—(1) From such day as the undertaker may determine, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 5 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) and identified on the traffic regulation plans where it is identified in the corresponding row of column (3) of that Part that such lengths of road are to become a clearway, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
  - (i) the removal of any obstruction to traffic;
  - (ii) the maintenance, improvement, reconstruction or operation of the road;
  - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable, or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 1 (the Electronic Communications Code) to the Digital Economy Act 2017(a); or
  - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
  - (i) for police, ambulance, fire and rescue authority or traffic officer purposes,
  - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2011(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
  - (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person's control.

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

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

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(a) 2017 c. 30, as brought into force by Regulation 2 of S.I. 2017/765, Regulation 2 of S.I. 2017/1136 and Regulation 2 of S.I. 2017/1286.

(b) 1991 c. 56.

(c) 2011 c. 5.

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

### **Traffic Regulation**

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

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

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

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

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

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

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

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

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

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

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(a) 2004 c. 18, as brought into force by Article 2 of S.I. 2004/2380 and Article 2 of S.I. 2009/1095 (W.55).

(b) 1984 c.27, section 32 was amended by sections 1, 2, 8(1) and paragraph 4 of Schedule 5 to the Local Government Act 1985 (c. 51) and by section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act..

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).

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

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

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

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

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

(12) Any application to which this article applies must include a statement that the provisions of paragraph (11) apply to that application.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

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

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

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

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

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

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

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

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(a) 2004 c. 18, Schedule 7 as implemented by Article 2 of S.I. 2007/2053, Article 2 and Schedule of S.I. 2007/3174; as amended by Regulation 28 of S.I. 2013/362 and Regulation 2 and 3 of S.I. 2018/488.

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

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

(7) In this article—

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

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

### **Protective work to buildings**

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

(2) Protective works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article ~~51~~52 (arbitration).

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(a) S.I.2016/1154, amended by S.I. 2018/110

(b) 1991 c. 57.

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

(8) Where—

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

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

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

(10) Any compensation payable under paragraph (8) or (9) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

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

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

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

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

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land indicating the nature of the survey or investigation that the undertaker intends to carry out.

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

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

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

- (a) in land located within the highway boundary without the consent of the highway authority or the local highway authority as the case may be; or
- (b) in a private street without the consent of the street authority.

but such consent must not be unreasonably withheld.

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(a) 2008 c. 29, section 152 as implemented by Article 3 of S.I. 2010/101 and amended by S.I. 2009/1307.

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

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

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

that authority is deemed to have granted consent.

## PART 5

### POWERS OF ACQUISITION

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

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

(2) This article is subject to paragraph (2) of article 27 (compulsory acquisition of rights) and imposition of restrictive covenants) and paragraph (8) of article 34 (temporary use of land for carrying out the authorised development) and article ~~52~~53 (crown rights).

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

**25.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated into this Order subject to the modifications that—

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

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

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

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

(2) The authority conferred by article 34 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

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

**27.**—(1) The undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

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(a) As amended by S.I. 2009/1307.



(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule and relating to that part of the authorised development specified in column (3) of that Schedule.

(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 10 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

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

### **Public rights of way**

**28.**—(1) Subject to paragraph (2), the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and shown on the rights of way and access plans are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 and shown on the rights of way and access plans, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

### **Private rights over land**

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

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

whichever is the earlier.

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

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker which being within the limits of land which may be acquire or used shown on the land plans, are

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(a) 1965 c. 56. Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), Section 103 of the Planning and Compulsory Purchase Act 2004 c. 5 and S.I. 2009/1307.

required for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act ((a)).

(6) This article does not apply in relation to any right to which section 138 (b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 36 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

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

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

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

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

“(a) In section 4A(1)(d)(extension of time limit during challenge)

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

(ii) for the “three year period” mentioned in section 4 substitute the “five year period mentioned in article 25 (time limit for exercise of authority to acquire

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(a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(b) 2008 c. 29. Section 138 as amended by section 23 of the Growth and Infrastructure Act 2013 (c. 27) and paragraph 12, Schedule 1 of S.I. 2017/1285.

(c) 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

(d) 1981 c. 67.

land compulsory) of the A47/A11 Thickethorn Junction Development Consent Order 202[X].”

(2) In section 11A(a) (powers of entry: further notice of entry)—

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

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

(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 25 of the A47/A11 Thickethorn Junction Development Consent Order 202[X].”

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

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

“(2) But see article ~~30-32~~ (acquisition of subsoil or airspace only) on the A47/A11 Thickethorn Junction Development Consent Order 202[X], which excludes the acquisition of subsoil or airspace only from this schedule;” and

(b) after paragraph 29, end insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article ~~21-22~~ (protective works to buildings), ~~32-34~~ (temporary use of land for carrying out the authorised development) or ~~33-35~~ (temporary use of land for maintaining the authorised development) of the A47/A11 Thickethorn Junction Development Consent Order 202[X].”

### Application of the 1981 Act

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

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

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

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

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

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

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

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

(b) for the “three year period” mentioned in Section 5A substitute the “five year period mentioned in article ~~25-26~~ (time limit for exercise of authority to acquire land compulsorily) of the A47/A11 Thickethorn Junction Development Consent Order 202[X].”

(7) In section (6)(f)(notices after execution of declaration), in subsection (1)(b) substitute—

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(a) 1965 c.56, section 11A as inserted by section 202(1) Housing and Planning Act 2016 (c. 22).

(b) 1981 c.67, section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(c) 1981 c. 67, section 5A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(d) 1981 c. 67, section 5B was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(e) As inserted by section 202(2) of Schedule 3 to the Housing and Planning Act 2016 (c. 22).

(f) As amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

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

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

(9) In Schedule A1(a) (counter-notice requiring purchase of and not in general vesting declaration) for paragraph 1(2) substitute—

“(2) But see article ~~30~~32 (acquisition of subsoil or airspace only) of the A47/A11 Thickethorn Junction Development Consent Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule.”

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

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

**32.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 24 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and
- (c) section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(4) Paragraphs (1) and (2) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

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

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

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

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

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

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(a) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2012/16.

(b) 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act(a).

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

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

**34.—**(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 26 (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11(c) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (d);
- (b) remove any buildings and vegetation from that land,
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken), or any other mitigation works in connection with the authorised development.

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

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

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 7 (land of which temporary possession may be taken); or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice

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(a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).  
(b) 1991 c. 22, to which there are no amendments relevant to section 85 of the act.  
(c) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).  
(d) 1981 c. 66. Section 4 as amended by section 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 21).

of entry under section 11 of the 1965 Act **(a)** or made a declaration under section 4 of the 1981 Act **(b)** in relation to that land.

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

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

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

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

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

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

- (a) acquiring new rights over any part of that land that is also specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired); or
- (b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 32 (acquisition of subsoil or airspace only).

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

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

(11) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 24 (compulsory acquisition of land) or article 27 (compulsory acquisition of rights and imposition of restrictive covenants).

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(a) 1965 c. 56, section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), Section 103 of the Planning and Compulsory Purchase Act 2004 c. 5 and S.I. 2009/1307.

(b) 1981 c. 66. Section 4 as amended by section 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 21).

(c) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(d) 2008 c. 29, section 152 as implemented by Article 3 of S.I. 2010/101 and amended by S.I. 2009/1307.

(e) 1965 c. 56, section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and part of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15)..

(f) 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

## Temporary use of land for maintaining the authorised development

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

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

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

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

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

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

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

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

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

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

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

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

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

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

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(a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(b) 2008 c. 29, Section 152 as implemented by Article 3 of S.I. 2010/101 and amended by S.I. 2009/1307.

(c) 1965 c. 56, section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and part of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(d) 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

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

### **Statutory undertakers**

**36.**—(1) Subject to the provisions of article 27 (compulsory acquisition of rights and imposition of restrictive covenants), Schedule 9 (protective provisions) and paragraph (2), the undertaker may—

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

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

- (a) Part 3(a) (street works in England and Wales) of the 1991 Act; and
- (b) article 37 (apparatus and rights of statutory undertakers in stopped up streets).

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

**37.**—(1) Where a street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access) any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

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

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

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

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

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

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

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(a) 1991 c.22, Part 3 as amended by 2004 (c. 18), S.I. 2007/1952, S.I. 2008/102 (w. 55) and 2003 (c. 21).



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

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

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

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

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

(8) In this article—

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

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

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

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

**38.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 36 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 36, any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 37 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

In this paragraph—

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

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

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

## PART 6 OPERATIONS

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

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

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

(2) In carrying out any activity authorised by paragraph (1) or (4), the undertaker must—

- (a) do no unnecessary damage to any tree or shrub;
- (b) ensure all works are carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice [provided these meet or exceed the appropriate British Standards](#);
- (c) pay compensation to any person for any loss or damage arising from such activity; and
- (d) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981(a) and the Conservation of Habitats and Species Regulations 2010(b) or any successor acts and regulations.

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

(4) The undertaker may, for the purposes of carrying out the authorised development —

- (a) remove any hedgerows within the Order limits and specified in Schedule 8 Part 1 (removal of hedgerows); and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 8 Part 2 (removal of important hedgerows).
- (c) without limitation on the scope of sub-paragraph (a), and with the consent of the local authority in whose area the hedgerow is located, remove or translocate any hedgerow within the Order limits.

(5) The grant of consent of a local authority in terms of paragraph (4)(c) must not be unreasonably withheld.

(6) If a local authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(c) the local authority is deemed to have granted consent.

(7) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerows Regulations 1997(d).

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(a) S.I. 2015/596.

(b) S.I. 2010/490, amended by S.I. 2010/490, S.I. 2010/2020, S.I. 2011/603, S.I. 2011/625, S.I. 2011/950, S.I. 2012/630, S.I. 2012/635, S.I. 2012/637, S.I. 2012/1914, S.I. 2012/1927, S.I. 2013/755, S.I. 2014/2933, S.I. 2015/377, S.I. 2015/1390, S.I. 2015/2020, S.I. 2016/1154, S.I. 2017/1012.

(c) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(d) S.I. 1997/1160, as amended by S.I. 2003/2155, S.I. 2015/1997, S.I. 2015/377, S.I. 2009/1307 and S.I. 2013/755.

## Trees subject to tree preservation orders

40.—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made after 17 July 2020 if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

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

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;
- (b) the duty contained in section 206(1) (replacement of trees)(a) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and
- (c) the undertaker must consult the relevant planning authority prior to that activity taking place.

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

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

## PART 7

### MISCELLANEOUS AND GENERAL

#### Removal of human remains

41.—(1) Before the undertaker carries out any development or works which are to be or may disturb any human remains it is to remove those human remains, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed the undertaker is to give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the land for a minimum of 28 days.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2), the undertaker is to send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the land specified in the notice may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

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(a) 1990 c. 8 as amended by paragraph 11 of Schedule 8 to the Planning Act 2008 (c. 29).

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person is to, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker is to pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under powers conferred by this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker is to remove the remains and cause them to be re-interred in Trinity Burial Ground or such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker is to comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under powers conferred by this article—

- (a) a certificate of re-interment or cremation is to be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) is to be sent by the undertaker to the relevant planning authority.

(11) The removal of the remains of any deceased person under powers conferred by this article is to be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(a) does not apply to a removal carried out in accordance with this article.

(14) Section 3 (burial not to take place after Order in Council for discontinuance) of the Burial Act 1853(b) does not apply to a removal carried out in accordance with this article.

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(a) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) 2014 (2014 No. 1) and amended by section 96(1) of and paragraph 1 in Schedule 3 to, the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (2018 No. 3).

(b) 1853 c. 134.

## Application of landlord and tenant law

~~42.~~41.—(1) This article applies to—

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

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

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

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

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

## Operational land for purposes of the 1990 Act

~~43.~~42. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act(~~90~~a).

## Defence to proceedings in respect of statutory nuisance

~~44.~~43.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(~~91~~b) in relation to a nuisance falling within paragraphs (d), (fb), (g) or (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(~~92~~c) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(~~93~~d); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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(~~90~~a) 1990 c. 8, to which there are amendments to this sub-section not relevant to this Order.

(~~91~~b) 1990 c. 43, to which there are amendments to this sub-section not relevant to this Order.

(~~92~~c) 1990 c. 43, section 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6, Schedule 17 of the Environment Act 1995 (c. 25).

(~~93~~d) 1974 c. 40. Section 60 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43), there are further amendments to section 61 but none is relevant to this Order.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974<sup>(94a)</sup> does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **No double recovery**

~~45.44.~~ Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract, or any rule of law, or under two or more different provisions of this Order.

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

~~46.45.~~—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land, if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

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

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

~~47.46.~~—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 27 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity, which will accrue to that person by reason of the construction of the authorised development.

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

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

~~48.47.~~—(1) The undertaker may appeal in the event that a local authority issues a notice under section 60 (control of noise on construction sites), or does not give consent or grants consent but

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<sup>(94a)</sup> 1974 c. 40, section 61 to which there are amendments to section 61 but none is relevant to this Order.

subject to conditions, under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974<sup>(95a)</sup>.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority and affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
- (d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

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

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

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

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

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

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

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

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

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<sup>(95a)</sup> 1974 c. 40. Section 60 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43), there are further amendments to section 61 but none are relevant to this Order.

of the appointed person such written representations as have been sent outside the relevant time limits.

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

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

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

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

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

### **Protection of interests**

~~49.48.~~ Schedule 9 (protective provisions) to the Order has effect.

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

~~50.49.~~—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 10 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

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

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

### **Service of notices**

~~51.50.~~—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

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

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(~~96a~~) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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~~(96a)~~ 1978 c.30, as amended by section 17 of 1994 (c. 36), there are other amendments but none are relevant.



- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
  - (b) in any other case, the last known address of that person at the time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
  - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—
- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
  - (b) the notice or document is capable of being accessed by the recipient;
  - (c) the notice or document is legible in all material respects; and
  - (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.
- (10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **Arbitration**

~~52.51.~~ Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

### **Crown Rights**

~~53.52.~~—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker to use, enter upon or in any manner interfere with any land or rights of any description—

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

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

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

Signed by authority of the Secretary of State for Transport

Address  
Date

*Name*  
Head of the Transport and Works Act Orders Unit  
Department for Transport

# SCHEDULES

## SCHEDULE 1

Article 2, 5 and 6

### AUTHORISED DEVELOPMENT

#### **In the administrative areas of Norfolk County Council and South Norfolk District Council**

The authorised development is a nationally significant infrastructure project as defined in sections 14 and 22([97a](#)) of the 2008 Act and associated development within the meaning of section 115(2)([98b](#)) of the 2008 Act, comprising:

**Work No. 1** – works to existing B1172 Norwich Road to create a new junction between B1172 Norwich Road and the Cantley Lane Link Road (Work No. 2) including an access to the new Cantley Lane Link Road and a ghost island turning provision together with associated utilities diversions, embankments and drainage, as shown on sheet 5 of the works plans;

**Work No. 2** – a new 949 metre length of carriageway and footways, embankment, approaches and associated drainage to form the new Cantley Lane Link Road from a point connecting to the new junction at B1172 Norwich Road (Work No. 1) to its connection with Cantley Lane South including private accesses for the construction compounds (Work Nos. 3 and 5), shown on sheets 3 and 5 of the works plans;

**Work No. 3** – a temporary construction compound and material storage and processing area south-west of the new B1172 Norwich Road and Cantley Lane Link Road junction (Work No. 1) shown on sheet 5 of the works plans;

**Work No. 4** – a new drainage basin and associated drainage, west of Cantley Lane Link Road, between B1172 Norwich Road and the A11, outfalling into Cantley Stream, shown on sheet 3 of the works plans;

**Work No. 5** – a temporary construction compound and material storage and processing area south-east of the new B1172 Norwich Road and Cantley Lane Link Road junction (Work No. 1) shown on sheet number 5 of the works plans;

**Work No. 6** – a new detention basin and associated drainage south of the A47 and east of Cantley Lane South, outfalling into Cantley Stream, shown on sheet 7 of the works plans;

**Work No. 7** – a temporary material storage area south of the Thickthorn Park and Ride’s proposed extension area and east of Cantley Lane Link Road (Work No. 2) shown on sheets 3, 5 and 6 of the works plans;

**Work No. 8** – vegetation stripping and temporary fencing required to relocate wolverines in the section of Cantley Stream between Cantley Lane South and the A47 shown on sheets 3 and 7 of the works plans;

**Work No. 9** – a new drivable maintenance access track to the drainage basin west of Cantley Lane Link Road (Work No. 4) and associated drainage, shown on sheet 5 of the works plans;

**Work No. 10** – a new Cantley Lane Underpass structure, embankments, drainage, and access ramps beneath the A47 to accommodate the proposed A11/A47 Connector Road (Work No. 24) shown on sheet 6 of the works plans;

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[\(97a\)](#) Section 22 was substituted by article 3 of S.I. 2013/1883 and amended by section 1(6) of, and paragraph 153 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

[\(98b\)](#) Section 115(2) was amended by section 160(1) and (3) of the Housing and Planning Act 2016 (c. 22).

**Work No. 11** – extension of the existing driveable access track through the bridge extension (Work No. 31) under the A11/A47 Connector Road (Work No. 24), shown on sheet 3 of the works plans;

**Work No. 12** – a new driveable access track and associated drainage, east of the A11, west of Cantley Lane South and south of Cantley Stream, between Cantley Lane South for 383 metres to the extended Cantley Stream underpass (Work No.31), shown on sheet 3 of the works plans;

**Work No. 13** – works to realign Cantley Stream to accommodate the Cantley Lane Link Road (Work No. 2) and its new junction with the realigned Cantley Lane South (Work No. 14), shown on sheet 3 of the works plans;

**Work No. 14** – a combination of new and realigned carriageway either side of the new junction with Cantley Lane Link Road (Work No. 2) consisting of new carriageway, footways, embankments, approaches, associated drainage, improvements to private accesses to form the realigned Cantley Lane South, shown on sheet 3 of the works plans;

**Work No. 15** – a new driveable access track from the realigned Cantley Lane South (Work No.14) to an existing property to the west, shown on sheet 3 on the works plans;

**Work No. 16** – a new driveable access track from Cantley Lane South, north of the new junction with the Cantley Lane Link Road (Work No.2) to existing properties to the east, shown on sheet 3 on the works plans;

**Work No. 17** – a new drivable maintenance access track running southwards for 213 metres to the detention basin south of the A47 (Work No. 6), including embankments, approaches, associated drainage and private field accesses, shown on sheet 7 of the works plans;

**Work No. 18** – a new carriageway, drainage, embankments and associated access ramps from Cantley Lane Footbridge Cringleford (Work No. 35) and over the A47 connecting Cantley Lane South (south west of A47) for 356 metres to Cantley Lane (north east of A47), shown on sheet 7 of the works plans;

**Work No. 19** – a new Ward's Wood Underpass structure, embankments, drainage and access ramps, beneath the A11 to accommodate the proposed A11/A47 Connector Road shown on sheet 6 of the works plans;

**Work No. 20** – a new Cantley Wood Overbridge structure, embankments, drainage and access ramps to the new bridge structure over the A11 to accommodate the proposed Cantley Lane Link Road (Work No. 2) shown on sheet 3 of the works plans;

**Work No. 21** – existing carriageway altered to provide new A47 southbound merge slip road, embankments, approaches, and associated drainage connecting Thickthorn junction to the A47 southbound, shown on sheets 6 and 7 of the works plans;

**Work No. 22** – a new driveable access track from Cantley Lane South for 258 metres to the fields north of Big Wood, shown on sheets 3 and 6 of the works plans;

**Work No. 23** – two earthwork landscaping bunds on the south side of the A11/A47 connector road (Work No. 24), shown on sheet 6 of the works plans;

**Work No. 24** – a new 1516 metre length of carriageway, embankments and associated drainage to form the A11/A47 Connector Road, taking traffic from the A11 northbound to the A47 southbound and works associated with the stopping up of Cantley Lane, shown on sheets 2, 3, 6 and 7 of the works plans;

**Work No. 25** – earthwork landscaping bund south of Thickthorn junction and north of the A11/A47 Connector Road (Work No.24), between the A11 and A47, shown on sheet 6 of the works plans;

**Work No. 26** – existing carriageway altered and new carriageway and footway, embankment and associated drainage to form the segregated left turn lane from the A47 westbound approach to the A11 southbound, shown on sheet 6 of the works plans;

**Work No. 27** – resurfacing, signing, lining and ducting around Thickthorn junction and widening of the southern side of Thickthorn junction, construction of a maintenance bay and associated roundabout works shown on sheet 6 of the works plans;

**Work No. 28** – improvement works to the existing A11 approaching Thickthorn junction, including signing and lining works shown on sheet 6 of the works plans;

**Work No. 29** – alteration of the existing carriageway at the junction of Station Lane with the A11, including a new entry slip road, new carriageway, embankments and associated drainage, shown on sheet 1 of the works plans;

**Work No. 30** – central construction compound and material storage and processing area east of A11 and north of Big Wood and Cantley Stream, as shown on sheets 3 and 6 of the works plans;

**Work No. 31** – extension of the existing A11 bridge structure under the A11 to accommodate the new A11/A47 Connector Road (Work No. 24); shown on sheet 3 of the works plans;

**Work No. 32** – construction compound and material storage and processing area east of the A47 and south of Cantley Lane shown on sheet 7 of the works plans;

**Work No. 33** – Cantley Stream culvert structure underneath the realigned Cantley Lane South (Work No. 14), shown on sheet 3 of the works plans;

**Work No. 34** – diversion of surface water sewer west of the A11 between Cantley Lane Link Road (Work No.2) and Cantley Stream, shown on sheet numbers 3, 5 and 6 of the works plans;

**Work No. 35** – new bridge structure for Cantley Lane Footbridge (Cringleford) carrying the new carriageway (Work No. 18) from Cantley Lane South (south west of A47) over the A47 to Cantley Lane (north east of A47), shown on sheet 7 of the works plans;

**Work No. 36** – diversion and removal of electricity cables south of the A47 between the A11 and Cantley Lane South to accommodate Work Nos. 21, 22, 23, 24 and 25 shown on sheets 3 and 6 of the works plans;

**Work No. 37** – diversion and removal of electricity cables and electronic communications at Cantley Lane South, shown on sheet numbers 3 and 7 of the works plans;

**Work No. 38** – diversion and removal of potable water pipelines, electricity cables, sewer pipelines and electronic communications east and west of Cantley Lane South to accommodate Work Nos. 2, 12, 13, 14, 15 and 33, shown on sheet number 3 of the works plans;

**Work No. 39** – demolition of existing footbridge over the A47 linking Cantley Lane with Cantley Lane South shown on sheet no 7 of the works plans;

**Work No. 40** – diversion and removal of potable water pipelines, electricity cables, gas main and electronic communications on both sides of and crossing underneath the A47 to accommodate Work Nos. 18 and 24, shown on sheet number 7 of the works plans;

**Work No. 41** – diversion of electronic communications north of Cantley Lane along the east side of the A47 and the new A11/A47 Connector Road (Work No. 24) to accommodate Work Nos. 21, 24, 26, 27 and 39, shown on sheets 6 and 7 of the works plans;

**Work No. 42** – diversion and removal of 132kv electricity cables north east of the A47 to accommodate Work Nos. 21, 22, 24, 35 and 39, shown on sheet number 7 of the works plans;

**Work No. 43** – temporary construction compound and material storage processing area north of A11 and east of Station Lane, as shown on sheet 1 of the works plans;

**Work No. 44** – new Cantley Wood Link Road Overbridge structure, embankments, drainage and access ramps to the new bridge structure over the A11/A47 Connector Road (Work No.24) to accommodate the proposed Cantley Lane Link Road (Work No. 2) shown on sheet 3 of the works plans;

**Work No. 46** – diversion and removal of potable water pipeline, 11kv electricity cables, electronic communications and gas main on both sides of the new B1172 Norwich Road junction (Work No.1), shown on sheet number 5 of the works plans;

**Work No. 47** – diversion, removal or alteration of the sewer pipelines underneath and either side of the A11 to accommodate Work Nos. 12 and 24, shown on sheet number 3 of the works plans;

**Work No. 48** – removal of electricity overhead lines crossing the A47 north west of the existing footbridge to accommodate Work Nos. 10, 21, 22, 23 and 24, shown on sheets 6 and 7 of the works plans;

**Work No. 49** – alterations to sewer pipelines, as shown on sheet 7 of the works plans.

And for the purposes of or in connection with the construction of any of those works mentioned above, further development within the Order limits consisting of:

- (a) alteration to the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; and altering the level of any such kerb, footpath, footway, cycle track or verge, installing low noise surfacing and landscaping sections of abandoned sections;
- (b) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (c) ramps, means of access, non-motorised links, footpaths, cycle tracks and crossing facilities;
- (d) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, barriers, pumping stations, parapets, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (e) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (f) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, soakaways, pipes, cables, ducts and lights;
- (g) works to alter the course of or otherwise interfere with a watercourse;
- (h) landscaping, noise bunds and barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (i) works for the benefit or protection of land affected by the authorised development;
- (j) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (k) the felling of trees;
- (l) construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;
- (m) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and

- (n) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development.

## SCHEDULE 2 REQUIREMENTS

Article 5

### PART 1 REQUIREMENTS

#### Interpretation

1. In this Schedule—

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

“contaminated land” has the same meaning as that term is given in section 78A of the Environmental Protection Act 1990<sup>(99a)</sup>;

“DMRB” means the Design Manual for Roads and Bridges, which accommodates all current standards, advice and other documents relating to the design, assessment and operation of trunk roads and motorways, or any equivalent replacement to the DMRB published;

“drainage strategy” means Appendix 13.2 of the environmental statement;

“EMP (Second Iteration)” means the second iteration of the environmental management plan produced in accordance with the DMRB, which is to be a refined version of the EMP (First Iteration) including more detailed versions of the outline plans contained or listed within the EMP (First Iteration) or any other plans as required;

“EMP (Third Iteration)” means the third iteration of the environmental management plan produced in accordance with the DMRB, which is a refined version of the EMP (Second Iteration) and which relates to the operational and maintenance phase of the authorised development;

“environmental masterplan” means the document certified as the environmental masterplan under article ~~48~~<sup>50</sup> (certification of documents, etc.);

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017<sup>(100b)</sup>;

“lead local flood authority” has the same meaning as in the Flood and Water Management Act 2010;

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

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981<sup>(101c)</sup>;

“REAC” means the Register of Environmental Actions and Commitments forming table 3.1 of the EMP (First Iteration).

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<sup>(99a)</sup> 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 (c. 37).

<sup>(100b)</sup> S.I. 2017/1012.

<sup>(101c)</sup> 1981 c. 69.

## **Time limits**

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

## **Detailed design**

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

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

## **Environmental Management Plan**

4.—(1) No part of the authorised development is to commence until an EMP (Second Iteration) for that part, substantially in accordance with the EMP (First Iteration) has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, local highway authority, lead local flood authority and the Environment Agency to the extent that the content of the EMP (Second Iteration) relates to matters relevant to their functions.

(2) The EMP (Second Iteration) for any part of the authorised development must be written in accordance with ISO14001 and so far as is relevant to that part of the authorised development, must reflect the mitigation measures required by the REAC and set out in the Environmental Statement and must include as many of the following plans and strategies as are applicable to the part of the authorised development to which it relates—

- (a) Site waste management plan;
- (b) Materials management plan;
- (c) Soil management plan;
- (d) Construction noise and dust management plan;
- (e) Construction communication strategy;
- (f) Landscape and ecology management plan;
- (g) Temporary surface water drainage strategy;
- (h) Detailed heritage Written Scheme of Investigation;
- (i) INNS management plan;
- (j) Operational UXO Emergency Response Plan; and
- (k) Water monitoring and management plan.

(3) The relevant part of the authorised development must be constructed in accordance with the approved EMP (Second Iteration).

(4) On completion of construction of each part of the authorised development the EMP (Third Iteration) relating to that part must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the relevant local highway authority to the extent that the content of the EMP (Third Iteration) relates to matters relevant to their functions.



(5) The relevant part of the authorised development must be operated and maintained in accordance with the EMP (Third Iteration).

### **Landscaping**

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

(2) The landscaping scheme prepared under sub-paragraph (1) must reflect the mitigation measures set out in the REAC and be based on the environmental masterplan.

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

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

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

### **Contaminated land and groundwater**

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

(2) Where the risk assessment prepared in accordance with sub-paragraph (1) determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose and to prevent any impacts on controlled waters must be submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its function and the Environment Agency.

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

### **Protected species**

7.—(1) No part of the authorised development is to commence until for that part, final preconstruction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by that part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

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

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

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

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

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

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

### **Surface water drainage**

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

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

### **Archaeological remains**

**9.**—(1) No part of the authorised development is to commence until for that part a written scheme of investigation of areas of archaeological interest, reflecting the relevant mitigation measures set out in the REAC, has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, Norfolk County Council Historic Strategy and Advice Team and Historic England on matters related to their function.

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

### **Traffic management**

**10.**—(1) No part of the authorised development comprising the construction, alteration or improvement of Work No. 24 is to commence until a traffic management plan substantially in accordance with the outline traffic management plan, for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant highway authority on matters related to its function.

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

### **Fencing**

**11.** Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Manual of Contract Documents

for Highway Works maintained by or on behalf for the undertaker except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

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

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

## **PART 2**

### **PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

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

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

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 14 (further information); or
- (c) such longer period as may be agreed between the parties.

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

(3) Where—

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

#### **Further information**

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

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

(3) In the event that the Secretary of State does not give such notification within that 21 day business period the Secretary of State is deemed to have sufficient information to consider the

application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 13 (applications made under requirements) and in this paragraph.

(5) In this paragraph, “business day” means a day other than Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(~~102~~[a](#)).

### Register of requirements

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

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

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

### Anticipatory steps towards compliance with any requirement

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

### Details of consultation

17. In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than ~~15~~[20](#) business days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker’s response to that consultation.

## SCHEDULE 3

Articles 12, 13 and 19

### CLASSIFICATIONS OF ROADS, ETC

#### PART 1

#### TRUNK ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
<b>The classification of roads plans – sheet 2</b>	
Hethersett; Ketteringham; Cringleford	New link Road between the A11 north bound

~~(102)~~[a](#) 1970 c.80.

	and the A47 southbound A 1725 metre length of carriageway to be classified as part of the A47 Trunk Road from point K, 796 metres north east of the A11 junction with Station Lane in an easterly direction to point L (sheet 7).
<b>The classification of roads plans – sheet 6</b>	
Ketteringham	New northbound diverge slip road A 570 metre length of carriageway to be classified as part of the A47 Trunk Road from point I 162 metres north of the centreline of the existing Cantley Lane South overbridge in a north-westerly then south-westerly direction to point J.
Cringleford	New southbound merge slip road A 694 metre length of carriageway to be classified as part of the A47 Trunk Road from point M, 42 metres east of the centreline of the Thickthorn Junction overbridge in a south direction to point N (sheet 7).

## PART 2

### CLASSIFIED B ROADS

<i>(1)</i> Area	<i>(2)</i> Length of road
<b>The classification of roads plans – sheet 5</b>	
Hethersett	B1172 Norwich Road A 250 metre length of carriageway to be classified as part of the B1172 (including existing highway to be improved). From point D, 118 metres east from the centreline of its junction with the new Cantley Lane Link Road, in a westerly direction to point C.
Hethersett; Ketteringham	<del>Cantley Lane Link Road A 947 metre length of highway to be classified as B Road, from point E at its junction with the B1172, in a south easterly direction to point F (sheet 3).</del>

## PART 2A

### CLASSIFIED C ROADS

<i>(1)</i> Area	<i>(2)</i> Length of road
<b>The classification of roads plans – sheet 1</b>	
Hethersett	Station Lane Junction (including existing highway to be improved) A 220 metre length of carriageway to be classified as C Road from point A, 60 metres north west of the junction with the A11 in a south easterly and then north easterly direction to point B.
<b>The classification of roads plans – sheet 3</b>	

Ketteringham	Cantley Lane South A 194 metre length of carriageway from point G, 105 metres south of the centre of the junction with Cantley Lane Link Road in a northerly direction to point H.
<b><u>The classification of roads plans – sheet 5</u></b>	
<u>Hethersett; Ketteringham</u>	<u>Cantley Lane Link Road</u> <u>A 947 metre length of highway to be classified as C Road, from point E at its junction with the B1172, in a south easterly direction to point F (sheet 3).</u>

## PART 3

### SPEED LIMITS

Note: where speed limits are indicated on the plans relating to this Part (the traffic regulation plans) but are not referenced in this schedule they indicate that national speed limits apply in accordance with either:

- (a) the national speed limit set out in Section 86 and Schedule 6 of the Road Traffic Regulation Act 1984 and the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 as varied by the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 and continued indefinitely by Regulation 2 of the 70 Miles Per Hour, 60 Miles Per Hour and 50 Miles Per Hour (Temporary Speed Limit) (Continuation) Order 1978 (SI 1978/1548)(~~103a~~); or
- (b) the provisions of the Road Traffic Regulation Act 1984 (which defines speed limits on ‘restricted roads’ by reference to street lighting),

and are not subject to this order. For details of the scheme lighting design, refer to the general arrangement plans.

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed Limit</i>
<b>The traffic regulation plans – sheet 1</b>		
Hethersett	Station Lane approach to A11 From point A, 60 metres north west of the junction with the A11 in an south eastern and then north eastern direction to point B a distance of 217 metres.	50 miles per hour
<b>The traffic regulation plans – sheet 3</b>		
Ketteringham	Cantley Lane South From point G, a distance of 105 metres south of the centre of the junction with Cantley Lane Link Road in a northerly direction to point H, a distance of 134 metres.	40 miles per hour

~~(103a)~~ SI 1978/1548. The Road Traffic Regulation Act 1984 and the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 and the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 were not statutory instruments.

Ketteringham	Cantley Lane South From point H, a distance of 30 metres north of the centre of the junction with Cantley Lane Link Road in a north easterly direction to point I (sheet 7), a distance of 62 metres.	20 miles per hour
Hethersett; Ketteringham; Cringleford	A11/A47 Connector Road From point J, a distance of 93 metres south west of the centreline of the Cantley Stream / A11 crossing in a northern direction to the Ward's Wood underpass and then in an eastern direction to the Cantley Lane underpass and then in a south eastern direction to point K (sheet 7), a distance of 1329 metres.	Removal of restricted road status 50 miles per hour
<b>The traffic regulation plans – sheet 4</b>		
Hethersett	B1172 From point C, 1101 metres west of the junction with Cantley Lane Link Road in an eastern direction to point D (sheet 5) a distance of 1217 metres.	40 miles per hour
<b>The traffic regulation plans – sheet 5</b>		
Hethersett	Cantley Lane Link Road From point E at the junction with the B1172, in a south easterly direction to point F (sheet 3) at the junction with Cantley Lane South, a distance of 947 metres.	40 miles per hour
<b>The traffic regulation plans – sheet 6</b>		
Hethersett; Ketteringham; Cringleford	A11 approach to Thickthorn junction From point L, 251 metres south west from the give way line with Thickthorn junction, in a north easterly direction to point M at Thickthorn junction, a distance of 251 metres.	Removal of restricted road status 40 miles per hour
Hethersett; Ketteringham; Cringleford	A47 north bound diverge From point O, 82 metres south of the centreline of the overbridge at Thickthorn junction in a north westerly direction then a south westerly direction to point N, a distance of 355 metres.	Removal of restricted road status 40 miles per hour
Hethersett; Ketteringham; Cringleford	A47 north bound diverge From point P, 161 metres	Removal of restricted road status

	south of the centreline of the overbridge at Thickthorn junction in a north westerly direction to point Q, a distance of 157 metres.	
Hethersett; Ketteringham; Cringleford	A47 south bound merge From point S, 51 metres north east of the centreline of the A47 at Thickthorn junction in a south easterly direction to point R, a distance of 161 metres.	Removal of restricted road status

## PART 4

### FOOTPATHS, CYCLE TRACKS, FOOTWAYS AND BRIDLEWAYS

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Length of Footpath/Cycle track/Footway/Bridleway</i>
<b>The rights of way and access plans – sheet 3</b>	
Ketteringham	Reference CF3 to CF4 A cycle track on the west side of Cantley Lane Link Road from point CF3, 46 metres north westerly of the junction with Cantley Lane South in a southern direction to point CF4, a distance of 67 metres.
<b>The rights of way and access plans – sheet 5</b>	
Hethersett; Ketteringham	Reference CF1 to CF2 A cycle track on the east side of Cantley Lane Link Road from point CF1 at the junction with B1172 in a southerly and then south easterly direction to point CF2 (sheet 3), a distance of 1043 metres.
<b>The rights of way and access plans – sheet 7</b>	
Ketteringham; Cringleford	Reference CF5 to CF6 A bridleway from point CF5 at the junction with Cantley Lane South in an easterly direction via the proposed Cantley Lane footbridge to point CF6, a distance of 354 metres.

## PART 5

### TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
<b>The traffic regulation plans – sheet 3</b>		
Hethersett; Ketteringham; Cringleford	New link Road between the A11 north bound and the A47 southbound From point J, 796m north east of the A11 junction with Station Lane in an easterly	Proposed clearway



	direction to point K (sheet 7) a distance of 1725 metres.	
Hethersett; Ketteringham	Cantley Lane South From point G, a distance of 105 metres south of the centre of the junction with Cantley Lane Link Road in a north easterly direction to point I (sheet 7), a distance of 525 metres.	Proposed 7.5 Tonne weight limit except for loading
<b>The traffic regulation plans – sheet 5</b>		
Hethersett; Ketteringham	Cantley Lane Link Road From point E at the junction with the B1172, in a south easterly direction to point F (sheet 3) at the junction with Cantley Lane South, a distance of 947 metres.	Proposed 7.5 Tonne weight limit except for loading

## SCHEDULE 4

Article 17, 28 and 29

### PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

In relating this Schedule to the rights of way and access plans, the provisions described in this Schedule are shown on the rights of way and access plans in the following manner—

- (a) Existing highways are to be stopped up, as described in column (2) of Parts 1 and 2 of this Schedule, are shown by blue diagonal hatching (as shown in the key on the rights of way and access plans) over the extent of the area to be stopped up, which is described in column (3) of Parts 1 and 2 of this Schedule and given a reference label in a square box (a capital A followed by a number).
- (b) New highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 2 of this Schedule, are shown by red honeycomb-hatching (for motorways and trunk roads), green cross hatching (for other classified roads and highways) pale green hatching (for cycle tracks) and green dashes (for public rights of way) (as shown in the key on the rights of way and access plans) and are given a reference label in a square (D for new highway to be substituted or provided and CF for public rights of way and cycle tracks in each case followed by a number) and will be a road unless the word ‘footpath’, ‘bridleway’, ‘footway’ or ‘cycle track’ appears beneath its reference letter in column (4) of Part 2 of this Schedule.
- (c) Private means of access to be stopped up, as described in column (2) of Parts 3 and 4 of this Schedule, are shown by solid lime green shading (as shown in the key on the rights of way and access plans) over the extent of stopping up described in column (3) of Parts 3 and 4 of this Schedule, and are given a reference label in a square (a capital B followed by a number).
- (d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 3 of this Schedule, are shown by red diagonal hatching (as shown in the key on the rights of way and access plans) and are given a reference label in a square (a capital C followed by a number).

## PART 1

### HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
<b>The rights of way and access plans – sheet 3</b>		
Hethersett; Ketteringham	Reference A3 to A4 A11 slip road	Reference A3 to A4 From a point A3 495 metres south westerly of the give way line at Thickthorn Junction in a north easterly direction to point A4 (sheet 6), a distance of 224 metres.
<b>The rights of way and access plans – sheet 6</b>		
Hethersett; Ketteringham; Cringleford	Reference A5 to A6 Part of Cantley Lane South	Reference A5 to A6 From a point A5 314 metres south of the centreline of the overbridge at Thickthorn junction in a south easterly direction to point A6, a distance of 335 metres.

## PART 2

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New highway to be substituted/provided</i>
<b>The rights of way and access plans – sheet 1</b>			
Hethersett			Reference D1 to D2 Widening of carriageway from point D1 70 metres north west of the A11 Hethersett Bypass in a south easterly and then north easterly direction to point D2 on the A11 Hethersett Bypass, a distance of 140 metres.
<b>The rights of way and access plans – sheet 2</b>			
Hethersett			Reference D11 to D12 The A11/A47connector road from point D11 284 metres south west of the A11 Cantley Stream crossing a) in a northerly direction to the Ward

			<p>Wood's underpass where it passes underneath the A11; then</p> <p>b) in an easterly direction to Cantley Lane underpass where it passes underneath the A47, then</p> <p>c) in a south easterly direction to a point D12 (sheet 7) 5m north of the A47 Cantley Stream crossing on the A47 a distance of 1761 metres.</p>
<b>The rights of way and access plans – sheet 3</b>			
Hethersett; Ketteringham	Reference A1 to A2 Cantley Lane South	Reference A1 to A2 From a point A1 32 metres south of the existing property access in a northern direction to point A2, a distance of 169 metres.	Reference D9 to D10 Realignment of Cantley Lane South. To be substituted by a new length of highway from a point D9 104 metres south of the centreline of the junction with Cantley Lane Link Road in a northern direction to tie into point D10 on the existing Cantley Lane South, a distance of 187 metres.
Hethersett; Ketteringham			Reference D7 to D8 A new length of highway between point D7 to point D8 on Cantley Lane South, a distance of 9 metres.
<b>The rights of way and access plans – sheet 5</b>			
Hethersett			Reference D3 to D4 Widening of B1172 Norwich Road New length of carriageway from point D3 175 metres west of the centre of the B1172 / Cantley Lane Link Road junction, in an easterly direction to point D4, a distance of 283 metres.
Hethersett			Reference D5 to D6 New Cantley Lane Link Road New length of

			carriageway from point D5 295 metres west of the centre of the B1172 McDonalds roundabout in a southerly direction and then a south westerly direction to point D6 (sheet 3) on Cantley Lane South, a distance of 106 metres.
<b>The rights of way and access plans – sheet 6</b>			
Hethersett; Ketteringham; Cringleford			Reference D13 to D14 A new segregated left turn lane from point D14 on the A47 in a north westerly direction towards Thickthorn junction and then in a south westerly direction to join the A11 at point D13, a distance of 424 metres.
Hethersett; Ketteringham; Cringleford			Reference D15 to D16 A new southbound merge slip road from point D15 at the Thickthorn junction in a south easterly direction to point D16 (sheet 7) on the A47, a distance of 692 metres.
Ketteringham; Cringleford	Reference A8 to A10 Cringleford BR5 and bridleway (unnamed)	Reference A8 to A10 From a point A8 (sheet 7) at the base of the existing A47 footbridge in a northern direction to point A10, a distance of 174 metres.	Reference CF5 to CF6 (sheet 7) To be substituted for a length of bridleway from point CF5 on Cantley Lane South crossing the A47 over the proposed Cantley Lane footbridge to point CF 6 on Cantley Lane, a distance of 359 metres.
Ketteringham; Cringleford	Reference A11 to A12 Bridleway (unnamed)	Reference A11 to A12 From a point A11 at the A47 southbound merge slip road pegasus crossing in a south westerly direction to point A12, a distance of 92 metres.	Reference CF5 to CF6 (sheet 7) To be substituted for a length of bridleway from point CF5 on Cantley Lane South crossing the A47 over the proposed Cantley Lane footbridge to point CF6 on Cantley Lane, a distance of 359

			metres.
Ketteringham; Cringleford	Reference A13 to A14 Bridleway (unnamed)	Reference A13 to A14 From a point A13 at the A47 northbound diverge slip road pegasus crossing in a south westerly and then south easterly direction to point A14, a distance of 156 metres.	Reference CF5 to CF6 (sheet 7) To be substituted for a length of bridleway from point CF5 on Cantley Lane South crossing the A47 over the proposed Cantley Lane footbridge to point CF 6 on Cantley Lane, a distance of 359 metres.
<b>The rights of way and access plans – sheet 7</b>			
Hethersett; Ketteringham; Cringleford	Reference A7 to A8 Cantley Lane	Reference A7 to A8 From a point A7 97 metres east of the existing footbridge in a westerly direction to point A8	Reference CF5 to CF6 (sheet 7) To be substituted for a length of bridleway from point CF5 on Cantley Lane South crossing the A47 over the proposed Cantley Lane footbridge to point CF 6 on Cantley Lane, a distance of 359 metres.
Cringleford	Reference A8 to A9 Cringleford FP4a	Reference A8 to A9 From a point A8 at the base of the existing footbridge crossing the A47 in a south westerly direction to a point A9, a distance of 75 metres	Reference CF5 to CF6 To be substituted for a length of bridleway from point CF5 on Cantley Lane South crossing the A47 over the proposed Cantley Lane footbridge to point CF6 on Cantley Lane, a distance of 359 metres.

### PART 3

**PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A  
SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS  
WHICH ARE OTHERWISE TO BE PROVIDED**

<i>(1)</i> Area	<i>(2)</i> Private means of access to be stopped	<i>(3)</i> Extent of stopping up	<i>(4)</i> New private means of access to be substituted or provided
<b>The rights of way and access plans – sheet 3</b>			
Ketteringham	Reference B1 to B2 Access to the properties on Cantley Lane South	Reference B1 to B2 A length from a point 53 metres north of the access to the property joining Cantley Lane	Reference C11 to C12 Access to properties on Cantley Lane South to substituted by a new length of private

		South in a north westerly direction for a distance of 12 metres	means of access from a point 79 metres north of the access to the property joining Cantley Lane South, in a westerly direction for a distance of 38 metres.
Hethersett; Ketteringham	Reference B9 to B10 Access to the A11 underpass from Cantley Lane South	Reference B9 to B10 A length from a point 36 metres from the centreline from the proposed Cantley Stream culvert in a westerly direction then a south westerly direction for a distance of 407 metres.	Reference C7 to C8 Private means of access to the A11 underpass to be substituted by a new length of private means of access from a point C8 72 metres south of the centre of Cantley Lane Link Road junction with Cantley Lane South in a westerly direction to point C7, a distance of 368 metres.
Ketteringham			Reference C9 to C10 A new private access to an agricultural field from point C9 on Cantley Lane South to point C10, a distance of 20 metres.
Ketteringham			Reference C13 to C14 A new private access to a residential property from point C13 to a point C14 on Cantley Lane South, a distance of 29 metres.
Ketteringham			Reference C15 to C16 A new private access to a residential property from point C15 to point C16 on Cantley Lane South, a distance of 30 metres.
Ketteringham			Reference C19 to C20 A new private access to a residential property from point C19 to point C20 on Cantley Lane South, a distance of 4 metres.
Ketteringham			Reference C21 to C22 A new private access to a residential property from point C21 to point C22 on

			Cantley Lane South, a distance of 7 metres.
<b>The rights of way and access plans – sheet 5</b>			
Hethersett			Reference C1 to C2 A new private access to an agricultural field from point C1 on the proposed Cantley Lane Link Road to point C2, a distance of 9 metres.
Hethersett			Reference C3 to C4 A new private access to an agricultural field from point C3 to point C4 on the proposed Cantley Lane Link Road, a distance of 6 metres.
Hethersett			Reference C5 to C6 A new private access to a drainage basin from point C5 on the proposed Cantley Lane Link Road to point C6, a distance of 13 metres.
<b>The rights of way and access plans – sheet 7</b>			
Ketteringham			Reference C23 to C24 A new private access track to agricultural fields and a new drainage basin from point C23 50 metres south west of the existing footbridge in a south easterly direction to point C24, a distance of 136 metres.

## PART 4

### PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> Area	<i>(2)</i> Private means of access to be stopped up	<i>(3)</i> Extent of stopping up
<b>The rights of way and access plans – sheet 6</b>		
Ketteringham	Reference B3 to B4 Access to agricultural field	Reference B3 to B4 A private agricultural access from a point B3 77 metres west of the A11 Hethersett Bypass to point B4, a distance of 31 metres.
Ketteringham	B5 to B6	Reference B5 to B6

	Access to agricultural field	A private agricultural access from a point B5 on Cantley Lane South to point B6, a distance of 5.5 metres.
Ketteringham	B7 to B8 Access to agricultural field	Reference B7 to B8 A private agricultural access from a point B7 on Cantley Lane South to point B8 for a distance of 5.5 metres.

## SCHEDULE 5

### LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Plot reference number shown on land plans</i>	<i>(2)</i> <i>Purpose of which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
<b>Land Plan – Sheet 3</b>		
3/3b	Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers. Right to pass and repass with or without plant and vehicles and including access to highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	Work Nos. 4, 11, 31 and 34
3/3h	Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers. Divert, install, underground, alter, retain, use, monitor and maintain and remove water	Work Nos. 14, 15, 37 and 38



	<p>and sewerage pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications cables, apparatus and associated infrastructure.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
3/3i	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water and sewerage pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications cables, apparatus and associated infrastructure.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated</p>	Work Nos. 22, 36, 37 and 38

	<p>infrastructure including marker posts and inspection chambers. Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
3/7c	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	Work No. 38 and 13
3/8f	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p>	Work No. 38 and 13

	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove gas mains and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water and sewerage pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications cables, apparatus and associated infrastructure.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
3/9a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water and sewerage pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications</p>	Work Nos. 36, 37 and 38

	<p>cables, apparatus and associated infrastructure. Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers. Right to pass and repass with or without plant and vehicles and including access to highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
<b>Land Plan – Sheet 6</b>		
6/3g	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers. Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers. Right to pass and repass with or without plant and vehicles and including access to highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	Work Nos. 22, 23 and 36
6/9b	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including</p>	Work Nos. 21, 41 and 42

	<p>overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers. Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers. Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
<b>Land Plan – Sheet 7</b>		
7/1a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers. Divert, install, underground, alter, retain, use, monitor and maintain and remove gas mains and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water and sewerage pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications cables, apparatus and associated infrastructure.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables,</p>	Work Nos. 6, 17 and 40

	<p>conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers. Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
7/7b	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove gas mains and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water and sewerage pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications cables, apparatus and associated infrastructure.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive</p>	Work Nos. 18, 40, 41 and 42

	covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	
7/7d	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove gas mains and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water and sewerage pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications cables, apparatus and associated infrastructure.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	Work Nos. 32, 40, 42
7/8c	Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including	Work No. 42

	<p>overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers. Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers. Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
7/9a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers. Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers. Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	Work No. 42



## MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

### Compensation enactments

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

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

(2) For section 5(1) (5A) (relevant valuation date) of the 1961 Act substitute—

“5.—(1) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(4) of Schedule 4 to the A47/A11 Thickthorn Junction Development Consent Order [XX] (“the A47/A11 Thickthorn Junction Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(7) of Schedule 4 to the A47/A11 Thickthorn Junction Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land,

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

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(~~104~~[a](#)) has effect subject to the modifications set out in sub-paragraph (1).

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

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

### Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 30 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27(1) (compulsory acquisition of rights and imposition of restrictive covenants)—

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

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

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~~104~~[a](#) 1973 c. 80.

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

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

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

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

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

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

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

(5) Section 11(~~105a~~) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 24), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(~~106b~~) (powers of entry: further notices of entry), 11B(~~107c~~) (counter-notice requiring possession to be taken on specified date), 12(~~108d~~) (unauthorised entry) and 13(~~109e~~) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(~~110f~~) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30 is also modified so as to enable the acquiring authority in circumstances corresponding to those referred

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(~~105a~~) 1965 c. 56. Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), Section 103 of the Planning and Compulsory Purchase Act 2004 c. 5 and S.I. 2009/1307.

(~~106b~~) 1956 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(~~107c~~) 1956 c. 56. Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).

(~~108d~~) 1956 c. 56. Section 12 was amended by section 56(2) of, and part of Schedule 9, to the Courts Act 1971 (c. 23).

(~~109e~~) 1956 c. 56. Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunal, Courts and Enforcement Act 2007 (c. 15).

(~~110f~~) 1956 c. 56. Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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

## “SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

### **Introduction**

1.—(1) This Schedule applies where an undertaker serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 30 (application of the 1981 Act) of the A47/A11 Thickthorn Junction Development Consent Order [XX] in respect of the land to which the notice to treat relates.

(2) But see article ~~310~~32 (acquisition of subsoil or airspace only) of the A47/A11 Thickthorn Junction Development Consent Order [XX] which excludes the acquisition of subsoil or airspace only from this Schedule.

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

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

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

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

### **Response to counter-notice**

5. On receiving a counter-notice, the undertaker must decide whether to—

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

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

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

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

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

### Determination by the Upper Tribunal

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

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

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

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

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

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

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

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

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

## SCHEDULE 7

Article 34

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Plot Reference Number shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
<b>Land Plans – Sheet 1</b>			
Norfolk County Council Parish of Hethersett	1/3b	Facilitate provision of and provide temporary storage, welfare facilities, laydown areas, access and working space for Station Lane junction improvements.	Work Nos. 29, 43
<b>Land Plans – Sheet 2</b>			
Norfolk County Council	2/2a	Facilitate provision of and provide temporary	Work No. 24

Parish of Hethersett		storage, laydown areas, access and working space for drainage and A11 bridge extension structure.	
<b>Land Plans – Sheet 3</b>			
Norfolk County Council Parish of Hethersett	3/2b	Facilitate provision of and provide temporary storage, laydown areas, access and working space for drainage and A11 bridge extension structure.	Work Nos. 11, 24, 31 and 34
Norfolk County Council Parish of Hethersett	3/3c	Right to pass and repass with or without plant and vehicles to access adjoining parcels permanently acquired by the undertaker.	Work No. 12
Norfolk County Council Parish of Hethersett	3/3e	Material storage and processing area.	Work Nos. 2, 20 and 30
Norfolk County Council Parish of Ketteringham	3/3g	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels	Work Nos. 14, 15, 37 and 38
Norfolk County Council Parish of Ketteringham	3/3j	East of A11 north of Cantley Wood	Work Nos. 4, 11, 24, 31 and 34
Norfolk County Council Parish of Hethersett	3/6a	Right to pass and repass with or without plant and vehicles and including access to highways.	Work Nos. 4, 11, 24, 31 and 34
Norfolk County Council Parish of Ketteringham	3/7b	Facilitate provision of and provide temporary storage, laydown areas, access and working space for drainage and A11 bridge extension structure.	Work Nos. 8, 13, 33 and 38
Norfolk County Council Parish of Ketteringham/ Norfolk County Council Parish of Keswick and Intwood	3/8a	Right to pass and repass with or without plant and vehicles to access adjoining parcels permanently acquired by the undertaker.	Work Nos. 16 and 37

Norfolk County Council Parish of Ketteringham	3/8e	To facilitate access the Cantley Stream area to erect temporary fencing, vegetation clearance and watervole relocation	Work Nos. 14, 37 and 38
Norfolk County Council Parish of Ketteringham	3/8g	Facilitate provision of and provide temporary storage, laydown areas, access and working space for improved residential access	Work Nos. 8, 13, 33 and 38
<b>Land Plans – Sheet 5</b>			
Norfolk County Council Parish of Ketteringham	5/2b	Right to pass and repass with or without plant and vehicles and including access to highways.	Work Nos. 1, 2 and 3
Norfolk County Council Parish of Hethersett	5/2c	Right to pass and repass with or without plant and vehicles and including access to highways.	Work Nos. 1, 2 and 5
Norfolk County Council Parish of Hethersett	5/3b	Material storage and processing area.	Work Nos. 1, 2 and 3
Norfolk County Council Parish of Hethersett	5/5a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:	Work Nos. 1, 2 and 5
<b>Land Plans – Sheet 6</b>			
Norfolk County Council Parish of Ketteringham	6/3a	South of B1172 and west of the Cantley Lane Link Road	Work Nos. 19, 24, 30 and 36
Norfolk County Council Parish of Ketteringham	6/3f	Material storage and processing area.	Work Nos. 10, 21 and 41
Norfolk County Council Parish of Cringleford	6/9a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:	Work Nos. 10, 21 and 41
Norfolk County Council Parish of Ketteringham	6/10a	South of B1172 and east of the Cantley Lane Link Road	Work Nos. 10, 21 and 41
<b>Land Plans – Sheet 7</b>			
Norfolk County	7/1c	Material storage and	Work Nos. 6, 24 and

Council Parish of Ketteringham		processing area (access)	40
Norfolk County Council Parish of Ketteringham/ Norfolk County Council Parish of Keswick and Intwood	7/2a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:	Work No. 8
Norfolk County Council Parish of Ketteringham/ Norfolk County Council Parish of Cringleford	7/6b	South of B1172 and west of the Cantley Lane Link Road	Work No. 8
Norfolk County Council Parish of Ketteringham	7/6c	Right to pass and repass with or without plant and vehicles and including access to highways	Work Nos. 6, 24 and 42
Norfolk County Council Parish of Cringleford	7/7c	Material storage and processing area.	Work Nos. 23 and 42
Norfolk County Council Parish of Cringleford	7/7e	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:	Work Nos. 32 and 42
Norfolk County Council Parish of Cringleford	7/8b	East of A11 north of Cantley Wood	Work Nos. 24, 32 and 42
Norfolk County Council Parish of Ketteringham	7/11a	Laydown areas and working width to support construction of new carriageway, footways, embankments, service diversions and drainage works on adjacent land parcels.	Work No. 8

## SCHEDULE 8

Article 39

### REMOVAL OF HEDGEROWS

#### PART 1

#### REMOVAL OF HEDGEROWS

(1)	(2)	(3)
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<i>Location of hedgerow</i>	<i>Work to be carried out</i>	<i>Relevant part of the authorised development</i>
H1 to H2 shown on sheet 3 of the Hedgerow Plans	Partial removal	Work No. 2
H8 to H8 <a href="#">shown</a> on sheet 5 of the Hedgerow Plans	Partial removal	Work No. 1
H9 to H9 <a href="#">shown</a> on sheet 5 of the Hedgerow Plans	Full removal	Work No. 1 and Work No. 2

## PART 2

### REMOVAL OF IMPORTANT HEDGEROWS

<i>(1)</i> <i>Location of hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
H6 to H6 shown on sheet 3 of the Hedgerow Plans	Partial removal and translocation	Work No. 12

## SCHEDULE 9

Articles 36 and [4849](#)

### PROTECTIVE PROVISIONS

#### PART 1

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

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

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989([H11a](#)), belonging to or maintained by that utility undertaker;
- (b) in that case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986([H12b](#)) for the purposes of gas supply;
- (c) in the case of water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991([H13a](#)); and

[\(H11a\)](#) 1989 C. 29. The definition of “electricity plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27).

[\(H12b\)](#) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of Schedule 6, and Schedule 8 to the Utilities Act 2000 (c. 27), sections 1459(1) and (5) and 197(9) of, and part 1 of Schedule 23 to, the Energy Act 2004 (c. 20) and S.I. 2011/2704.



- (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at future date) of that Act(~~114~~<sup>b</sup>),

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

### **On street apparatus**

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

### **Apparatus in stopped up streets**

4.—(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 16 (temporary alteration, diversion and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

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~~(113a)~~ 1991 c. 56.

~~(114b)~~ 1991 c. 56. Section 102(4) was amended by section 96(1)(1)(c) of the Water Act 2003 (c. 37). Section 104 was amended by sections 96(4) and 101(23) of, part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29).

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 22 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### **Acquisition of land**

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

### **Removal of apparatus**

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

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article ~~51~~52 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article ~~51~~52 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

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

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of

the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article ~~51~~52 (arbitration).

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

### **Retained apparatus**

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

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

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

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

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

(6) The undertaker is not required to comply with sub-paragraph (5) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, or involve embankment works within 10 metres of any electricity apparatus, the plan to be submitted to the utility undertaker under subparagraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

### **Expenses and costs**

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection

with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article ~~51~~52 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

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

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

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

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

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

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

### Cooperation

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

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

## PART 2

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

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

14. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(~~115~~[a](#));

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

“the electronic communications code” has the same meaning as in Chapter 1 (electronic communications, networks and services) of Part 2 of the 2003 Act(~~116~~[b](#));

“electronic communications code network” means—

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

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

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

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

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

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~~115~~[a](#) See paragraph 5 of Schedule 3A (the electronic communications code) to the Communications Act 2003 (c.21). Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).

~~116~~[b](#) See section 106 of the 2003 Act.

15. The exercise of the powers conferred by article 36 (statutory undertakers) is subject to Part 10 (undertakers works affecting electronic communications apparatus) the electronic communications code in the 2003 Act.

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

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

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

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

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

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article ~~51~~52 (arbitration).

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

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

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

## PART 3

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

#### Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 10 (consent to transfer benefit of Order)—

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

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 28(3)(b)).

## Interpretation

### 18. In this Part of this Schedule—

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

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

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

“commence” and “commencement” in paragraph 25 and 26 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

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

“functions” includes powers and duties;

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

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

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

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

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

“National Grid” means National Grid Electricity Transmission Plc or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989 and National Grid Gas Plc or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986 as the context requires;

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

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

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise.

19. Except for paragraphs 20 (apparatus of National Grid in stopped up streets), 25 (retained apparatus: protection) and 26 (retained apparatus: protection), 27 (expenses) and 28 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

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

20.—(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 23 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 25.

(2) Notwithstanding the temporary alteration, diversion or prohibition of any highway under the powers of article 16 (temporary alteration, diversion prohibition and restriction of ~~the~~ use of streets), National Grid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

### **Protective works to buildings**

21. The undertaker must exercise the powers conferred by article 22 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld).

### **Acquisition of land**

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

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



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

(4) Any agreement or consent granted by National Grid under paragraph 9 or 10 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**23.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 24(1)) the necessary facilities and rights—

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

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

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

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

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

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

Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker under paragraph 8(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 32 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of electricity undertaker**

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

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

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

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

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

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

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

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

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

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

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

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).

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

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

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

#### **Retained apparatus: protection of gas undertaker**

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

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

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
  - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any specified works until National Grid has given written approval of the plan so submitted.
- (4) Any approval of National Grid required under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
  - (b) must not be unreasonably withheld or delayed.
- (5) National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Specified works must only be executed in accordance with—
- (a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and National Grid; and
  - (b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.
- (7) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development:
- (a) the undertaker must implement an appropriate ground mitigation scheme; and
  - (b) National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 11.
- (11) The undertaker is not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.
- (12) In sub-paragraph (11), “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

## Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 23(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 32 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

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

## **Indemnity**

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

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 10 (consent to transfer benefit of Order).

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

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

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

## **Enactments and agreements**

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

## **Co-operation**

30.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 23(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 25 or 26, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

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

## **Access**

31. If in consequence of the agreement reached in accordance with paragraph 22(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

32. Save for differences or disputes arising under paragraph 23(2), 23(4) and 24(1), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article ~~51~~52 (arbitration).

## **Notices**

33. Notwithstanding article ~~50~~51 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 25 or 26 must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# **PART 4**

## **FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED**

## **Application**

34. For the protection of Anglian Water, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

## **Interpretation**

35. In this part of this Schedule –

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

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means—

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under The Water Industry Act 1991,
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act; and
- (d) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus

and for the purpose of this definition, where words are defined by section 219 of the Water Industry Act 1991 they shall be taken to have the same meaning.

“functions” includes powers and duties

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

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

### **On street apparatus**

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

### **Apparatus in stopped up streets**

**37.—(1)** Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), where Anglian Water has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Anglian Water legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 40 or the power of the undertaker to carry out works under paragraph 42.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 16 (temporary alteration, diversion, prohibition and restriction of the use of streets), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

**38.** The undertaker, in the case of the powers conferred by article 22 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.



## Acquisition of land

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

## Removal of apparatus

40.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not (without the prior written consent of Anglian Water) be extinguished, until:

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 25.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article ~~51~~52 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article ~~51~~52 (arbitration), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

(7) Notice under sub-paragraph (6) that Anglian Water desires the undertaker to execute any work, or part of any work, must be given within 14 days of agreement under sub-paragraph (4) or, in default of agreement, within 14 days of the date of settlement by arbitration under sub-paragraph (4).

(8) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a

notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(9) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water’s reasonable requests for a reasonable period of time to enable Anglian Water to:

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

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

41.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article ~~51~~52 (arbitration).

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

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

### **Retained apparatus**

42.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 40(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

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

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

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 40(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances and will keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1), works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres
- (c) 4.5 metres where the diameter of the pipe is between 451 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres.

### **Expenses and costs**

43.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of the Schedule.

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article ~~51~~52 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

**44.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 38 or 40(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

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

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

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

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Cooperation**

**45.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 40(2) or Anglian Water makes requirements for the protection or alteration of apparatus under sub-paragraph (9), the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

**46.** Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

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

**48.** Any time period in which an action must be taken in this part of the Schedule may be amended by written agreement between the undertaker and Anglian Water.

## PART 5

### FOR THE PROTECTION OF CADENT

#### **Application**

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

#### **Interpretation**

50. In this Part of this Schedule—

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

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

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

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

“commence” and “commencement” include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

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

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

“functions” includes powers and duties;

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

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

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

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

“maintain” and “maintenance” have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;

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

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

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

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 54(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 54(2) or otherwise.

### **On Street apparatus**

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

- (a) paragraphs 51, 56, 57 and 58; and
- (b) where sub-paragraph (2) applies, paragraphs 54 and 55.

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

(3) Paragraph 57 does not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

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

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

**52.**—(1) Where any street is stopped up under article 17 (Permanent stopping up and restriction of use of streets and private means of access), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 54.

(2) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 16 (Temporary alteration, diversion, prohibition and restriction of use of streets), Cadent will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction of use in respect of any apparatus which at the time of the stopping up or diversion was in that street.

### **Protective works to buildings**

53. The undertaker must exercise the powers conferred by article 22 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed)

### **Acquisition of land**

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

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

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

(4) Any agreement or consent granted by Cadent under paragraph 56 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 54 do not apply, the undertaker must, unless Cadent agrees otherwise—

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

### **Removal of apparatus**

55.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 57, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land

must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

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

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

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

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

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

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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 63 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

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

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



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

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

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

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

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

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

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

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

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

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 48 to 50 and 53 to 55 apply as if the removal of the apparatus had been required by the undertaker under paragraph 54(2).

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

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

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 57.

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

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

## Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 54(3) if it elects to do so; or
  - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 56(6).

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

### **Indemnity**

**59.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 22 (protective work to buildings)) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 10 (consent to transfer benefit of the Order).
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1)

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in

connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### Enactments and agreements

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

### Co-operation

61.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 54(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 56, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent’s undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

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

### Access

62. If in consequence of any agreement reached in accordance with paragraph 53(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

### Arbitration

63. Save for differences or disputes arising under sub-paragraphs 54(2) and 54(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article ~~51~~52 (arbitration).

### Notices

64. Notwithstanding article ~~50~~51 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 56(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com as well as via post to Plant Protection, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA, or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## SCHEDULE 10

Articles 2 and 49

### DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Book of Reference	TR010037/APP/4.3	Revision 2 [REP4-004]
Classification of roads plans	TR010037/APP/2.11	Revision 1 [AS-027]
EMP (First Iteration)	TR010037/APP/7.4	Revision 1 [REP4-020]
Engineering drawings and sections	TR010037/APP/2.7	Revision 0 [APP-010]

Environmental statement	TR010037/APP/6.1 – 6/3	Revision 0 [APP-038, APP-040 to APP-047, APP-049 to APP-050, APP-052, APP-055 to APP-092, APP-095 to APP-110, APP-112 to APP-116, APP-118 to APP-121] Revision 1 [REP3-006, REP3-009, REP4-008, REP4-010, REP4-012, REP4-014, REP4-016] Revision 2 [REP4-006, REP4-011]
General arrangement plans	TR010037/APP/2.2	Revision 1 [AS-019]
Hedgerow plans	TR010037/APP/2.12	Revision 1 [REP4-002]
Land plans	TR010037/APP/2.3	Revision 2 [AS-020]
Special category land plans	TR010037/APP/2.10	Revision 1 [AS-026]
Environmental masterplan	TR010037/APP/6.8	Revision 1 [AS-032]
Rights of way and access plans	TR010037/APP/2.5	Revision 1 [AS-022]
Traffic regulation plans	TR010037/APP/2.6	Revision 1 [AS-023]
Works plans	TR010037/APP/2.4	Revision 1 [AS-021]
Outline traffic management plan	TR010037/APP/7.5	Revision 1 [REP4-022]

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## **EXPLANATORY NOTE**

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

This Order authorises National Highways Limited to improve the A47/A11 Thickthorn junction in Norfolk and carry out all associated works.

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

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

A copy of the plans, engineering drawings and sections, book of reference and environmental statement mentioned in this Order and certified in accordance with article ~~49~~[50](#) (certification of plans, etc.) may be inspected free of charge during working hours at National Highways Limited, Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.