

# **M3 Junction 9 Improvement**

**Scheme Number: TR010055**

## **3.1 Draft Development Consent Order (Rev 5) Clean**

**APFP Regulation 5(2)(b)**

**Planning Act 2008**

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

**Volume 3**

**27 October 2023**

202[ ] No.

**INFRASTRUCTURE PLANNING**

**M3 Junction 9 Development Consent Order**

*Made* - - - - - \*\*\*

*Coming into force* \*\*\*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) 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The [single appointed person], having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the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The Secretary of State, having considered the representations made and not withdrawn, and the report of the [single appointed person], has decided to make an Order granting development consent for the development described in the application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(d), 115(e), 117(f), 120(g), and 122(h) of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5(i) to, the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

**1.**—(1) This Order may be cited as the M3 Junction 9 Development Consent Order 202[•] and comes into force on [•].

#### **Interpretation**

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

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

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

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

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

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

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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. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, 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) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act.
- (e) Section 115 was amended by paragraph 56 of Part 2 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011 and section 160 of the Housing and Planning Act 2016 (c.22) and section 43 of the Wales Act 2017 (c.4).
- (f) Section 117 was amended by paragraph 58 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.
- (g) Section 120 was amended by paragraph 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
- (h) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
- (i) Part 1 of Schedule 5 was amended by paragraph 4 of Part 1 of Schedule 8 and Part 2 of Schedule 22 to the Marine and Coastal Access Act 2009, paragraph 71 of Part 1 of Schedule 13 to the Localism Act 2011 and paragraph 76 of Part 3 of Schedule 6 to the Wales Act 2017.
- (j) 1961 c.33.
- (k) 1965 c.56.
- (l) 1980 c.66.
- (m) 1981 c.66.
- (n) 1984 c.27.

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

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

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

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

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

“authorised development” means the development and associated development described in Schedule 1 (authorised development);

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

“bridleway” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act;

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

“carriageway” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act;

“the classification of road plans” means the plans certified by the Secretary of State as the classification of road 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, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, ecological surveys and pre-construction ecological mitigation, erection of any temporary means of enclosure, 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 provision as to interpretation) of the 1980 Act(d), and for the purposes of this Order includes parts of a cycle track and a right of way on foot;

“de-trunking plans” means the plans certified by the Secretary of State as the de-trunking plans for the purposes of this Order;

“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 in section 32(1) (meaning of electronic communications networks and services)(e) of the Communications Act 2003;

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

“the environmental management plan” means the plan certified by the Secretary of State as the first iteration environmental masterplan (fiEMP) for the purposes of this Order;

“the environmental statement” means the documents 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 section 329(1) (further provision as to interpretation) of the 1980 Act;

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(a) 1990 c.8.  
(b) 1991 c.22.  
(c) 2008 c.29.  
(d) 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).  
(e) 2003 c.21. Section 32(1) was amended by S.I. 2011/1210

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

“highway” has the same meaning as in section 328 (meaning of “highway”) of the 1980 Act;

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

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

“the local highway authority” means Hampshire County Council;

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

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

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

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

“the protected trees and hedgerows to be removed plans” means that plans certified by the Secretary of State as the protected trees and hedgerows to be removed plans for the purposes of this Order;

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

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

“the revoking existing clearway orders plans” means the plans certified by the Secretary of State as the revoking existing clearway orders plans for the purposes of this Order;

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

“speed limit plans” means the plans certified by the Secretary of State as the speed limit 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(b)(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” has the same meaning as in section 49 (the street authority and other relevant authorities) of the 1991 Act;

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

“the traffic regulation measures plans” means the plans certified by the Secretary of State as the traffic regulation measures plans 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—

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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.

(b) Section 48 was amended by section 124 of the Local Transport Act 2008 (c.26)

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

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

“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 certified by the Secretary of State as the works plans 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, areas and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(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.

(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**

**3.**—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within any maintenance period defined in article 35(11), any maintenance of any part of the authorised development—

- (a) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(c) in relation to the carrying on of a flood risk activity;
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (bye-law making powers of the appropriate agency) to the Water Resources Act 1991(d);
- (c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(e) including, but not limited to, Southern Water Authority Land Drainage and Sea Defence Byelaws 1981;
- (d) section 28E (duties in relation to sites of special scientific interest) and 28H (Statutory undertakers, etc.: duty in relation to carrying out operations) of the Wildlife and Countryside Act 1981(f); and

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(a) 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).

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

(c) S.I. 2016/1154

(d) 1991 c.57.

(e) 1991 c.59.

(f) 1981 c.69.



(e) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup>.

(2) In paragraph 3(1)(a) “flood risk activity”<sup>(b)</sup> has the meaning given in the Environmental Permitting (England and Wales) Regulations 2016.

### **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, unless otherwise agreed in writing between the undertaker and the person responsible.

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

## **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 within the Order limits.

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

#### **Maintenance of authorised development**

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

#### **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,

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. In carrying out the authorised development the undertaker may—

- (a) Subject to paragraphs (b), (c) and (d) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in respect of work numbers 1i, 1l, 1k, 3b, 8, 9c, 9d, 11, 30, 33, 42, between points A to B, C to D, G to H and I to L only as shown on the works plans, deviate laterally from lines or

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(a) 2017 c.20.

(b) This term is defined in paragraph 3 of Part 1 of Schedule 25 to the Regulations.

(c) As amended by section 100(2) of the Environment Act 1995 c.25 and S.I. 1996/186.

situations of the authorised development shown on the work plans to a maximum of 2.0 metres

- (c) in respect of work number 1j and 1m as shown on the works plans, deviate laterally from lines or situations of the authorised development shown on the works plans to a maximum of 5.0 metres
- (d) deviate vertically from the levels of the authorised development shown on the engineering and structural drawings and sections—
  - (i) to a maximum of 1 metre upwards or downwards in respect of the construction of the gyratory northern overbridge (work number 27), gyratory southern overbridge (work number 28), A34 southbound underpass (work number 13), A33 underpass (work number 14), attenuation basin (work numbers 1j and 1m), M3 southern bridge portal gantry (work number 36) and bridleway (work number 9)
  - (ii) to a maximum of 0.75m upwards or downwards in respect of the construction of the retaining walls (work numbers 2d, 12a, 12c, 31a, 32c, 32d), subways (work numbers 2e, 24a, 24d, 33a), A34 footway/cycleway overbridge (work number 4) and gyratory (work number 29)
  - (iii) In respect of any other work comprised in the authorised development, to a maximum of 0.5 metres upwards or downwards

except that these maximum limits of 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 and the local highway authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or worse adverse environmental effects in comparison with 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 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) The undertaker may—

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

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), 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.

(4) If the benefit of the provisions of this Order relating to compulsory acquisition is transferred or granted to a transferee or lessee pursuant to this article and the transferee or lessee exercises those powers then the undertaker alone is liable for any compensation that is payable to another party as a consequence of the exercise of those powers by the transferee or lessee.

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

- (a) Scottish and Southern Energy Power Distribution Limited (company number SC213459, whose registered office is at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ) for the purposes of undertaking Work No. 21, 35;
- (b) Southern Gas Networks plc (company number 05167021, whose registered office is at St Lawrence House, Station Approach, Horley, Surrey, RH6 9HJ) for the purposes of undertaking Work No. 20;
- (c) Southern Water Limited (company number 02366620, whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX) for the purposes of undertaking Work No. 5; or
- (d) Openreach Limited (company number 10690039, whose registered office is at Kelvin House, 123 Judd Street, London, WC1H 9NP) for the purposes of undertaking Work No. 26.

## PART 3

### STREETS

#### **Street works**

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

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

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

(3) Subject to article 13 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

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

**12.**—(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; 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.

(5) Any application to which this article applies must include a statement that the provisions of paragraph (4) apply to that application.

(6) 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.

### **Application of the 1991 Act**

**13.—**(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)(a) of that Act; 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) (restriction on works following substantial road works);
- (d) section 58A(g) (restriction on works following substantial street works);
- (e) section 73A(h) (power to require undertaker to re-surface street)
- (f) section 73B(i) (power to specify timing etc. of re-surfacing)
- (g) section 73C(j) (materials, workmanship and standard of re-surfacing)
- (h) section 78A(k) (contributions to costs of re-surfacing by undertaker); and
- (i) schedule 3A(l) (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 stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

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- (a) Section 86(3) defines what highway works are major highway works.
  - (b) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c.51) and section 168(2) of, and Schedule 9 to, the 1991 Act.
  - (c) As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11); and Schedule 8 to the 1991 Act.
  - (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.
  - (g) Inserted by section 52 of the Traffic Management Act 2004.
  - (h) Inserted by section 52 of the Traffic Management Act 2004.
  - (i) Inserted by section 55 of the Traffic Management Act 2004.
  - (j) Inserted by section 55 of the Traffic Management Act 2004.
  - (k) Inserted by section 55 of the Traffic Management Act 2004.
  - (l) Inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.

- (5) The provisions of the 1991 Act<sup>(a)</sup> referred to in paragraph (4) are—
- (a) section 54 (advance notice of certain works), subject to paragraph (6);
  - (b) section 55 (notice of starting date of works), subject to paragraph (6);
  - (c) section 57 (notice of emergency works);
  - (d) section 59 (general duty of street authority to co-ordinate works);
  - (e) section 60 (general duty of undertakers to co-operate);
  - (f) section 68 (facilities to be afforded to street authority);
  - (g) section 69 (works likely to affect other apparatus in the street);
  - (h) section 75 (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 14 (construction and maintenance of new, altered or diverted streets and other structures)—

- (a) affects the operation of section 87 (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 to which the provisions of Part 3 of the 1991 Act apply.

(8) Nothing in this article affects the operation of the Traffic Management (Hampshire County Council) Permit Scheme Order 2019 as varied by the Traffic Management (Hampshire County Council) Permit Scheme Variation Order 2022 operated by the local highways authority pursuant to the Traffic Management Permit Scheme (England) Regulations 2007<sup>(b)</sup>.

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

**14.**—(1) Any highway (other than a special road or 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 lies and, unless otherwise agreed in writing with the local highway authority, the highway including any culverts, bunding or other structures laid under it or supporting it must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a highway (other than a special road or 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, bunding, or other structures laid or supporting it 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 constructed, altered or diverted under this Order, the constructed, 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 footpath, cycle track or bridleway including any culverts, bunding, or other structures laid under it or supporting 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

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(a) Sub-paragraphs (a) to (h) as amended by the Traffic Management Act 2004.

(b) SI 2007/3372 \_

completed to the reasonable satisfaction of the street authority and unless otherwise agreed in writing with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(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 special road or a trunk road) over a special road or trunk road, the highway surface (being those elements over the waterproofing membrane) must from its completion be maintained by and at the expense of the local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker unless otherwise agreed in writing with the local highway authority.

(7) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over another highway which is not a special road or trunk road, both the highway surface and the structure of the bridge must be maintained by and at the expense of the local highway authority from their completion.

(8) 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.

(9) For the purposes of a defence under paragraph (8), 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,

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

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

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

- (a) classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads; and

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(a) As amended by section 57 of the Infrastructure Act 2015 (c.7)

- (b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 to the 1980 Act.
- (2) From the date on which the undertaker notifies the Secretary of State that the roads described in Part 1 (special roads) of Schedule 3 have been completed and are open for traffic—
- (a) the undertaker is the highway authority for those roads; and
  - (b) they are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads but does not make provision for highways classified as special roads.
- (3) From the date on which the roads described in Part 2 (trunk roads) of Schedule 3 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.
- (4) On such day as the undertaker may determine, the roads described in Part 3 (roads to be de-trunked) of Schedule 3 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.
- (5) From the date on which the roads described in Part 4 (classified roads) of Schedule 3 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.
- (6) From the date on which the roads described in Part 5 (speed limits) of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.
- (7) On such day as the undertaker may determine, the restrictions specified in column (3) of Part 6 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 are to apply to the lengths of road identified in the corresponding row of column (2) of that Part.
- (8) Unless otherwise agreed with the local highway authority, the public rights of way set out in Part 8 (public rights of way to be created) 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 and are to have the status described in column (2) of that Part.
- (9) On such day as the undertaker may determine, the orders specified in column (3) of Part 7 (revocations & variations of existing traffic regulation orders) of Schedule 3 are to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.
- (10) The application of paragraphs (1) to (8) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

### **Temporary stopping up 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 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.

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(a) As amended by section 22 of the 1991 Act, and by section 57 of, and Schedule 1 to, the Infrastructure Act 2015.

(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 as if it were a dispute under Part 1 of the 1961 Act.

(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 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) to the extent specified and described in column (3) of those Parts of that Schedule.

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

- (a) the new street 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 street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

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

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

(4) 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 as if it were a dispute under Part 1 of the 1961 Act.

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

### **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

**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 6 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) 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 uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) applies—

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

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

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

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

## 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—

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(a) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).  
(b) 1991 c. 56.  
(c) 2000 c. 26.  
(d) 2004 c. 18.

- (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 it has—

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

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

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,
 and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004.

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

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

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

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

(11) 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.

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

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs or the person or body otherwise having authority to give such consent; 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.

(6) In this article—

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

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

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

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(a) 1991 c.57.

(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 to a building under this article the undertaker may (subject to paragraphs (5) and (6))—

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(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 49 (arbitration).

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

(8) Where—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) in land located within the highway boundary for which the local highway authority is the highway authority, without the consent of the local highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the 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 local highway authority or a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision within 28 days of receiving the application for consent, that authority is deemed to have granted consent.

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

## 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 to carry out or to facilitate, or is incidental to, the authorised development.

(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).

### **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 as modified by article 30 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 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.

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

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

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 4(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition 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) 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

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(a) 1981 c.67.

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 and must ensure a copy of this site notice is provided to the local highway authority for their information at the same time.

- (3) The notice to be erected under paragraph (2) must include—
- (a) details of the public rights of way to be extinguished;
  - (b) the date on which the extinguishment will take effect;
  - (c) details of any public rights of way being provided in substitution; and
  - (d) details of the places where a copy of this Order and the documents listed in Schedule 11 (documents to be certified) may be inspected.

### **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) (powers of entry) of the 1965 Act,

whichever is the earlier.

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

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers 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 within the Order limits which are required to be interfered with or breached for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

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

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

(6) This article does not apply in relation to any right to which section 138 (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

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

- (a) If any such agreement as is referred to in paragraph (8)—
  - (i) is made with a person in or to whom the right is vested or belongs; and
  - (ii) 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 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the [•] Development Consent Order 20[•]”.

(3) In section 11A(b) (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”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 26 of the [•] Development Consent Order 20[•]”.

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

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

“(2) But see article 29(3) (acquisition of subsoil or airspace only) of the [•] Development Consent Order 20[•], 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 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development) of the M3 Junction 9 Development Consent Order 20[•].”

### **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—

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(a) As inserted by section 202(1) of the Housing and Planning Act 2016 (c.22).  
(b) As inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).



“(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) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

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

(6) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118(c) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the [•] Development Consent Order 20[•]”.

(7) In section 6(d) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(e) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

“(2) But see article 32(3) (acquisition of subsoil or airspace only) of the [•] Development Consent Order 20[•], which excludes the acquisition of subsoil or airspace only from this Schedule.”

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 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 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

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

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(a) Inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).

(b) As inserted by sections 202(2) and 216(3) of the Housing and Planning Act 2016 (c.22).

(c) 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).

(d) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c.22).

(e) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c.20) and S.I. 2017/16.

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

### **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.

(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 as if it were a dispute under Part 1 of the 1961 Act.

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

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

**34.**—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 26(2) (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) 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(a) (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (other than in connection with the acquisition of rights only);
- (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 (2) 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 28 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

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(a) Section 11 was amended by sections 186, 187, 188, and 216 of the Housing and Planning Act 2016 (c.22), Schedule 4 to the Acquisition of Land Act 1981 (c.67), section 3 of schedule 1 to the Housing (Consequential Provision) Act 1985 (c.71), section 16 of, paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and S.I. 2009/1307.

in relation to that land in column (3) 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 of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

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

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works (including ground strengthening works) have been constructed under paragraph (1)(d); or
- (c) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by 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 as if it were a dispute under Part 1 of the 1961 Act.

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

(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 under article 27 (compulsory acquisition of rights and imposition of restrictive covenants) relating to the purposes for which temporary possession of that land may be taken as specified in column (2) of Schedule 7 (land of which temporary possession may be taken); 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(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(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).

### **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;

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(a) Section 13 was amended by sections 139 and 148 of, and paragraphs 27 and 28 of Schedule 13, and part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

- (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 explaining the purpose for which entry is to be taken.

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

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

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

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

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

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

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

### **Statutory undertakers**

**36.**—(1) Subject to the provisions of article 27(3) (compulsory acquisition of rights and imposition of restrictive covenants), Schedule 10 (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 (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 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

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

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

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

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

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

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

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

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

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

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

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

(8) In this article—

“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.

(4) In this article—

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

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

## **PART 6**

### **OPERATIONS**

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

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

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

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

(a) do no unnecessary damage to any tree or shrub and pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may for the purposes of carrying out the authorised development but subject to paragraph (2) remove any hedgerow provided that hedgerow is described in Schedule 8 (removal of hedgerows).

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(a) 2003 c.21.

(5) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997(a) and includes important hedgerows.

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

**40.**—(1) The undertaker may fell or lop any tree described in Schedule 9 (trees subject to tree preservation orders), cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if 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 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) 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) In this article “the specified land” means the land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must 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 for 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 specified land.

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

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(a) S.I.1997/1160.

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

- (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 must, 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 (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must 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 must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) 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 (7) 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 (7) 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,

then subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in 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.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) 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 must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation is to be sent to the Registrar General by the undertaker 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 (9) must be sent by the undertaker to the relevant planning authority.

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

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

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

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(a) 1857 c.81.



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

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

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

**44.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (d), (fb), (g), (ga) or (h) 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) 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(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
  - (iii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of

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(a) 1990 c.43.  
(b) 1974 c.40.

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

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

**45.**—(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 subject to conditions, under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974.

(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 sub-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. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. 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 (2)(e).

(6) 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.

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

(8) 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.

(9) 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.

(10) Except where a direction is given under sub-paragraph (11) 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.

(11) 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. 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 Department for Communities and Local Government or such guidance as may from time to time replace it.

### **Protective provisions**

**46.** Schedule 10 (protective provisions) has effect.

### **Certification of plans etc.**

**47.—**(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of each of the plans and documents set out in Schedule 11 (documents to be certified) for certification that they are true copies of the plans and documents referred to in this Order.

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

### **Service of notices**

**48.—**(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<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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(a) 1978 c.30.

(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**

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

Signed by authority of the Secretary of State for Transport

Date

[Name]  
[Title]  
[Department]

# SCHEDULES

## SCHEDULE 1

Articles 2, 5 and 6

### AUTHORISED DEVELOPMENT

#### **In the administrative areas of Hampshire County Council and Winchester City Council and South Downs National Park Authority.**

The authorised development is a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act (a) and associated development within the meaning of section 115(2) of the 2008 Act, comprising—

Work No. 1 – as shown on sheet nos. 3, 5 and 6 of the works plans and being the improvement and construction of the realignment of the northbound and southbound carriageways of the A33 between B3047 (London Road) / A33 junction and proposed A33/M3 northbound onslip roundabout, being 1371 metres in length, such works including—

- (a) The construction of 2 no. uncontrolled pedestrians crossing at the location shown on sheet 3 of the works plans;
- (b) The construction of a realigned central reserve on the A33, being 60m in length at the location shown on sheet 3 of the works plans;
- (c) The construction of a widened section of the A33 and reconfiguration to a two-way layout, being 190m in length at the location shown on sheet 3 of the works plans;
- (d) The construction of a realigned business park access to the A33 at the location shown on sheet 3 of the works plans;
- (e) The construction of a realignment of the business park access at the location shown on sheet 3 of the works plans;
- (f) The construction of a 1 no. splitter island at the location shown on sheet 3 of the works plans;
- (g) The construction of the extension of the existing central reserve with associated vehicle restraint system, being 275m in length at the location shown on sheet 5 of the works plans;
- (h) The construction of carriageway realignment on the existing river Itchen bridge (including possible remediation works), being 47m in length at the location shown on sheet 5 of the works plans;
- (i) The construction of a new vehicular maintenance access from the attenuation basin maintenance track at the location shown on sheet 5 of the works plans;
- (j) The construction of a drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 5 of the works plans;
- (k) The construction of an attenuation basin maintenance track, being 130m in length at the location shown on sheet 5 of the works plans;
- (l) The construction of an open drainage channel at the location shown on sheet 5 of the works plans;
- (m) The construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 5 of the works plans;

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

- (n) The construction of a 1 no. roundabout splitter island at the location shown on sheet 5 of the works plans;
- (o) The construction of an open drainage channel at the location shown on sheet 5 of the works plans.

Work No. 2 – as shown on sheet nos. 3, 5, 6 and 7 of the works plans and being the construction of a cycle track between B3047 London Road/ A33 junction and M3 Junction 9 gyratory, being 2000m in length of footway, cycle way, edgings, verges, wayfinding signage, bollards, fencing, tactile paving, chalk bunds, embankments, retaining walls, steps., including the construction of a cycle track underpass (24 metres in length), such works including—

- (a) The construction of a realignment of the existing public right of way (Ref. 111/6/1) to connect to the proposed Kings Worthy cycle track at the location shown on sheet 3 of the works;
- (b) The construction of a retaining wall, being 80 metres in length at the toe of the embankment of the proposed Kings Worthy cycle track at the location shown on sheet 5 of the works plans;
- (c) The construction of a new pedestrian link, being 41m in length, from the proposed cycle track to the existing public right of way (Ref. 111/749/1) at the location shown on sheet 5 of the works plans;
- (d) The construction of a retaining wall, being 37 metres in length, in the embankment of the A34 southbound at the location shown on sheet 5 of the works plans;
- (e) The construction of a cycle track subway with associated lighting, being 24 metres in length to the north west of the A34 northbound underpass to maintain connectivity on the cycle track route between Kings Worthy and Winchester at the location as shown on sheet 6 of the works plans.

Work No.3 – As shown on sheet nos. 3, 5, 6 and 7 of the works plans and being the construction improvements and realignment of the southbound carriageway of the A34, being 1660 metres in length, such works including—

- (a) The construction of 1 no. variable message sign including installation of new sign, sign illumination, sign structures, gantry foundations, control cabinets, power and communication cable connections at the location shown on sheet nos. 3 and 5 of the works plans;
- (b) The construction of a variable message sign maintenance layby including layby foundations, earthworks and vehicle restraint system at the location shown on sheet 3 of the works plans;
- (c) The construction of carriageway widening on the existing river Itchen bridge (including possible remediation works), being 46 metres in length at the location shown on sheet 5 of the works plans;
- (d) The construction of 1 no. variable message sign including installation of new sign, sign illumination, sign structures, gantry foundations, control cabinets, power and communication cable connections at the location shown on sheet nos. 5 and 6 of the works plans;
- (e) The construction of a variable message sign maintenance layby including layby foundations, earthworks and vehicle restraint system at the location shown on sheet nos. 5 and 6 of the works plans.

Work No. 4 – as shown on sheet 5 of the works plans and being the construction of a cycle track overbridge across the river Itchen, being 38 metres in length.

Work No. 5 – as shown on sheet nos. 5 and 6 and being the diversion of 1095 metres of water pipeline.

Work No. 6 – as shown on sheet nos. 5 and 6 of the works plans and being the construction of drainage attenuation basins and associated maintenance and landscaping between A34 northbound

95m south of river Itchen Bridge to M3 diverge offslip, being 781 metres in length, and the construction improvement and realignment of the northbound carriageway of the A34 (1194 metres in length), such works including—

- (a) The construction of an attenuation basin maintenance track, being 565 metres in length at the location shown on sheet nos. 5 and 6 of the works plans;
- (b) The construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet nos. 5 and 6 of the works plans;
- (c) The construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 6 of the works plans;
- (d) The construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 6 of the works plans;
- (e) The construction of a maintenance footway and associated earthworks, being 321 metres in length at the location shown on sheet 6 of the works plans.

Work No.7 – as shown on sheet nos. 5 and 6 of the works plans and being the construction of a new roundabout on embankment positioned to the north of M3 Junction 9, providing connections to the realigned A33 (Work No. 1) and realigned M3 northbound onslip (Work No. 8).

Work No. 8 – as shown on sheet nos. 5 and 6 of the works plans and being the construction of a new 1 lane merge onslip onto the M3 Northbound, being 600 metres in length, from the A33 roundabout (Work No. 7) on embankment to connect to the M3 Junction 9.

Work No. 9 – as shown on sheet nos. 4, 5, 6 and 7 of the works plans and being the construction of a new bridleway, being 1390 metres in length including edgings, verges, wayfinding signage, bollards, tactile paving, and horse mounting blocks, and associated drainage and landscaping features to connect Long Walk and Easton Lane, such works including—

- (a) The construction of an attenuation basin maintenance track, being 191 metres at the location shown on sheet 6 of the works plans;
- (b) The construction of a new vehicular access turning head to the infiltration and attenuation basin maintenance track at the location shown on sheet 6 of the works plans;
- (c) The construction of drainage infiltration and attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 6 of the works plans;
- (d) The construction of drainage infiltration and attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 5 of the works plans.
- (e) The construction of an open drainage channel at the location shown on sheet nos. 4, 5, 6 and 7 of the works plans.

Work No. 10 – as shown on sheet nos. 5, 6, 7 and 8 of the works plans and being the construction improvements of the southbound carriageways of the M3, being 1983 metres in length, such works including—

- (a) The construction of 1 no. variable message sign including installation of new sign, sign illumination, sign structures, gantry foundations, control cabinets, power and communication cable connections at the location shown on sheet 6 of the works plans;
- (b) The alteration of the existing M3 southbound carriageway from two lanes and hard shoulder to four lanes southbound, being 320 metres in length, from A34 southbound on merge to M3 southbound tie-in in cutting including tie in from the M3 Junction 9 southbound merge slip at the location shown on sheet 7 of the works plans
- (c) The construction of a new retaining wall, being 100 metres in length, and associated landscaping tie-ins as shown on sheet 7 of the works plans

Work No. 11 – as shown on sheet nos. 5, 6 and 7 of the works plans and being the construction of a new one lane off slip carriageway and associated hard shoulder, being 881 metres in length, on both embankment and in cutting to connect the M3 southbound to the M3 Junction 9 gyratory including alterations to the tie ins at both ends of the proposed off slip.

Work No. 12 – as shown on sheet nos. 4, 5, 6, 7 and 8 of the works plans and being the construction improvements of the northbound carriageways of the M3, being 2067 metres in length, such works including—

- (a) The construction of a new retaining wall, being 186 metres in length and associated landscaping tie-ins as shown on sheet nos. 6 and 7 of the works plans;
- (b) The alteration of the existing M3 northbound carriageway from two lanes and hard shoulder to four lanes northbound, being 656 metres in length, from M3 Junction 9 northbound offslip to A34 northbound offslip in cutting including tie in from the M3 Junction 9 northbound diverge slip;
- (c) The construction of a new retaining wall, being 167 metres in length, and associated landscaping tie-ins as shown on sheet nos. 6 and 7 of the works plans;
- (d) The construction of 1 no. variable messaging sign including installation of new sign, sign illumination, sign structures, gantry foundations, embankment, earthworks, control cabinets, power and communication cable connections at the location shown on sheet 7 of the works plans.

Work No. 13 – as shown on sheet 6 of the works plans and being the construction of a vehicular underpass, being 119 metres in length, and associated drainage and structural elements (wing walls, etc) underneath the M3 to connect the A34 southbound to the M3 Junction 9 gyratory.

Work No.14 – as shown on sheet 6 of the works plans and being the construction of a vehicular underpass, being 100 metres in length, and associated drainage and structural elements underneath the A34 northbound to connect the A33 to the M3 Junction 9 gyratory.

Work No. 15 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a toucan crossing including associated traffic signals and ducting.

Work No. 16 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a new roundabout (National Highways depot roundabout) at the junction of the National Highways depot access and the A33 northbound / southbound road.

Work No. 17 – as shown on sheet nos. 5, 6 and 7 of the works plans and being the construction of a new 2 lane carriageway between the A33 roundabout (Work No. 7) and National Highways depot roundabout (Works No. 16), such works including—

- (a) The construction of a 1 no. splitter island at the location shown on sheet 6 of the works plans;
- (b) The construction of a new vehicular access to the infiltration and attenuation basin maintenance track at the location shown on sheet 6 of the works plans;
- (c) The construction of a 1 no. splitter island at the location shown on sheet nos. 6 and 7 of the works plans.

Work No. 18 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a new works access to the National Highways depot and associated drainage features within the depot area, such works including—

- (a) The construction of a 1 no. splitter island at the location shown on sheet nos. 6 and 7 of the works plans;
- (b) The construction of attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheets 6 of the works plans;
- (c) The extinguishment of the existing National Highways depot exit at the location shown on sheet nos. 6 and 7 of the works plans.

Work No. 19 – as shown on sheet nos. 4, 5, 6, and 7 of the works plans and being the construction of the realignment of the M3 central reserve, being 1741 metres in length, and replacement of the existing central reserve steel vehicle restraint system.

Work No. 20 – as shown on sheet 6 and being the diversion of 216 metres in length of low-pressure gas main pipeline.



Work No. 21 – as shown on sheet nos. 6 and 7 and being the diversion of 269 metres in length of power cables.

Work No. 22 – as shown on sheet nos. 6 and 7 and being the construction of 2 lane carriageway (261 metres in length) between National Highways depot roundabout (Works No. 16) and the M3 Junction 9 gyratory, such works including—

- (a) The construction of a 1 no. splitter island at the location shown on sheet nos. 6 and 7 of the works plans;
- (b) The realignment of the existing M3 Junction 9 / A33 splitter island at the location shown on sheet 7 of the works plans;
- (c) The realignment of the A34 southbound approach to the M3 Junction 9 gyratory at the location shown on sheet 7 of the works plans.

Work No. 23 – as shown on sheet nos. 6 and 7 of the works plans and being the construction realignment of the A34 northbound merge from M3 Junction 9 gyratory to the A34 northbound merge termination, being 372 metres in length, on embankment.

Work No. 24 – as shown on sheet 7 of the works plans and being the construction of a cycle track, being 490 metres in length including edgings, verges, wayfinding signage, bollards, tactile paving, horse mounting blocks, in cutting and associated structural elements, such works including—

- (a) The construction of a cycle track subway with associated lighting, being 22 metres in length, underneath the M3 Junction 9 gyratory at the location shown on sheet 7 of the works plans;
- (b) The construction of an island in cutting at the location shown on sheet 7 of the works plans;
- (c) The construction of pedestrian steps, being 17 metres in length, at the location shown on sheet 7 of the works plans;
- (d) The construction of a cycle track subway, being 28 metres in length, underneath the M3 Junction 9 gyratory at the location shown on sheet 7 of the works plans.

Work No. 25 – as shown on sheet 7 of the works plans and being the realignment of the Easton lane entry / exit from the M3 Junction 9 gyratory, such works including—

- (a) The realignment of the existing splitter island at the location shown on sheet 7 of the works plans.

Work No. 26 – as shown on sheet 7 of the works plans and being the diversion of 499 metres of telecommunication equipment.

Work No. 27 – as shown on sheet 7 of the works plans and being the construction of a new M3 Junction 9 gyratory northern overbridge.

Work No. 28 – as shown on sheet 7 of the works plans and being the construction of a new M3 Junction 9 gyratory southern overbridge.

Work No. 29 – as shown on sheet nos. 7 and 8 of the works plans and being the realignment construction of the existing M3 Junction 9 gyratory to tie into the new northern (Works No. 27) and southern (Works No. 28) overbridges and new tie ins to the existing M3 offslips and onslips.

Work No. 30 – as shown on sheet nos. 7 and 8 of the works plans and being the realignment of the M3 offslip from the M3 to the M3 Junction 9 gyratory, being 370 metres in length, on embankment,

Work No. 31 – as shown on sheet nos. 7 and 8 of the works plans and being the realignment and construction of the M3 southbound onslip from the M3 Junction 9 gyratory to the M3 merge, being 711 metres in length, such works including—

- (a) The construction of a retaining wall, being 147 metres in length, and associated earthworks and landscaping at the location shown on sheet 7 of the works plans;
- (b) The realignment lane reduction of the M3 southbound onslip and associated earthworks at the location shown on sheet 7 of the works plans.

Work No. 32 – as shown on sheet 7 of the works plans and being the realignment of the A272 approach to the M3 Junction 9 gyratory, being 417 metres in length, and associated earthworks, such works including—

- (a) The realignment of the existing splitter island at the location shown on sheet 7 of the works plans;
- (b) The widening of the existing A272 exit from the M3 Junction 9 gyratory, being 241 metres in length, and associated earthworks at the location shown on sheet 7 of the works plans;
- (c) The construction of a retaining wall, being 184 metres in length, and associated earthworks and landscaping at the location shown on sheet 7 of the works plans;
- (d) The construction of a retaining wall, being 92 metres in length, and associated earthworks and landscaping at the location shown on sheet 7 of the works plans.

Work No. 33 – as shown on sheet nos. 6 and 7 of the works plans and being the realignment of a bridleway featuring the national cycle route 23, being 277 metres in length, and associated earthworks and landscaping, such works including—

- (a) The construction of a bridleway (NCN23) subway with associated lighting, being 23 metres in length, underneath the M3 Junction 9 gyratory at the location shown on sheet 7 of the works plans.

Work No. 34 – as shown on sheet nos. 5 and 6 of the works plans and being the realignment of the A34 northbound carriageway, being 1024 metres in length.

Work No. 35 – as shown on sheet 4 of the works plans and being the diversion of 50 metres of power cables.

Work No. 36 – as shown on sheet 7 of the works plans and being the construction of a gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, associated maintenance provision, signs sign illuminations, control cabinets and power.

Work No. 37 – as shown on sheet 8 of the works plans and being the construction of a gantry including the installation of new gantry foundations, gantry structures, associated maintenance provision, earthwork retaining structures, signs, sign illuminations, control cabinets, and power.

Work No. 38 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a temporary construction site compound situated on land to the east of the M3 Junction 9 gyratory.

Work No. 39 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of the A34 southbound link to the M3 southbound, being 430 metres in length.

Work No. 40 – as shown on sheet 6 of the works plans, the construction of a new vehicular access and maintenance track to the infiltration and attenuation basin.

Work No. 41 – as shown on sheet 5 of the works plans and being the construction of a drainage outfall into the river Itchen.

Work No. 42 – as shown on sheet 5 of the works plans and being the construction of a drainage outfall into the river Itchen.

Work No. 43 – – as shown on sheet 5 of the works plans and being the construction of a drainage outfall into the river Itchen.

Work No. 44 – as shown on sheet 6 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 45 – as shown on sheet 6 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 46 – as shown on sheet nos. 2 and 4 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 47 – as shown on sheet 4 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 48 – as shown on sheet no. 6 of the works plans and being the construction of a variable message sign layby including foundations, earthworks and vehicle restraint system.

Work No. 49 – as shown on sheet 7 of the works plans and being the construction of a temporary access from existing A272 to provide connectivity to the proposed temporary construction site compound (Work No. 38).

Work No. 50 – as shown on sheet 8 of the works plans and being the construction of a variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs, sign illuminations, control cabinets and power.

In connection with the construction of any of those works, further development within the Order limits consisting of—

- (a) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (b) the strengthening, alteration or demolition of any structure;
- (c) ramps, steps, means of access including private manes of access, non-motorised user routes or links, footpaths, footways, bridleways, cycle tracks, laybys and crossing facilities;
- (d) embankments, cuttings, bridges, abutments, foundations, retaining walls, barriers, parapets, drainage works, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (e) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, pipes, cables and ducts;
- (f) works to alter the course of, or otherwise interfere with a watercourse, including private water supplies;
- (g) landscaping, re-grading, re-profiling, contouring, works associated with the provision of ecological, landscape and archaeological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (h) works for the benefit or protection of land affected by the authorised development;
- (i) works to place, alter, remove or maintain road furniture;
- (j) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling), remediation of contamination;
- (k) the felling of trees and hedgerows;
- (l) establishment of site construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, office facilities, other ancillary accommodation, 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, street lighting, road restraints, road markings works, emergency roadside telephones, traffic management measure 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, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of or for purposes associated with or ancillary to the construction, operation or maintenance of the authorised development.

## SCHEDULE 2

Article 5

### REQUIREMENTS

#### PART 1

#### REQUIREMENTS

##### Interpretation

**1.** In this Schedule—

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

“commence” means beginning to carry out any material operation (as defined in section 56(4)(b) of the 1990 Act) forming part of the authorised development other than environmental surveys and monitoring, archaeological mitigation works, 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 temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of services and site clearance, construction of welfare facilities and temporary buildings, temporary display of site notices, information and advertisements, and establishment of construction compounds, and ‘commencement’ is to be construed accordingly;

“City Archaeologist” means the individual nominated or appointed as such by the relevant planning authority;

“design principles report” means that document certified by the Secretary of State as the design principles for the purposes of this Order;

“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 the document certified by the Secretary of State as the drainage strategy report being appendix 13.1 of the environmental statement for the purposes of this Order;

“Ecological Clerk of Works” means the individual appointed as such by the undertaker;

“environmental masterplan” means that plan certified by the Secretary of State as figure 2.3 of the environmental statement for the purposes of this Order;

“EMP (First Iteration)” means the first iteration of the environmental management plan produced in accordance with the DMRB during the preliminary design stage and as certified under article 48 (certification of documents, etc.);

“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;

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(a) Substituted by sections 86 and 105 of the Water Act 2003 (c.37), S.I. 2012/264 and S.I. 2012/284

(b) As amended by section 32 of and paragraph 10 of Schedule 12 to, the Planning and Compensation Act 1991 (c.34)

“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;

“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(a);

“flood risk assessment” means the document certified by the Secretary of State as the flood risk assessment for the purposes of the Order;

“lead local flood authority” means Hampshire County Council;

“outline Landscape and Ecological Management plan” means that plan certified by the Secretary of State as appendix 7.6 of the environmental statement for the purposes of this Order;

“outline traffic management plan” means the document certified by the Secretary of State as the outline traffic management plan for the purposes of the Order.

### **Time limits**

2. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

### **Environmental Management Plan**

3.—(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 and local highway authority to the extent that the content of the EMP (Second Iteration) relates to matters relevant to their functions.

(2) The EMP (Second Iteration) must—

- (a) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the authorised development;
- (b) incorporate the measures referred to in the environmental statement as being incorporated in the EMP (First Iteration);

require adherence to working hours of 07:00 to 19:00 on Mondays to Friday and 07:00 to 13:00 on Saturdays with no working hours on Sundays and public holidays, except for—

- (i) works requiring the full or partial closure of, or otherwise adversely affecting the operation of, the M3, A33, and A34 carriageway;
- (ii) works associated with the diversion or removal of existing utilities;
- (iii) works associated with traffic management and signal changes;
- (iv) works associated with tie-ins to existing carriageways;
- (v) any emergency works, or works required for engineering, safety, or efficiency purposes;
- (vi) any works for which different working hours have been agreed with parties who will or may be affected by those works and recorded in the approved EMP (Second Iteration), in which case the EMP (Second Iteration) must require adherence to those working hours; and
- (vii) as otherwise agreed by the relevant planning authority in advance.

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

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(a) S.I. 2017/1012

(4) Upon completion of construction of the authorised development the EMP (Second Iteration) must be converted into the EMP (Third Iteration). The EMP (Third Iteration) must be submitted to the Secretary of State for approval within 28 days of the opening of the authorised development for public use.

(5) The authorised development must be operated and maintained in accordance with the EMP (Third Iteration) approved under paragraph (4).

### **Details of consultation**

4.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

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

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

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

### **Landscaping**

5.—(1) No part of the authorised development is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions; and the local highway authority.

(2) The landscaping scheme prepared under sub-paragraph (1) must be based on the outline Landscape and Ecological Management Plan, environmental masterplan, and EMP (First Iteration)

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including—

- (a) location, number, species, size, timing and planting density of any proposed planting, including advanced planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) details of existing trees to be retained, with measures for their protection during the construction period outlined within a Tree Protection Plan and Arboricultural Method Statement;
- (f) implementation and maintenance timetables for all landscaping works; and
- (g) landscaping works associated with the provision of any fences and walls which do not serve a structural or safety purpose for a highway.

### **Implementation and maintenance of landscaping**

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under Requirement 5.

(2) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) Any tree or shrub or chalk grassland planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

## **Fencing**

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

## **Land and groundwater contamination**

8.—(1) In the event that contaminated material, including impacted groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental statement, the undertaker must cease construction of the authorised development in the vicinity of that contamination and must report it immediately in writing to the Secretary of State, the Environment Agency and the relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination, and sub-paragraphs (2) and (3) will apply.

(2) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared submitted to and approved in writing by the Secretary of State following consultation with the Environment Agency and the relevant planning authority.

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

## **Archaeology**

9.—(1) No part of the authorised development is to commence until for that part a written scheme of investigation, reflecting the mitigation measures included in the Archaeology and Heritage Mitigation Strategy prepared substantially in accordance with the Archaeology and Heritage Outline Mitigation Strategy appended to chapter 6 of the environmental statement, with provision for sub-written schemes of investigation for each area and each phase (strip, map and sample, geoarchaeological investigation, watching brief) as required, has been prepared in consultation with the City Archaeologist and submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the Archaeology and Heritage Mitigation Strategy and written schemes of investigation referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A programme of archaeological reporting, post excavation, archiving and publication undertaken in accordance with written schemes of investigation referred to in sub-paragraph (1) must be consulted upon with the City Archaeologist and implemented within a timescale discussed with the City Archaeologist and deposited with the Historic Environment Record of the relevant planning authority within an agreed time period.

(4) Any nationally significant archaeological remains not previously identified which are revealed when carrying out the authorised development must be—

- (a) retained in situ temporarily and reported to the City Archaeologist and Historic England as soon as reasonably practicable; and
- (b) subject to appropriate mitigation, including post-excavation process, as set out in the Archaeology and Heritage Mitigation Strategy and consulted upon with the City Archaeologist and Historic England.

(5) No construction operations are to take place within 20 metres from the identifiable extent of the nationally significant remains referred to in sub-paragraph (4) until an appropriate mitigation strategy has been discussed and consulted upon with the City Archaeologist and Historic England, unless otherwise agreed in writing by the Secretary of State.

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

(7) References in this paragraph to consultation, reporting, and discussion with the City Archaeologist shall include the nominated archaeologist for South Downs National Park Authority to the extent that it relates to matters relevant to their functions.

### **Protected species**

**10.**—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works near their location and report it immediately to the Ecological Clerk of Works.

(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds found when carrying out the authorised development. Where nesting birds are identified works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.

(3) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

### **Traffic management**

**11.**—(1) No part of the authorised development is to commence until a traffic management plan for the construction of that part of the authorised development, substantially in accordance with the outline traffic management plan, document reference 7.8, has been submitted to and approved in writing by the Secretary of State following consultation with the local highway authority.

(2) The authorised development must be constructed in accordance with the approved traffic management plan.

### **Detailed design**

**12.**—(1) The authorised development must be designed in detail and carried out so that it is in accordance with—

- (a) the preliminary scheme design shown on the works plans and the engineering and structural drawings and sections;
- (b) the design principles set out in the design principles report

unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans and the engineering drawings and sections showing departures from the preliminary design would not give rise to any materially worse adverse environmental effects in comparison with those reported in the environmental statement.

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

### **Surface water drainage**

**13.**—(1) No part of the authorised development is to commence until written details of the surface water drainage system for that part, in accordance with the flood risk assessment and drainage strategy, reflecting the mitigation measures in chapter 13 of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to their functions, the lead local flood authority, the Environment Agency, and the local highway



authority where that the surface water drainage system interacts with a highway maintainable at the expense of that local highway authority.

(2) The drainage system must be constructed and maintained in accordance with the approved details referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, the lead local flood authority and the Environment Agency.

### **Noise Mitigation**

**14.**—(1) No part of the authorised development is to commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development, including low noise surfacing, have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to their functions if required any additional relevant planning authority.

(2) The written details referred to in sub-paragraph (1) must either reflect the mitigation measures included in the environmental statement or, where the mitigation proposed materially differs from the mitigation identified in the environmental statement, the undertaker must provide evidence with the written details submitted that the mitigation proposed would not give rise to any materially new adverse or materially worse adverse environmental effects in comparison with those reported in the environmental statement taking into account the mitigation identified in it.

(3) The noise mitigation must be constructed in accordance with the approved details referred to in sub-paragraph (1) and must be retained thereafter.

### **Height Restrictions**

**15.** Any static unit providing welfare or other facilities within the temporary construction site compound as part of Work No. 38 shall be a single storey unit and shall not exceed a height of 4 metres, the measurement of which being from the external base to the external roof of the static unit but shall not include the depth of any foundation reasonably required to secure the structure or height of any aerial, mast, satellite dish, chimney stack, flue, pipe, solar panel or other equipment reasonably required to be affixed to the static unit.

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

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

## **PART 2**

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

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

**17.**—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including 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 19; 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 referred to in paragraph 4 stating that, in the view of a body required to be consulted by the undertaker under the requirement in question, the subject matter of the application is likely to give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement,

then the application is taken to have been refused by the Secretary of State at the end of that period.

### **Further information**

**18.**—(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 this 21 day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(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 18 and in this sub-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(a).

### **Register of requirements**

**19.**—(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**

**20.** If before this Order came into force the undertaker or any other person took 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

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(a) 1971 c.80.

they would have been valid steps for that purpose had they been taken after this Order came into force.

### Details of consultation

21. With respect 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 28 days for any response to the consultation and 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

Article 15 and 19

### CLASSIFICATION OF ROADS, ETC.

#### PART 1

#### SPECIAL ROADS

<i>(1)</i> Area	<i>(2)</i> Length of road
Hampshire County Council (Winchester)	M3 northbound carriageway from a point 540 metres from the proposed M3 Junction 9 gyratory southern bridge to the proposed A34 northbound diverge between point 30 and 23 of sheets 6, 7 and 8 of the classification of road plans, comprising 878 metres.
Hampshire County Council (Winchester)	M3 northbound carriageway from the proposed A34 northbound diverge to a point 221 metres from the proposed M3 Junction 9 gyratory northern bridge between points 23 and 31 on sheets 4, 5, and 6 of the classification of road plans, comprising 1186 metres
Hampshire County Council (Winchester)	M3 northbound offslip to the proposed M3 Junction 9 gyratory between point 32 and 27 on sheets 8 and 7 of the classification of road plans, comprising 468 metres.
Hampshire County Council (Winchester)	M3 northbound onslip from the proposed A33 / M3 onslip roundabout to the M3 northbound carriageway to a point 790 metres from the proposed M3 Junction 9 gyratory northern bridge between points 14 and 33 on sheets 5 and 4 of the classification of road plans, comprising 468 metres.
Hampshire County Council (Winchester)	M3 southbound carriageway from a point 1066 metres from the proposed M3 Junction 9 gyratory northern bridge to a point 790 metres from the proposed M3 Junction 9 gyratory southern bridge between point 34 and 35 on sheets 5 6, 7 and 8 of the classification of road plans, comprising 1984 metres.
Hampshire County Council (Winchester)	M3 southbound merge from a point 182 metres from the proposed M3 underpass southern portal to a point 782 metres from the proposed M3 Junction 9 gyratory southern bridge between point 18 and 36 on sheet 6, 7 and 8 of the classification of road plans, comprising 1311 metres.
Hampshire County Council (Winchester)	M3 southbound onslip from the proposed M3 Junction 9 gyratory to a point 48 metres from the proposed M3 Junction 9 gyratory southern bridge between point 37 and 38 on sheet 7 and 8 of the classification of road plans, comprising 797 metres.
Hampshire County Council (Winchester)	M3 southbound offslip from a point 1059 metres from the proposed M3 Junction 9 gyratory northern bridge to a point 394 metres from the proposed M3 Junction 9 gyratory northern bridge between point 39

	and 21 on sheets 5 and 6 of the classification of road plans, comprising 694 metres.
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## PART 2

### TRUNK ROADS

<i>(1)</i> Area	<i>(2)</i> Length of road
Hampshire County Council (Winchester)	A33 southbound from the proposed A33 / M3 northbound onslip roundabout to the proposed National Highways depot roundabout between point 5 and 6 on sheets 5 and 6 of the classification of road plans, comprising 520 metres.
Hampshire County Council (Winchester)	A33 southbound from the proposed National Highways depot roundabout to the proposed M3 Junction 9 gyratory between point 7 and 8 on sheets 6 and 7 of the classification of road plans, comprising 227 metres.
Hampshire County Council (Winchester)	A33 northbound from the proposed National Highways depot roundabout to the proposed M3 Junction 9 gyratory between point 9 and 10 on sheets 7 and 6 of the classification of road plans, comprising 246 metres.
Hampshire County Council (Winchester)	A33 northbound from the proposed National Highways depot roundabout to the proposed A33 / M3 northbound onslip roundabout between point 11 and 12 on sheets 6 and 5 of the classification of road plans, comprising 524 metres.
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to the commencement of the proposed M3 northbound onslip motorway between point 13 and 14 on sheet 5 and 6 of the classification of road plans, comprising 8 metres.
Hampshire County Council (Winchester)	Proposed A33 / M3 northbound onslip roundabout extents as shown at point 15 on sheet 5 of the classification of road plans, comprising 87 metres.
Hampshire County Council (Winchester)	Proposed National Highways depot roundabout extents as shown at point 16 on sheet 6 of the classification of road plans, comprising 87 metres.
Hampshire County Council (Winchester)	A34 southbound from a point 659 metres from the proposed M3 underpass northern portal to a point 178 metres from the proposed M3 underpass southern portal between point 17 and 18 on sheets 5 and 6 of the classification of road plans, comprising 890 metres.
Hampshire County Council (Winchester)	A34 southbound diverge from commencement of diverge to the proposed M3 Junction 9 gyratory between point 19 and 20 on sheets 6 and 7 of the classification of road plans, comprising 588 metres.
Hampshire County Council (Winchester)	A34 southbound from a point 394 metres from the proposed M3 Junction 9 gyratory to a point 347 metres from the proposed M3 Junction 9 gyratory between point 21 and 22 on sheet 6 of the classification of road plans, comprising 49 metres.
Hampshire County Council (Winchester)	A34 northbound from the proposed M3 / A34 northbound diverge to a point 223 metres from the proposed M3 Junction 9 gyratory northern bridge between point 23 and 24 on sheets 6 and 5 of the classification of road plans, comprising 1171 metres.
Hampshire County Council (Winchester)	A34 northbound onslip from the proposed M3 Junction 9 gyratory to a point 68 metres from the proposed M3 Junction 9 gyratory between point 25 and 26 on sheet 7 and 6 of the classification of road plans, comprising 613 metres.

Hampshire County Council (Winchester)	M3 northbound offslip from a point 60 metres from the proposed M3 Junction 9 gyratory southern bridge to a point 63 metres from the proposed M3 Junction 9 gyratory southern bridge between point 27 and 28 on sheet 7 of the classification of road plans, comprising 39 metres.
Hampshire County Council (Winchester)	M3 Junction 9 gyratory extents as shown at point 29 on sheet 7 of the classification of road plans, comprising 583 metres.

### PART 3

#### ROADS TO BE DE-TRUNKED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Road</i>
Hampshire County Council (Winchester)	A33 northbound carriageway between point 1 and 2 on sheets 3 and 5 of the de-trunking plans, comprising 1182 metres.
Hampshire County Council (Winchester)	A33 southbound carriageway between point 3 and 4 on sheets 3 and 5 of the de-trunking plans, comprising 1261 metres.
Hampshire County Council (Winchester)	A34 northbound carriageway between point 5 and 6 on sheets 5, 6 and 7 of the de-trunking plans, comprising 935 metres.
Hampshire County Council (Winchester)	A34 southbound carriageway between point 7, 8, 9 and 10 on sheets 5, 6 and 7 of the de-trunking plans, comprising 902 metres.
Hampshire County Council (Winchester)	M3 northbound onslip to M3 northbound carriageway from M3 Junction 9 gyratory between point 11, 12 and 13 on sheets 6 and 7 of the de-trunking plans, comprising 259 metres.
Hampshire County Council (Winchester)	M3 southbound offslip from M3 southbound carriageway to M3 Junction 9 gyratory between point 14 and 15 on sheets 6 and 7 of the de-trunking plans, comprising 418 metres.
Hampshire County Council (Winchester)	M3 southbound onslip to M3 southbound carriageway from M3 Junction 9 gyratory between point 16 and 17 on sheet 7 of the de-trunking plans, comprising 245 metres.
Hampshire County Council (Winchester)	M3 northbound offslip from M3 northbound carriageway to M3 Junction 9 gyratory between point 18 and 19 on sheet 7 of the de-trunking plans, comprising 315 metres.
Hampshire County Council (Winchester)	M3 Junction 9 gyratory as shown by point 20 on sheet 7 of the de-trunking plans, comprising 645 metres.

### PART 4

#### CLASSIFIED ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Hampshire County Council (Winchester)	A33 southbound from a point 17 metres from the existing Cart and Horses Junction (Kings Worthy) to the proposed A33 / M3

	northbound onslip roundabout between points 1 and 2 on sheets 3 and 5 of the classification of road plans, comprising 1367 metres
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to the existing Cart and Horses Junction (Kings Worthy) between point 3 and 4 on sheets 3 and 5 of the classification of road plans, comprising 1367 metres.
Hampshire County Council (Winchester)	Easton Lane southbound from a point 104 metres from the proposed M3 Junction 9 gyratory southern bridge to a point 196 metres from the proposed M3 Junction 9 gyratory southern bridge between point 44 and 45 on sheet 7 of the classification of road plans, comprising 100 metres.
Hampshire County Council (Winchester)	Easton Lane northbound from a point 126 metres from the proposed M3 Junction 9 gyratory southern bridge to a point 145 metres from the proposed M3 Junction 9 gyratory southern bridge between point 46 and 47 on sheet 7 of the classification of road plans, comprising 38 metres.
Hampshire County Council (Winchester)	A272 southbound from the proposed M3 Junction 9 gyratory to a point 132 metres from the proposed M3 Junction 9 gyratory southern bridge between point 40 and 41 on sheet 7 of the classification of road plans, comprising 204 metres.
Hampshire County Council (Winchester)	A272 northbound from a point 103 metres from the proposed M3 Junction 9 gyratory to the proposed M3 Junction 9 gyratory between point 42 and 43 on sheet 7 of the classification of road plans, comprising 171 metres.

## PART 5

### SPEED LIMITS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed limit</i>
Hampshire County Council (Winchester)	Easton Lane northbound between point 31 and 32 on sheet 7 of the speed limit plans, comprising 15 metres.	30mph
Hampshire County Council (Winchester)	Easton Lane southbound between point 33 and 34 on sheet 7 of the speed limit plans, comprising 80 metres.	30mph
Hampshire County Council (Winchester)	A33 northbound and southbound between point 1 and 2 on sheet 3 of the speed limit plans, comprising 327 metres.	40mph
Hampshire County Council (Winchester)	A33 southbound between point 3 and 4 on sheet 5 of the speed limit plans, comprising 163 metres.	40mph
Hampshire County Council (Winchester)	A33 southbound from proposed A33 / M3 northbound onslip roundabout to the proposed National Highways depot roundabout between Point 5 and 6 on sheets 5 and 6 of the speed limit plans, comprising 527 metres.	40mph
Hampshire County Council (Winchester)	A33 southbound from proposed National Highways depot roundabout to the proposed M3	40mph

	Junction 9 gyratory between point 7 and 8 on sheets 6 and 7 of the speed limit plans, comprising 222 metres.	
Hampshire County Council (Winchester)	A33 northbound from the proposed M3 Junction 9 gyratory to the proposed National Highways depot roundabout between point 9 and 10 on sheets 7 and 6 of the speed limit plans, comprising 244 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound from the proposed National Highways depot roundabout to the proposed A33 / M3 northbound onslip roundabout between point 11 and 12 on sheets 6 and 5 of the speed limit plans, comprising 527 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 onslip roundabout to the A33 northbound between point 13 and 3 on sheet 5 of the speed limit plans, comprising 163 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to the M3 northbound onslip between point 14 and 15 on sheet 5 of the speed limit plans, comprising 46 metres.	40mph
Hampshire County Council (Winchester)	A33 / M3 northbound onslip roundabout extents as shown at point 16 on sheet 5 of the speed limit plans, comprising 83 metres.	40mph
Hampshire County Council (Winchester)	National Highways depot roundabout extents as shown at point 17 on sheet 6 of the speed limit plans, comprising 83 metres.	40mph
Hampshire County Council (Winchester)	A34 southbound diverge to the - proposed M3 Junction 9 gyratory between point 21 and 22 on sheets 6 and 7 of the speed limit plans, comprising 393 metres.	40mph
Hampshire County Council (Winchester)	A34 / M3 southbound offslip merge between point 23 and 24 on sheet 6 of the speed limit plans, comprising 50 metres.	40mph
Hampshire County Council (Winchester)	A34 northbound onslip between point 29 and 27 on sheet 7 of the speed limit plans, comprising 39 metres.	40mph
Hampshire County Council (Winchester)	Easton Lane northbound between point 30 and 31 on sheet 7 of the speed limit plans, comprising 23 metres.	40mph
Hampshire County Council (Winchester)	Easton Lane southbound between point 34 and 35 on sheet 7 of the speed limit plans, comprising 36 metres.	40mph

Hampshire County Council (Winchester)	A272 southbound between point 40 and 41 on sheet 7 of the speed limit plans, comprising 204 metres.	40mph
Hampshire County Council (Winchester)	A272 northbound between point 41 and 42 on sheet 7 of the speed limit plans, comprising 180 metres.	40mph
Hampshire County Council (Winchester)	M3 Junction 9 gyratory extents as shown at point 43 on sheet 7 of the speed limit plans, comprising 583 metres.	40mph
Hampshire County Council (Winchester)	M3 northbound offslip to the proposed M3 Junction 9 gyratory between point 36 and 37 on sheet 7 of the speed limit plans, comprising 40 metres.	40mph
Hampshire County Council (Winchester)	M3 southbound onslip from the proposed M3 Junction 9 gyratory between point 38 and 39 on sheet 7 of the speed limit plans, comprising 36 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound and southbound between point 2 and 3 on sheets 3 and 5 of the speed limit plans, comprising 871 metres.	50mph
Hampshire County Council (Winchester)	A34 southbound to M3 southbound onslip merge between point 18 and 19 on sheets 5 and 6 of the speed limit plans, comprising 905 metres.	50mph
Hampshire County Council (Winchester)	A34 southbound diverge to proposed M3 Junction 9 gyratory between point 20 and 21 on sheet 6 of the speed limit plans, comprising 200 metres.	50mph
Hampshire County Council (Winchester)	A34 northbound between point 26 and 28 on sheets 6 and 5 of the speed limit plans, comprising 802 metres.	50mph
Hampshire County Council (Winchester)	A34 northbound from M3 northbound diverge to A34 northbound between point 25 and 26 on sheet 6 of the speed limit plans, comprising 390 metres.	70mph
Hampshire County Council (Winchester)	A34 onslip from proposed M3 Junction 9 gyratory between point 27 and 26 on sheets 7 and 6 of the speed limit plans, comprising 578 metres.	70mph
Hampshire County Council (Winchester)	M3 northbound offslip between point 44 and 36 on sheets 8 and 7 of the speed limit plans, comprising 486 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound onslip between point 39 and 53 on sheets 7 and 8 of the speed limit plans, comprising 763 metres.	70mph



Hampshire County Council (Winchester)	M3 northbound between point 45 and 25 on sheets 8, 7 and 6 of the speed limit plans, comprising 876 metres.	70mph
Hampshire County Council (Winchester)	M3 northbound between point 46 and 47 on sheets 6, 5 and 4 of the speed limit plans, comprising 1186 metres.	70mph
Hampshire County Council (Winchester)	M3 northbound onslip between point 15 and 48 on sheets 5 and 4 of the speed limit plans, comprising 605 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound between point 49 and 50 on sheets 5, 6, 7 and 8 of the speed limit plans, comprising 1980 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound offslip between point 51 and 23 on sheets 5 and 6 of the speed limit plans, comprising 695 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound onslip merge between point 19 and 52 on sheets 6, 7 and 8 of the speed limit plans, comprising 1305 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound onslip from the proposed M3 Junction 9 gyratory between point 39 and 53 on sheets 7 and 8 of the speed limit plans, comprising 763 metres.	70mph

## PART 6

### TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

<i>(1) Area</i>	<i>(2) Road name, number and length</i>	<i>(3) Measures</i>
Hampshire County Council (Winchester)	A33 southbound from the Cart and Horses Junction (Kings Worthy) to the proposed A33 / M3 northbound onslip roundabout between point 1 and 2 on sheets 3 and 5 of the traffic regulation measures plans, comprising 1366 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 southbound from the proposed A33 / M3 northbound onslip roundabout to the proposed National Highways depot roundabout between point 3 and 4 on sheets 5 and 6 of the traffic regulation measures plans, comprising 526 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 southbound from the proposed National Highways depot roundabout to the proposed M3 Junction 9 gyratory between point 5 and 6 on sheet 6 and 7 of the traffic	Clearway extents

	regulation measures plans, comprising 224 metres.	
Hampshire County Council (Winchester)	A33 northbound from the proposed M3 Junction 9 gyratory to the proposed National Highways depot roundabout between Point 7 and 8 on sheets 6 and 7 of the traffic regulation measures plans, comprising 242 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 northbound from the proposed National Highways depot roundabout to the proposed A33 / M3 northbound onslip roundabout between Point 9 and 10 on sheets 6 and 5 of the traffic regulation measures plans, comprising 527 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to a point 20 metres from the existing Cart and Horses Junction (Kings Worthy) between point 11 and 12 on sheets 5 and 3 of the traffic regulation measures plans, comprising 1365 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to a point 24 metres from the proposed A33 / M3 northbound onslip roundabout between point 13 and 14 on sheet 5 of the traffic regulation measures plans, comprising 10 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 / M3 northbound onslip roundabout the proposed roundabout extents as shown as point 15 on sheet 5 of the traffic regulation measures plans, comprising 84 metres.	Clearway extents
Hampshire County Council (Winchester)	National Highways depot roundabout the proposed roundabout extents as shown as point 16 on sheet 6 of the traffic regulation measures plans, comprising 84 metres.	Clearway extents
Hampshire County Council (Winchester)	A34 southbound from a point 662 metres from the proposed M3 underpass northern portal to a point 204 metres from the proposed M3 underpass southern portal between point 17 and 18 on sheets 6 and 5 of the traffic regulation measures plans, comprising 891 metres.	Clearway extents
Hampshire County Council (Winchester)	A34 southbound from diverge to the proposed M3 Junction 9 gyratory between point 19 and 20 on sheets 6	Clearway extents

	and 7 of the traffic regulation measures plans, comprising 589 metres.	
Hampshire County Council (Winchester)	A34 southbound from a point 393 metres from the proposed M3 Junction 9 gyratory northern bridge to a point 346 metres from the proposed M3 Junction 9 gyratory northern bridge between point 21 and 22 on sheet 6 of the traffic regulation measures plans, comprising 50 metres.	Clearway extents
Hampshire County Council (Winchester)	A34 northbound from M3 / A34 northbound diverge to a point 1172 metres from the M3 / A34 northbound diverge between point 23 and 24 on sheet 6 and 5 of the traffic regulation measures plans, comprising 1172 metres.	Clearway extents
Hampshire County Council (Winchester)	A34 northbound onslip from a point 32 metres from the proposed M3 Junction 9 gyratory northern bridge between Point 25 and 26 on sheet 7 and 6 of the traffic regulation measures plans, comprising 612 metres.	Clearway extents
Hampshire County Council (Winchester)	Easton Lane northbound between point 27 and 28 on sheet 7 of the traffic regulation measures plans, comprising 23 metres.	Clearway extents
Hampshire County Council (Winchester)	Easton Lane southbound between point 29 and 30 on sheet 7 of the traffic regulation measures plans, comprising 25 metres.	Clearway extents
Hampshire County Council (Winchester)	M3 northbound offslip between point 31 and 32 on sheet 7 of the traffic regulation measures plans, comprising 40 metres.	Clearway extents
Hampshire County Council (Winchester)	M3 Junction 9 gyratory extents as shown at point 33 (including points 34, 35, 36) on sheet 7 of the restrictions to traffic movement plans, comprising 635 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 overtaking between point 37 and 38 on sheets 6 and 5 of the traffic regulation measures plans, comprising 487 metres.	No overtaking
Hampshire County Council (Winchester)	A33 overtaking between point 39 and 40 on sheets 5 and 3 of the traffic regulation measures plans, comprising 731 metres.	No overtaking

## PART 7

### REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Title of Order</i>	<i>(4)</i> <i>Revocations or variations</i>
Hampshire County Council (Winchester)	A34 northbound carriageway between point 1 and 2 on sheets 5 and 7 of the revoking existing clearway orders plans, comprising 926 metres.	The Winchester-Preston Trunk Road (A34) (24 Hours Clearway) (No.2) Order 1987	Existing section of highway (in part) to be stopped up. Traffic regulation order to be revised to suit proposed highway arrangement.
Hampshire County Council (Winchester)	A34 southbound carriageway between point 3 and 4 on sheets 5 and 7 of the revoking existing clearway orders plans, comprising 899 metres.	The Winchester-Preston Trunk Road (A34) (24 Hours Clearway) (No.2) Order 1987	Existing section of highway (in part) to be stopped up. Traffic regulation order to be revised to suit proposed highway arrangement.
Hampshire County Council (Winchester)	A33 between point 5 and 6 on sheets 3 and 5 of the revoking existing clearway orders plans, comprising 929 metres.	The South West of Basingstoke – Southampton Trunk Road (Prohibition of Waiting) (Clearways) Order 1968	Existing section of highway (in part) to be stopped up. Traffic regulation order to be revised to suit proposed highway arrangement.

## PART 8

### PUBLIC RIGHTS OF WAY TO BE CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Status and length of public right of way / footpath / cycle track / bridleway / footway and associated structures</i>
Hampshire County Council (Winchester)	Cycle track between the Cart and Horses Junction (Kings Worthy) to the existing NCN Route 23 adjacent to Tesco and the proposed gyratory between points 16, 4 and 15 as shown on sheets 3, 5, 6 and 7 of the rights of way and access plans, comprising 2606 metres.
Hampshire County Council (Winchester)	Bridleway between the proposed gyratory and Easton Lane between point 3 and 4 as shown on sheets 6 and 7 of the rights of way and access plans, comprising 277 metres.
Hampshire County Council (Winchester)	Bridleway between Easton Lane and Long Walk between point 1 and 2 on sheet 4, 5, 6 and 7 of the rights of way and access plans, comprising 1197 metres.

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

1. 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 to be stopped up, as described in column (2) of Part 1 and Part 2 of this Schedule, are shown by red boxed 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 Part 1 and Part 2 of this Schedule.
- (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 green shading (for motorways), pink shading (for trunk roads), yellow shading (for other classified roads and highways) and blue, yellow or purple shading (for public rights of way) (as shown in the key on the rights of way and access plans and are given a reference label (a capital letter in a circle) and will be a road unless otherwise stated 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 Part 2 of this Schedule, are shown by blue 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 Part 2 of this Schedule, and are given a reference label (a lower case letter in a circle).
- (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 2 of this Schedule, are shown by blue shading (as shown in the key on the rights of way and access plans) and are given a reference label (a number in a circle).

**PART 1**

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

<i>(1) Area</i>	<i>(2) Highway to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New Highway to be substituted/provided</i>
Hampshire County Council (Winchester)	A34 northbound carriageway	935 metres between points 17 and 18 as shown on sheets 5 and 7 of the rights of way and access plans.	A new length of trunk road (realigned A34 northbound carriageway) for a length of 691 metres.
Hampshire County Council (Winchester)	A34 southbound carriageway	920 metres between points 19 and 20 as shown on sheets 5 and 7 of the rights of way and access plans.	A new length of trunk road (realigned A34 southbound carriageway) for a length of 549 metres.
Hampshire County Council (Winchester)	M3 northbound onslip carriageway	258 metres between points 23 and 24 as shown on sheets 6 and 7 of the rights of way and access plans.	A new length of trunk road (realigned A34 northbound merge) for a length of 617 metres.

Hampshire County Council (Winchester)	M3 northbound offslip carriageway	316 metres between points 29 and 30 as shown on sheets 7 and 8 of the rights of way and access plans.	A new length of special road (realigned M3 northbound offslip carriageway) for a length of 440 metres.
Hampshire County Council (Winchester)	M3 southbound onslip carriageway	246 metres between points 27 and 28 as shown on sheet 7 of the rights of way and access Plans.	A new length of special road (realigned M3 southbound onslip carriageway) for a length of 687 metres.
Hampshire County Council (Winchester)	M3 southbound offslip carriageway	418 metres between the M3 southbound offslip to point 26 as shown on sheets 6 and 7 of the rights of way and access plans.	A new length of special road (realigned M3 southbound offslip carriageway) for a length of 634 metres.
Hampshire County Council (Winchester)	A272 northbound carriageway	101 metres between points 33 and 34 as shown on sheet 7 of the rights of way and access plans.	A new length of classified road (realigned A272 northbound carriageway) for a length of 116 metres.
Hampshire County Council (Winchester)	Easton Lane southbound carriageway	106 metres between points 31 and 32 as shown on sheet 7 of the rights of way and access plans.	A new length of classified road (realigned Easton Lane southbound carriageway) for a length of 106 metres.
Hampshire County Council (Winchester)	M3 Junction 9 gyratory (with demolition of existing structures over M3 northbound and southbound carriageways)	640 metres as identified by all points referenced 35 on sheet 7 of the rights of way and access plans.	A new length of trunk road (realigned M3 Junction 9 gyratory) for a length of 583 metres.
Hampshire County Council (Winchester)	National Highways rear entrance / exit	As noted on the rights of way and access plans	A realigned entrance / exit via a proposed roundabout (National Highways depot roundabout) for a length of 93 metres.
Hampshire County Council (Winchester)	Existing public right of way to be stopped up	441 metres of existing public right of way between points 6 and 7 as shown on sheets 6 and 7 of the rights of way and access plans.	New public right of way as per reference F/C 1 between points 4, 15 and 16, for a length of 2693 metres, as shown on sheets 3, 5, 6 and 7.
Hampshire County Council (Winchester)	Existing public right of way to be stopped up	290 metres of existing public right of way between points 5 and 6 as shown on sheets 6 and 7 of the rights of way and access plans.	New public right of way as identified between points 1 and 2, 3 and 4, for a length of 1679 metres as shown on sheets 4, 6 and 7 of the rights of way and access plans.

Hampshire County Council (Winchester)	Existing footway / footpath between to be stopped up	1719 metres of existing footway / footpath between points 7 and 8, 9 and 10, 11 and 12, 13 and 14 as shown on sheets 3, 5, 6 and 7 of the rights of way and access plans.	New public right of way as per reference F/C 1 between points 4, 15 and 16, for a length of 2693 metres as shown on sheets 3, 5, 6 and 7 of the rights of way and access plans.
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## PART 2

### 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) Area</i>	<i>(2) Private means of access to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New private means of access to be substituted/provided</i>
Hampshire County Council (Winchester)	A33 business park access	Shown as point A on sheet 3 of the rights and access plans.	Between point 49 and 48 on sheet 3 of the classification of road plans, comprising 18 metres.
Hampshire County Council (Winchester)	A33 business park access	Shown as point B on sheet 3 of the rights of way and access plans	Between point 50 and 51 on sheet 3 of the classification of road plans, comprising 33 metres.

## SCHEDULE 5

Article 27

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

<i>(1) Plot reference number shown on land plans</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
Land Plans – Sheet 6		
Plot 6/5	Rights to be acquired permanently to access, construct, maintain and repair overhead electricity cables and associated apparatus	Work No. 21

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

**Compensation enactments**

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

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

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

“(5) (a) 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 Compulsory Purchase Act 1965 (as modified by paragraph [5(5)] of Schedule [6] to the [•] Development Consent Order 20[•] (the “[•] Order”));

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph [5(8)] of Schedule [6] to the [•] 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) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (4).

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

(a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and

(b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

**Application of Part 1 of the 1965 Act**

**3.** 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.

**4.—(1)** The modifications referred to in paragraph 3(a) are as follows.

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(a) 1973 c.26.



(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 restriction 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 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 (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 restriction, 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(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20 (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(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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

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(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).  
(b) Section 11B was inserted by sections 187(3) and 216(3) of the above Act and S.I. 2017/75

## “SCHEDULE 2A

### COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

#### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have 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 M3 Junction 9 Development Consent Order 202[•] in respect of the land to which the notice to treat relates.

(2) But see article 31(3) (acquisition of subsoil or airspace only) of the M3 Junction 9 Development Consent Order 202[•] which excludes the acquisition of subsoil or airspace only from this Schedule.

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

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

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

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

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

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

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

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

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

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

#### **Determination by the Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right of 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 acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

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

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and 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> Plot Reference Number shown on land plans	<i>(2)</i> Purpose for which temporary possession may be taken	<i>(3)</i> Relevant part of the authorised development
Land Plans – Sheet 4		
4/1a	Land required temporarily for temporary traffic management purposes.	Ancillary works
4/1b	Required to facilitate and provide a working space and temporary access for works associated with the diversion of power cables	Work No. 35
4/1c	Required to facilitate and provide a working space and temporary access for works associated with the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk and Easton Lane	Work No. 9

4/1d	Land required temporarily for temporary traffic management purposes.	Ancillary works
4/2a	Required to facilitate and provide a working space and temporary access for works associated with the diversion of 50 metres in length of power cables	Work No. 35
4/2b	Required to facilitate and provide a working space and temporary access for works associated with the diversion of power cables	Work No. 35
4/2c	Land required temporarily for temporary traffic management purposes.	Ancillary works
Land Plans – Sheet 5		
5/5a	Requirement to facilitate and provide a working space and temporary access for works associated with the construction of a drainage outfall into the river Itchen	Work No. 43
5/2d	Land required temporarily for temporary traffic management purposes.	Ancillary Works
5/2e	Required to facilitate and provide a working space and temporary access for works associated with: 1. the improvement and construction of the realignment of the northbound and southbound carriageways of the A33 between B3047 (London Road) / A33 junction and proposed A33 / M3 northbound onslip roundabout; 1g. the construction of the extension of the existing central reserve with associated vehicle restraint system; 1h. the construction of carriageway realignment on the existing river Itchen bridge (including possible remediation works), approximately; 3. the construction improvements and realignment of the southbound carriageway of the A34; 42. the construction of a drainage outfall into the river Itchen.	Work No. 1, 1g, 1h, 3, 42

5/3c	Required temporarily to facilitate construction generally and to facilitate and provide a working space and temporary access for works associated with the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk to Easton Lane.	Work No. 9
5/4	Required temporarily to facilitate construction of surface water drainage outfall	Work No. 42
Land Plans – Sheet 6		
6/1f	Required to facilitate and provide a working space and temporary access for works associated with: 9. the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk and Easton Lane; 9a. the construction of an attenuation basin maintenance track; 20. the diversion low-pressure gas main pipeline; 26. the diversion of telecommunication equipment; 33. the realignment of the National Cycle Route 23 and associated earthworks and landscaping.	Work No. 9, 9a, 20, 26, 33
6/1g	Required to construct a temporary construction site compound	Work No. 38
6/4d	Required to facilitate and provide a working space and temporary access for works associated with the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk to Easton Lane.	Work No. 9
6/6a	Required to facilitate and provide a working space and temporary access for works associated with the diversion of a low-pressure gas main pipeline.	Work No. 20
6/6b	Required to facilitate and provide a working space and	Work No. 20, 38

	temporary access for works associated with: 20. the diversion of a low-pressure gas main pipeline; 38: the construction of a temporary construction site compound situated on land to the east of the M3 Junction 9 gyratory.	
Land Plans – Sheet 7		
7/1a	Required to facilitate and provide a working space and temporary access for works associated with the construction of a temporary construction site compound situated on land to the east of the M3 Junction 9 gyratory	Work No. 38
7/2c	Land required temporarily for temporary traffic management purposes.	Ancillary works
7/4g	Land required temporarily for temporary traffic management purposes.	Ancillary works
7/5	Land required temporarily for temporary traffic management purposes.	Ancillary works
7/6	Land required temporarily for temporary traffic management purposes.	Ancillary works

## SCHEDULE 8

Article 39

### REMOVAL OF HEDGEROWS

<i>(1) Hedgerow No. as referred to in the protected trees and hedgerows to be removed plans</i>	<i>(2) Work to be carried out</i>	<i>(3) Relevant part of authorised development</i>	<i>(3) hedgerow</i>	<i>Important</i>
H1	Partial Removal	Work No. 35	Yes	
H2	Partial Removal	Work No. 9	Yes	
H3	Partial Removal	Work No. 9	Yes	
H4	Removal	Work No. 3, 10(a), 11, 19, 20, 21, 39	No	
H5	Partial Removal	Work No. 3, 32, 33	No	
H6	Partial Removal	Work No. 3, 9, 33	Yes	
H7	Partial Removal	Work No. 3, 33	Yes	
H9	Partial Removal	Work No. 49	No	
H10	Partial Removal	Work No. 49	No	

## SCHEDULE 9

Article 40

### TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> Name of Order/Type of tree	<i>(2)</i> Work to be carried out	<i>(3)</i> Relevant part of the authorised development
Tree preservation order (00039-2003-TPO) partially covered by tree group G43(B) which identified ash, sycamore, yew, hawthorn, field maple, english oak, elder, blackthorn	Partial Removal	Work No. 24, 29

## SCHEDULE 10

Articles 36 and 46

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE 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—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(c); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(d) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act(e),

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(a) 1989 c.29.

(b) 1986 c.44.

(c) 1991 c.56.

(d) Inserted by section 94(3) of and paragraph 90 of Schedule 7 to the Water Act 2014 (c.21), sections 96(1)(c)(3) and 105(3) of the Water Act 2003 (c.37), S.I. 2017/462 and S.I. 2004/641.

(e) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c.29), section 11 of the Water Act 2003, sections 96, 105(3) of and part 3 of Schedule 9 to the Water Act 2014, S.I. 2004/641, S.I. 2017/462 and S.I. 2017/1288

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

“utility undertaker” means—

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

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

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

(h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

### **On street apparatus**

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

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

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

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

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 22 (protective works 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 (1) to (7).

(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 (1) 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 49 (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 49 (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.

(7) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

## **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 49 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question

than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

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

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

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

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

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(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, the plan to be submitted to the utility undertaker under sub-paragraph (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 (6), 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 49 (arbitration) to be necessary then, if such placing involves cost 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 (6) 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 (6), 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, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

## **Cooperation**

**12.** Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's

undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

**13.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

## PART 2

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

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

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

“the 2003 Act” means the Communications Act 2003<sup>(a)</sup>;

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

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

“electronic communications code network” means—

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

(b) an electronic communications network which the undertaker is providing or proposing to provide;

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

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

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

**16.** The exercise of the powers conferred by article 36 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

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

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it by reason, or in consequence of, any such damage or interruption.

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(a) 2003 c.21.

(b) Section 106 was amended by section 4 of the Digital Economy Act 2017.

(2) Nothing in sub-paragraph (8) 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 and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise 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 49 (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.
- (c) 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 in land belonging to the undertaker on the date on which this Order is made.

## PART 3

### FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER

#### Application

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

#### Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991(a); “alternative apparatus” means appropriate alternative apparatus to the satisfaction of SGN to enable SGN 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 SGN for the purposes of gas distribution together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

“commence” has the same meaning as in article 2 and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include the works described in that definition that would otherwise have been excluded from its scope other than ecological surveys, preconstruction ecological mitigation, erection of any temporary means of enclosure and the temporary display of site notices or advertisements

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(a) 1991 c.22.

“functions” includes powers and duties;

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

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for SGN'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” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SGN including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

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

“SGN” means Southern Gas Networks plc or its successors in title or successor bodies and any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(a).

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

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(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 7(2) or otherwise;

“undertaker” means the undertaker as defined in article 2 of this Order.

### **On Street Apparatus**

3. (1) Except for paragraphs 4 (*apparatus in stopped up streets*), 7 (*removal of apparatus*) in so far as sub-paragraph 3(2) applies, 8 (*facilities and rights for alternative apparatus*) in so far as sub-paragraph 3(2) below applies, 9 (*retained apparatus: protection*), 10 (*expenses*) and 11 (*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 SGN, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraph 7 and 8 of this Part shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding articles 11, 12, 30 and 35 or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of SGN under the 1991 Act.

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(a) 1986 c.44.

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

4.—(1) Without prejudice to the generality of any other protection afforded to SGN elsewhere in the Order, where any street is stopped up under article 17 (*permanent stopping up of streets*) if SGN has any apparatus in the street or accessed via that street SGN will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to SGN, or will procure the granting to SGN of, legal easements reasonably satisfactory to SGN 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 SGN to require the removal of that apparatus under paragraph 7 of this Part.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 16 (*temporary stopping up and restriction of use of streets*), SGN will be 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 it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 22 (*protective works to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN.

### **Acquisition of land**

6. (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 from SGN any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of SGN otherwise than by agreement.

(2) The undertaker and SGN 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 SGN or other enactments relied upon by SGN as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(3) Any agreement or consent granted by SGN under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 6(1).

(4) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ SGN must use reasonable endeavours to surrender its easement or other interest in land in respect of such decommissioned apparatus to the reversionary landowner and transfer title to such de-commissioned apparatus to the reversionary landowner. If SGN is not released by the reversionary landowner from all liabilities (including title) in respect of such de-commissioned apparatus the undertaker shall take on such liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(5) Where the undertaker acquires land which is subject to any SGN right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 7 do not apply, the undertaker must, unless SGN agrees otherwise:

- (a) retain any notice of SGN'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 SGN'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 SGN's easement, right or other interest in relation to such acquired land; and

- (c) provide up to date official entry copies to SGN within 20 working days of receipt of such up to date official entry copies.

### **Removal of apparatus**

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, 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 SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of SGN and in accordance with sub-paragraph (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 SGN 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 SGN reasonably needs to move or remove any of its apparatus) the undertaker must afford to SGN to its satisfaction (taking into account sub-paragraph 8(1) below) the necessary facilities and rights:

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the 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, SGN 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 shall not extend to the requirement for SGN to use its compulsory purchase powers to this end 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 SGN and the undertaker.

(5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SGN of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SGN to its satisfaction, 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**

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SGN facilities and rights in land for the access to, construction and maintenance 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 SGN and must be no less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SGN.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-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 SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SGN's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 15 (*arbitration*) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of SGN**

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

(2) The plan to be submitted to SGN 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 SGN has given written approval of the plan so submitted.

(4) Any approval of SGN 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) In relation to any work to which sub-paragraphs (1) and (2) apply, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing 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 to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) as approved or as amended from time to time by agreement between the undertaker and SGN and in accordance with all conditions imposed under sub-paragraph (4)(a), and SGN will be entitled to watch and inspect the execution of those works.

(7) Where SGN 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 SGN's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If SGN, 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 sub-paragraph 7(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) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that SGN 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 10.

## **Expenses**

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

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by SGN as a consequence of SGN;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 7(3) if it elects to do so; or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (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 9(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 article 58 (*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 SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) 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 SGN 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 SGN 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**

**11.**—(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 works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of SGN, or there is any interruption in any service provided, or in the supply of any goods, by SGN, or SGN becomes liable to pay any amount to any third party, the undertaker will—

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

(2) The fact that any act or thing may have been done by SGN on behalf of the undertaker or in accordance with a plan approved by SGN or in accordance with any requirement of SGN 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 SGN 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) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of SGN, its officers, servants, contractors or agents; and
- (b) any authorised works or any other works authorised by this Part of this Schedule carried out by SGN as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 9 (*consent to transfer benefit of order*) subject to the proviso that once such works become apparatus (“new apparatus”),

any authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

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

### **Enactments and agreements**

**12.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and SGN 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**

**13.—** (1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under sub-paragraph 7(2) or SGN 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 SGN's undertaking and SGN must use its best endeavours to co-operate with the undertaker for that purpose.

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

### **Access**

**14.** If in consequence of the agreement reached in accordance with sub-paragraph 6(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**15.** Save for differences or disputes arising under sub-paragraphs 7(2), 7(4), 8(1), 11(5) and paragraph 9 any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be determined by arbitration in accordance with article 49 (*arbitration*).

### **Notices**

**16.** The plans submitted to SGN by the undertaker pursuant to sub-paragraph 9(1) must be sent to SGN at 1 Forbury Place, 43 Forbury Road, Reading, Berkshire RG1 3JH or such other address as SGN may from time to time appoint instead for that purpose and notify in writing to the undertaker.

## PART 4

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

#### **Application**

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

#### **Interpretation**

2.—(1) In this Part of this Schedule—

“the Agency” means the Environment Agency;

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

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, or flood defence;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning given in section 113(1) of the Water Resources Act 1991(a);

“plans” includes sections, drawings, specifications, calculations and method statements;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within —

(a) 8 metres of the base of a remote defence which is likely to—

- (i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or
- (ii) interfere with the Agency’s access to or along that remote defence.

(b) 8 metres of a drainage work or is otherwise likely to—

- (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (ii) affect the flow, purity or quality of water in any watercourse or other surface waters;
- (iii) cause obstruction to the free passage of fish or damage to any fishery;
- (iv) affect the conservation, distribution or use of water resources; or
- (v) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

- (c) an activity that includes dredging, raising or taking of any sand, silt ballast, clay gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and
- (d) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work.

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

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(a) 1991 c. 57. The definition of “main river” was amended by section 59(3) of the Water Act 2014 (c. 21).

### **Submission and approval of plans**

3.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 11.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been accepted if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so the Agency must provide reasons for the grounds of that refusal.

### **Construction of protective works**

4. Without limiting paragraph 2, the requirements which the Agency may have under that paragraph may include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

### **Timing of works and service of notices**

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

### **Works not in accordance with this Schedule**

6.—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the

Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3) and paragraph 10, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 11.

### **Maintenance of works**

7.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works until the notice of completion of the specified works is received by the Agency in accordance with paragraph 4(2) maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) Subject to sub-paragraph (5), and paragraph 10, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with the provisions of this Part of this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and on receipt of such notice the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 11.

(6) This paragraph does not apply to:

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

### **Remediating impaired drainage work**

8. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

### **Agency access**

9. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours or as soon as reasonably practicable of the undertaker becoming aware of such obstruction.

### **Free passage of fish**

10.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 10, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) Subject to paragraph 10, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

### **Indemnity**

11.—(1) The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur —

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

(2) The undertaker is responsible for and indemnifies the Agency against all costs and losses not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of—



- (a) the construction, operation or maintenance or failure during construction of any specified works comprised within the authorised development
  - (b) the operation or maintenance of any specified works comprised within the authorised development or the failure of any such works; or
  - (c) any act or omission of the undertaker, its employees, contractors or agents or other persons acting under the direction of the undertaker whilst engaged upon—
    - (i) the construction, operation or maintenance of the specified works; or
    - (ii) in the case of those specified works that the undertaker is liable to maintain, dealing with any failure of those specified works.
- (3) For the avoidance of doubt in sub-paragraph (1)—
- “costs” includes—
- (i) expenses and charges;
  - (ii) staff costs and overheads;
  - (iii) legal costs;
- “losses” includes physical damage.
- (4) The undertaker indemnifies the Agency against all liabilities, claims and demands arising out of or in connection with the authorised development or otherwise out of the matters referred to in sub-paragraph (1).
- (5) In sub-paragraph (3)—
- “claims” and “demands” include as applicable—
- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
  - (b) any interest element of sums claimed or demanded;
- “liabilities” includes—
- (a) contractual liabilities;
  - (b) tortious liabilities (including liabilities for negligence or nuisance);
  - (c) liabilities to pay statutory compensation or for breach of statutory duty;
  - (d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).
- (6) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.
- (7) The Agency must, at all times, take reasonable steps to prevent and mitigate any such claims,
- (8) demands, proceedings, costs, damages, expenses or loss.
- (9) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.
- (10) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, liabilities, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

## **Disputes**

12. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must if the parties agree, be determined by arbitration under article 49 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other .

## SCHEDULE 11

Articles 28 and 47

### DOCUMENTS TO BE CERTIFIED

<i>(1) Document</i>	<i>(2) Application Document Reference</i>	<i>(3) Revision</i>
Book of reference	Volume 4, document 4.3	
Classification of roads plans	Volume 2, document 2.8	
Design principles report	Volume 8, document 8.18	
De-trunking plans	Volume 2, document 2.10	
Engineering and structural drawings and sections	Volume 2, document 2.6 to 2.7	
Environmental management plan	Volume 7, document 7.3	
Environmental statement	Volume 6, document 6.1 to 6.4	
Flood risk assessment	Volume 7, document 7.4	
General arrangement plans	Volume 2, document 2.5	
Land plans	Volume 2, document 2.2	
Outline traffic management plan	Volume 7, document 7.8	
Protected trees and hedgerows to be removed plans	Volume 2, document 2.13	
Rights of way and access plans	Volume 2, document 2.4	
Revoking existing clearway orders plans	Volume 2, document 2.14	
Speed limit plans	Volume 2, document 2.9	
Traffic regulation measures plans	Volume 2, document 2.11	
Works plans	Volume 2, document 2.3	

## **EXPLANATORY NOTE**

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

This Order authorises National Highways to construct, operate and maintain the M3 Junction 9 and carry out all associated works.

This Order permits National Highways 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, general arrangement plans, book of reference and environmental statement mentioned in this Order and certified in accordance with article 47 (certification of plans etc). may be inspected free of charge during working hours at National Highways, Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ.