

February 2023

# London Luton Airport Expansion

Planning Inspectorate Scheme Ref: TR020001

Volume 2 Draft Development Consent Order and Consents  
**2.04 DCO Validation Report**

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APFP Regulation: 5(2)(b)

**The Planning Act 2008**

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

**London Luton Airport Expansion Development Consent  
Order 202x**

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**2.04 DCO VALIDATION REPORT**

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## INFRASTRUCTURE PLANNING

### The London Luton Airport (Expansion) Development Consent Order 202[ ]

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*Coming into force* 202[ ]

**Comment [ERR1]:**  
Warning only High impact [e00023]  
The format of the Made date  
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Warning only High impact [e00026]  
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An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 37 of the Planning Act 2008(b) (“the 2008 Act”).

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[The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.]

[The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application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 is satisfied that replacement land (as that term is defined in section 131(12) of the 2008 Act) has been or will be given in exchange for the special category land, and that the replacement land has been or will be vested in the person or persons in whom the special category land is vested and subject to the same rights, trusts and incidents as attach to the special category land, and that, accordingly, section 131(4) of the 2008 Act applies.]

[The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of the 2008 Act, makes the following Order—]

## PART 1 PRELIMINARY

### **Citation and commencement**

1. This Order may be cited as the London Luton Airport (Expansion) Development Consent Order 202[ ] and comes into force on [ ] 202[ ].

### **Interpretation**

2.—(1) In this Order—

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

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

“the 1972 Act” means the Local Government Act 1972(f)

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

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(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755.

(b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1972 c. 70.

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

“the 1982 Act” means the Civil Aviation Act 1982**(c)**;

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

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

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

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

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

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

“airport” has the same meaning as in Part 1 of the Civil Aviation Act 2012**(i)** and is located within the area shown on the airport boundary plan;

“Airport Access Road and Luton DART long section plans” means the plans of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State;

“airport operator” means the managing body of London Luton Airport as defined in the Airports Slot Allocation Regulations 2006**(j)**;

“airport boundary plan” means the plan of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State;

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

“associated development” has the same meaning as in section 115 (development for which development consent may be granted) of the 2008 Act;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) or any part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

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- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) to the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections J(3A) and I(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) to the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 (c. 50) and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.
- (c) 1982 c. 16.
- (d) 1984 c. 27.
- (e) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (f) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (g) 2008 c. 29.
- (h) S.I. 2017/3.
- (i) 2012 c. 19.
- (j) S.I. 2006/2665.

“book of reference” means the document of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State;

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

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

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

“code of construction practice” means Appendix 4.2 of the environmental statement;

“cycle track” has the same meaning as in the 1980 Act(a);

“electronic transmission” means a communication transmitted—

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

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

“environmental statement” means the document of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State;

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

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act and “highway” includes part of a highway;

“land plans and Crown land plans” means the plans of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State;

“LLAOL planning permission” means the planning permission reference 12/01400/FUL including any variations thereto granted under section 96A or section 73 of the 1990 Act;

“maintain” in relation to the authorised development includes to inspect, repair, adjust, alter, remove, refurbish, replace, improve or reconstruct provided that such works do not give rise to any materially new or materially different environmental effects in comparison to those reported in the environmental statement and any derivative of “maintain” is to be construed accordingly;

“Order land” means the land shown on the land plans and Crown 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 Order limits shown on the works plans;

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

“permit scheme” means the East of England Permit Scheme made under the Traffic Management (Hertfordshire County Council) Permit Scheme Order 2015 (as varied) and the Traffic Management (Luton Borough Council) Permit Scheme Order 2015 (as varied) made under Part 3 (permit schemes) of the Traffic Management Act 2004(c) as in force at the date on which this Order is made;

“relevant highway authority” means, in any given provision of this Order, the local highway authority for the area to which the provision relates;

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

“rights of way plans – permanent stopping up of public rights of way” means the plans of that description contained in the streets, rights of way and access plans;

“rights of way plans – public rights of way proposals” means the plans of that description contained in the streets, rights of way and access plans;

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(a) The definition of “cycle track” (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 39) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(b) 1981 c. 67.

(c) 2004 c. 18.



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

“special category land plans” means the plans of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) or section 138(4A) of the 2008 Act;

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

“street, rights of way and access plans” means the plans of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State;

“streets, rights of way and access plan – airport access road” means the plans of that description contained in the streets, rights of way and access plans;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“traffic authority” has the same meaning as in the 1984 Act;

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

“undertaker” means London Luton Airport Limited (company registration number 02020381) of Hart House Business Centre, Kimpton Road, Luton, LU2 0LA or the person who has the benefit of this Order in accordance with articles 7 (benefit of Order) and 8 (consent to transfer benefit of Order);

“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

“works plans” means the plans of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State.

(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) Excluding the dimensions specified in paragraph 6 of Part 2 of Schedule 2 to this Order, 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) References in this Order to the creation and acquisition of rights over land includes the rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the discretion of the undertaker, either—

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

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

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

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

(7) References to any body in the Order or any registered company listed in article 8 (consent to transfer benefit of Order) includes that body’s or that company’s successor bodies from time to time.

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

(9) References in this Order to materially new or materially different environmental effects in comparison with those reported in the environmental statement must not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the environmental statement as a result of the authorised development.

(10) In this Order, the expression “includes” is to be construed without limitation.

## PART 2 PRINCIPAL POWERS

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

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

(2) Any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of this Order.

### **Maintenance of authorised development**

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

### **Maintenance of drainage works**

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

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

### **Limits of works**

**6.—**(1) Each numbered work must be situated within the limits of the corresponding numbered area shown on the works plans.

(2) In carrying out the authorised development the undertaker may—

- (a) in respect of the Airport Access Road works comprised in Works Nos. 6b(01), 6b(02) and 6b(03) deviate vertically from the proposed levels as shown by the proposed vertical alignment shown on sheets 1 to 4 of the Airport Access Road Highway Mainline-Indicative Plan/Profile within the Airport Access Road and Luton DART long section plans to a maximum of 2.0 metres upwards or downwards; and
- (b) in respect of the Luton DART works comprised in Work No. 3g deviate vertically from the proposed rail levels shown on the Indicative Luton DART Tunnel Extension – Alignment Profile within the Airport Access Road and Luton DART long section plans to a maximum of 0.5 metres upwards or 1.0 metres downwards.

(3) The limits set out in paragraphs (1) and (2) do not apply where it is demonstrated by the undertaker to the relevant planning authority’s satisfaction and the relevant planning authority certifies accordingly that works in excess of these limits would not give rise to any materially new

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(a) 1991 c. 59. The definition of “drainage” (in section 72(1) of the Land Drainage Act 1991 (c. 59)) was substituted by section 100(2) of the Environment Act 1995 (c. 25).

or materially different environmental effects in comparison with those reported in the environmental statement.

(4) Part 5 (procedure for discharge of requirements) of Schedule 2 (requirements) applies to an application to the relevant planning authority for certification under paragraph (3) as though it were an approval required by a requirement under that Schedule.

### **Benefit of Order**

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

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

8.—(1) Subject to paragraph (4), the undertaker may with the written consent of the Secretary of State—

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

(2) Subject to paragraph (3), where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker includes references to the transferee or the grantee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant of any or all of the benefits of the provisions and such related statutory rights as may be agreed is made to the following bodies—

- (a) London Luton Airport Operations Limited (company number 03491213, whose registered office is at Percival House, 134 Percival Way, London Luton Airport, Luton, LU2 9NU);
- (b) the airport operator, where different from London Luton Airport Operations Limited;
- (c) Cadent Gas Limited (company number 10080864, whose registered office is at Pilot Way, Ansty, Coventry, CV7 9JU);
- (d) UK Power Networks Holdings Limited (company number 7290590, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP);
- (e) Affinity Water Limited (company number 02546950, whose registered office is at Tamblin Way, Hatfield, Hertfordshire, AL10 9EZ);
- (f) Prax Group Limited (company number 13940675, whose registered office is at Harvest House Horizon Business Village, 1 Brooklands Road, Weybridge, Surrey, KT13 0TJ);
- (g) Virgin Media Limited (company number 02591237, whose registered office is at 500 Brook Drive, Reading, United Kingdom, RG2 6UU);
- (h) Vodafone Limited (company number 01471587, whose registered office is at Vodafone House, The Connection, Newbury, Berkshire, RG14 2FN);
- (i) Thames Water Limited (company number 02366623, whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire, RG1 8DB); and
- (j) in relation to a transfer or a grant of any works within a highway, a highway authority responsible for the highways within the Order land.

(5) References to a registered company named in paragraph (4) are to include any associated company carrying out the same statutory undertaking, and for the purpose of this article “associated company” means any company which is—

- (a) the holding company or a subsidiary of a company named in paragraph (4); or
  - (b) another subsidiary of the holding company of a company named in paragraph (4),
- within the meaning of section 1159 of the Companies Act 2006<sup>(a)</sup>.

## PART 3

### STREETS

#### Application of the 1991 Act

**9.**—(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) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and roundabouts)<sup>(b)</sup> of the 1980 Act or section 184 (vehicle crossings over footways and verges)<sup>(c)</sup> of that Act.

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

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

- section 56 (directions as to timing)<sup>(d)</sup>;
- section 56A (power to give directions as to placing of apparatus)<sup>(e)</sup>;
- section 58 (restrictions following substantial road works)<sup>(f)</sup>;
- section 58A (restriction on works following substantial street works)<sup>(g)</sup>;
- section 73A (power to require undertaker to re-surface street)<sup>(h)</sup>;
- section 73B (power to specify timing etc. of re-surfacing)<sup>(i)</sup>;
- section 73C (materials, workmanship and standard of re-surfacing)<sup>(j)</sup>;
- section 78A (contributions to costs of re-surfacing by undertaker)<sup>(k)</sup>; and
- Schedule 3A (restriction on works following substantial street works)<sup>(l)</sup>.

(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

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(a) 2006 c. 46.

(b) Section 64 was amended by Schedule 17 to the Local Government Act 1965 (c. 51) and Schedule 9 to the 1991 Act.

(c) Section 184 was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and Schedule 8 to the New Roads and Street Works Act 1991 (c. 22) and sections 35 and 46 of the Criminal Justice Act 1982 (c. 48).

(d) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(e) Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).

(f) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(g) Section 58A was inserted by section 52 of the Traffic Management Act 2004 (c. 18).

(h) Section 73A was inserted by section 55 of the Traffic Management Act 2004 (c. 18).

(i) Section 73B was inserted by section 55 of the Traffic Management Act 2004 (c. 18).

(j) Section 73C was inserted by section 55 of the Traffic Management Act 2004 (c. 18).

(k) Section 78A was inserted by section 57 of the Traffic Management Act 2004 (c. 18).

(l) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004 (c. 18).

nature by the undertaker under the powers conferred by article 13 (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.

- (5) The provisions of the 1991 Act(a) referred to in paragraph (4) are—
- section 54 (advance notice of certain works)(b), subject to paragraph (6);
  - section 55 (notice of starting date of works)(c), subject to paragraph (6);
  - 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);
  - section 68 (facilities to be afforded to street authority);
  - section 69 (works likely to affect other apparatus in the street);
  - section 75 (inspection fees);
  - section 76 (liability for cost of temporary traffic regulation); and
  - section 77 (liability for cost of use of alternative route),

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

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

- (7) Nothing in article 12 (construction and maintenance of new, altered or diverted streets)—
- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
  - (b) means that the undertaker is not by reason of any duty under that article to maintain a street or 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 maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 (street works in England and Wales) of the 1991 Act apply.

(8) Subject to paragraph (3), the permit scheme applies to the construction and maintenance of the authorised development and will be used by the undertaker in connection with the exercise of any powers conferred by this Part.

- (9) For the purposes of this Order—
- (a) a permit may not be refused or granted subject to conditions which relate to the imposition of moratoria; and
  - (b) a permit may not be granted under the permit scheme subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions pursuant to the powers conferred by this Order.

(10) References to moratoria in paragraph (9) mean restrictions imposed under section 58 (restrictions on works following substantial road works) or section 58A (restrictions on works following substantial street works) of the 1991 Act.

(11) Without restricting the undertaker's recourse to any appeal mechanism which may be available under a permit scheme the undertaker may appeal any decision to refuse to grant a

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(a) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(b) As also amended by section 49(1) of the Traffic Management Act 2004 (c. 18).

(c) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 (c. 18).

(d) As also amended by section 52(3) of the Traffic Management Act 2004 (c. 18).

(e) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

permit or to grant a permit subject to conditions pursuant to the permit schemes in accordance with the mechanism set out in Part 6 of Schedule 2 (requirements) of this Order.

### **Street works**

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a) to (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 9 (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**

**11.**—(1) Subject to paragraphs (2) and (3), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development alter the layout of any street within the Order limits and, without limiting 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 such kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain crossovers, and 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) must not be exercised without the consent of the street 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 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

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

(6) An application for consent under paragraph (3) is deemed advance notice under section 54 of the 1991 Act where advance notice is required.

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

**12.**—(1) Any highway to be constructed under this Order must be completed to the reasonable satisfaction of the relevant highway authority and, unless otherwise agreed in writing with the relevant highway authority, must be maintained by and at the expense of the highway authority from its completion.

(2) Where a highway is altered or diverted under this Order, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the relevant highway authority in whose area the highway lies and, unless otherwise agreed with the relevant highway authority, be maintained by and at the expense of the relevant highway authority from its completion.

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

(4) 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.

(5) For the purposes of a defence under paragraph (4), 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 dangers 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.

#### **Temporary stopping up and restriction of use of streets**

**13.—**(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.

(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 or diversion of a street under this article if there would otherwise be no such access.

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

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

(6) If a street authority which receives a valid 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 of public rights of way**

**14.**—(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 public rights of way specified in column (1) of Schedule 3 (permanent stopping up of public rights of way) to the extent specified and described in column (2) of that Schedule.

(2) Where a public right of way has been stopped up under this article—

- (a) all rights of way over or along the public right of way 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 public right of way as is bounded on both sides by land owned by the undertaker.

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

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

### **Access to works**

**15.**—(1) The undertaker may, for the purposes of the authorised development, and with the consent of the street authority, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a street authority which receives an application for consent under paragraph (1) 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.

### **Traffic regulation**

**16.**—(1) 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, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development—

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

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

(2) 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 (3).

(3) The undertaker must not exercise the powers conferred by paragraph (1) unless it has—

- (a) given not less than—
  - (i) 28 days' 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) except in the case of an emergency, 14 days' 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 7 days of its receipt of notice of the undertaker's intention as provided for in subparagraph (a).
- (4) Any prohibition, restriction or other provision made by the undertaker under paragraphs (1) and (2)—
- (a) has effect as if duly made by, as the case may be—
    - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
    - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces)<sup>(a)</sup> 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<sup>(b)</sup>.
- (5) 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 of paragraph (1) at any time.
- (6) Before exercising the powers of paragraph (1) 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.
- (7) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (8) 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.
- (9) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

#### **Agreements with street authorities**

**17.**—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street, including any structure carrying the street over any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street, including any structure carrying the street over any of the authorised development;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street over or under any part of the authorised development;
- (d) any stopping up, alteration or diversion of a street authorised by this Order;
- (e) the carrying out in the street of any of the works referred to in article 11 (power to alter layout, etc. of streets); and
- (f) such other works as the parties may agree.

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

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<sup>(a)</sup> As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

<sup>(b)</sup> 2004 c. 18.

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and other matters as the parties consider appropriate.

### **Designation of highways**

**18.**—(1) From the date on which each of the highways described in Schedule 4 (designation of highways) is completed and open for traffic that highway has the designation specified in column 3 of that Schedule.

(2) Notwithstanding Schedule 1, the application of paragraph (1) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

## **PART 4**

### **SUPPLEMENTAL POWERS**

### **Discharge of water**

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

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

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

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a consent granted by the Environment Agency.

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

(7) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12(1)(b) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

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(a) 1991 c. 56.  
(b) S.I. 2016/1154.

- (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;
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(a) have the same meaning as in that Act; and
- (c) “main river” means watercourses shown as such on the statutory main river maps held by the Environment Agency and the Department for Environment, Food and Rural Affairs.

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

(10) The Environment Agency is deemed to have granted consent under paragraph (3) where the watercourse, public sewer or drain belongs to the Environment Agency and an environmental permit under regulation 12(1)(b) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 has been granted in respect of the discharge.

(11) A sewerage undertaker is deemed to have granted consent under paragraph (3) where the watercourse, public sewer or drain belongs to the sewerage undertaker and consent under section 118 of the Water Industry Act 1991 has been granted in respect of the discharge.

### **Protective work to buildings**

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

(2) Protective works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage, and place on, leave on and remove from the building any apparatus and equipment for use in connection with the survey.

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

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

(5) Before exercising—

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

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

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(a) 1991 c. 57.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 52 (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 (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) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to entry onto, or possession 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)(b) of the 2008 Act.

(12) 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;
- (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; and
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk to such operation being disrupted.

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

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

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

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(a) As amended by sections 62(3) and 139(4) to (9) of, paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 223 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(b) As amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

- (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.
- (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 and on the Secretary of State.
- (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 surveyor investigation or to make the trial holes, boreholes or excavations.
- (4) No trial holes, boreholes or excavations are to be made under this article—
  - (a) in land located within a highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority,
 but such consent must not be unreasonably withheld or delayed.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—
  - (a) under paragraph (4)(a) in the case of a highway authority; or
  - (b) under paragraph (4)(b) in the case of a street authority,
 that authority will be deemed to have granted consent.
- (7) Section 13 (refusal to give permission to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act

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

- 22.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—
- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
  - (b) from constituting a danger to persons using the authorised development.
- (2) In carrying out any activity authorised by paragraph (1), the undertaker must 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.
- (3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.
- (4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.
- (5) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(a) and includes important hedgerows.

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(a) S.I. 1997/1160.

### Removal of human remains

23.—(1) In this article “the specified land” means any land within the Order limits.

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

(3) Subject to paragraph (14), before any such remains are removed from the specified land the undertaker is to give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

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

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker is to 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.

(6) Where a person has given notice under paragraph (5), and 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 is to, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

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

(8) If 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 is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(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 (8) 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 (8) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker is to 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 is to 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 powers conferred by this article—
- (a) a certificate of re-interment or cremation is to be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
  - (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to 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 for Justice.
- (13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.
- (14) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—
- (a) that the remains were interred more than 100 years ago; and
  - (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.
- (15) In the case of remains in relation to which paragraph (14) applies, the undertaker—
- (a) may remove the remains; and
  - (b) must apply for direction from the Secretary of State under paragraph (12) as to their subsequent treatment.
- (16) In this article—
- (a) references to a relative of the deceased are to a person who—
    - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
    - (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased;
  - (b) references to a personal representative of the deceased are to a person or persons who—
    - (i) is the lawful executor of the estate of the deceased; or
    - (ii) is the lawful administrator of the estate of the deceased.
- (17) Section 25 (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) of the Burial Act 1853<sup>(a)</sup> does not apply to a removal carried out in accordance with this article.

## PART 5

### POWERS OF ACQUISITION AND POSSESSION

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

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

(2) This article is subject to article 27 (compulsory acquisition of rights and imposition of restrictive covenants) and article 33 (temporary use of land for carrying out the authorised development).

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<sup>(a)</sup> 1853 c. 134.

### **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) is incorporated in this Order subject to the modifications that—

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

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

**26.**—(1) After the end of the period of 10 years beginning on the start date—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the 1981 Act and modification of the 2017 Regulations).

(2) The authority conferred by article 33 (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 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.

(3) In this article “start date” means the later of the day after—

- (a) the period for legal challenge in section 118 of the 2008 Act expires; or
- (b) the final determination of any legal challenge under that section,

whichever is later.

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

**27.**—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, 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 or in connection with the authorised development for the purposes specified in relation to that land in column (2) of that Schedule.

(3) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 5 (land in which only new rights etc. may be acquired) for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 5 as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 5 as are required for the benefit of any other statutory undertaker or any other person

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as modified by paragraph (1) of Schedule 6 (modification of compensation and

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(a) 1981 c. 67.



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 affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

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

### **Private rights over land**

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

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of the 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 the burden of the restrictive covenant—

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order land are extinguished at the start of any activity authorised by this Order which interferes with or breaches those rights.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) 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 over or the imposition of the restrictive covenant affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(9) References in this article to private rights over land include any right of way, 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 the 1965 Act**

**29.**—(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.

- (a) in section 4A(1)(a) (extension of time limit during challenge)—
  - (i) for “section 23 (application to the High Court in respect of compulsory purchase order) of the Acquisition of Land Act 1981” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008”; and
  - (ii) for “the three year period mentioned in section 4” substitute “the ten year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the London Luton Airport (Expansion) Development Consent Order 202[ ]”.
- (2) In section 11A (powers of entry: further notice of entry)(b)—
  - (a) in subsection (1)(a), after “land” insert “under that provision”;
  - (b) in subsection (2), after “land” insert “under that provision”.
- (3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 26 (time limit for exercise of authority to acquire land compulsorily) of the London Luton Airport (Expansion) Development Consent Order 202[ ]”.
- (4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
  - (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 31(3) (acquisition of subsoil or airspace only) of the London Luton Airport (Expansion) Development Consent Order 202[ ], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and
  - (b) after paragraph 29, insert—

## **“PART 4**

### **INTERPRETATION**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 20 (protective work to buildings), article 21 (authority to survey and investigate the land), article 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the London Luton Airport (Expansion) Development Consent Order 202[ ].”.

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(a) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).  
(b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

## Application of the 1981 Act and modification of the 2017 Regulations

- 30.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as so applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act), in subsection (1), omit the words “in themselves”.
- (4) In section 1 (application of Act) for subsection (2) substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.
- (5) In section 4 (execution of declaration), for subsection (1) substitute—
- “(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of a right that they are expressly authorised to acquire for the benefit of a third party in the third party in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 below is completed).”.
- (6) In section 5 (earliest date for execution of declaration)(a), in subsection (2), omit the words from “; and this subsection” to the end.
- (7) Omit section 5A (time limit for general vesting declaration)(b).
- (8) In section 5B(1) (extension of time limit during challenge)(c)—
- (a) for “section 23 (application to High Court in respect of compulsory purchase order) of the Acquisition of Land Act 1981” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008”; and
- (b) for “the three year period mentioned in section 4” substitute “the ten year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the London Luton Airport (Expansion) Development Consent Order 202[ ]”.
- (9) In section 6 (notices after execution of declaration)(d) for subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(f) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (10) In section 7 (constructive notice to treat)(e) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (11) In section 8 (vesting, and right to enter and take possession), after subsection (3), insert—
- “(4) In this section references to the acquiring authority include any third party referred to in section 4(1).”.
- (12) In section 10 (acquiring authority’s liability arising on vesting of the land), in subsection (1), after “vested in an acquiring authority” insert “or a third party”.
- (13) In section 11 (recovery of compensation overpaid), for subsection (1) substitute—
- “(1) This section applies where after the execution of a general vesting declaration a person (“the claimant”) claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.”.
- (14) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(f), omit paragraph 1(2).

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(a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(c) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(d) Section 6 was amended by paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(e) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(f) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

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

(16) Schedule 1 to the 2017 Regulations is modified as follows.

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

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

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

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

- (a) after “Insert the name of the authority” insert “and, where the context so requires, a reference to third parties”; and
- (b) omit “Thereafter rely on that definition wherever “(b)” appears in the text.”.

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

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 29 (modification of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test)(a) of the Town and Country Planning Act 1990(b).

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

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

**32.**—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order land 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—

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(a) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016 (c. 22).  
(b) 1990 c. 8.

- (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, will be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) 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**

**33.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, apparatus, fences, landscaping, debris and vegetation from that land;
- (c) use any private road within the Order land for the passage of persons or vehicles (with or without materials, plant and machinery);
- (d) construct temporary works (including the provision of means of access) or buildings on that land; and
- (e) construct any works on that land as are mentioned in Schedule 1 (authorised development).

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

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

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7, or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) (execution of declaration) 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 have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (e) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

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

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

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Subject to article 48 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

- (a) acquiring new rights over any part of that land under article 27 (compulsory acquisition of rights and imposition of restrictive covenants); or
- (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 31 (acquisition of subsoil or airspace only).

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

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

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

### **Temporary use of land for maintaining the authorised development**

**34.**—(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 land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land 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

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

(b) any building (other than a house) if it is for the time being occupied.

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

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

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

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

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

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

(7) Any dispute as to the removal of temporary works and restoration of land under paragraph (6) does not prevent the undertaker giving up possession of the land.

(8) 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.

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

(10) 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 (8).

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

(12) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act 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 (application of compulsory acquisition provisions) of the 2008 Act.

(13) 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 completed, save that in relation to landscaping "the maintenance period" means such period as may be approved in a landscaping and biodiversity management plan in accordance with paragraph 10 of Schedule 2 to this Order.

### **Special category land**

**35.**—(1) On the exercise by the undertaker of the Order rights, the special category land is not to vest in the undertaker (or any specified person), and the undertaker may not acquire any rights over the special category land, until the replacement land has been acquired in the undertaker's name or is otherwise in the name of persons who owned the special category land on the date those powers are exercised and the relevant planning authority has certified that a scheme for the provision of replacement land including a timetable for the implementation of the scheme has been received from the undertaker.

(2) On the requirements of paragraph (1) being satisfied—

- (a) the special category land is to vest in the undertaker (or any specified person) and be discharged from all rights, trusts and incidents to which it was previously subject; and

- (b) the rights to be acquired over the special category land are to vest in the undertaker and the special category land is to be discharged from all rights, trusts and incidents to which it was previously subject but only in so far as their continuance would be inconsistent with the exercising by the undertaker of the Order rights.

(3) The undertaker must implement the scheme certified by the relevant planning authority under paragraph (1) and on the date on which the special category land is laid out and provided in accordance with that scheme, the replacement land is to vest in the persons in whom the special category land was vested on the date of the exercise of the Order powers (if the replacement land is not already owned by those persons) and is to be subject to the same rights, trusts and incidents as attached to the special category land.

(4) In this article—

“Order rights” means rights and powers exercisable over the special category land by the undertaker under article 24 (compulsory acquisition of land) and article 27 (compulsory acquisition of rights and imposition of restrictive covenants);

“the replacement land” means the land identified as replacement land for the special category land in the book of reference and on the plans entitled “special category land plans”;

“the special category land” means the land identified as forming part of an open space, or fuel or field allotment in the book of reference and on the plans entitled “special category land plans”; and

“specified person” means a person other than the undertaker for whose benefit the replacement land or rights are being acquired.

### **Statutory undertakers**

**36.**—(1) Subject to the provisions of Schedule 8 (protective provisions), article 27 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (2), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land and described in the book of reference;
- (b) acquire existing rights, create and acquire new rights and impose restrictive covenants over the land belonging to statutory undertakers within the Order land and described in the book of reference;
- (c) extinguish or suspend the rights of, or remove or reposition apparatus belonging to, statutory undertakers over or within the Order land;
- (d) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order land; and
- (e) construct over existing apparatus belonging to statutory undertakers any necessary track or roadway (whether temporary or permanent) together with the right to maintain or remove the same, and install such service media under or over the existing apparatus needed in connection with the authorised development.

(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) of this Order.

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

**37.**—(1) Where a street is stopped up under article 14 (permanent stopping up of public rights of way), 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 14 (permanent stopping up of public rights of way) 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 an inspection chamber is to be treated as if it also had been agreed or had been so determined.

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

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

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

(8) In this article—

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

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

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

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

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

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

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

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

### **Crown rights**

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

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

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

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

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

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

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

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

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

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

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

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

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

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

## **PART 6 OPERATIONS**

### **Power to operate the authorised development**

**42.** The undertaker may operate and use the authorised development.

## **PART 7 MISCELLANEOUS AND GENERAL**

### **Disapplication of legislative provisions**

**43.**—(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 or maintenance of the authorised development—

- (a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991;
  - (b) section 23 (prohibition of obstructions, etc. in watercourses), 30 (authorisation of drainage works in connection with a ditch) and 32 (variation of awards) of the Land Drainage Act 1991<sup>(a)</sup>; and
  - (c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991.
- (2) The provisions of the Neighbourhood Planning Act 2017<sup>(b)</sup>, in so far as they relate to the temporary possession of, or entry into, land under this Order, 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 the maintenance period defined in article 34(13) (temporary use of land for maintaining the authorised development), any maintenance of any part of the authorised development.

#### **Interaction with LLAOL planning permission**

**44.**—(1) The undertaker may not, in accordance with this Order, operate the airport above the passenger cap permitted by the LLAOL planning permission until notice under this article has been served on the relevant planning authority by the undertaker.

(2) Notwithstanding article 45(2) (application of the 1990 Act) of this Order, upon service of notice in accordance with paragraph (1), the undertaker may not operate the airport under the LLAOL planning permission, and the LLAOL planning permission and the conditions of that permission cease to have effect and will not be enforceable except in respect of any breach that occurred prior to the undertaker serving notice under paragraph (1).

(3) Notwithstanding paragraph (1), the undertaker may exercise any other powers under this Order in respect of any part of the authorised development prior to or following service of notice under paragraph (1).

#### **Application of the 1990 Act**

**45.**—(1) Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

(2) To the extent that the LLAOL planning permission or the Green Horizons Park permission or compliance with any conditions or either of those permissions is inconsistent with any power or right exercised under this Order or the authorised development then—

- (a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission is capable of physical implementation;
- (b) no enforcement action under the 1990 Act may be taken against development carried out in accordance with that planning permission by reason of such inconsistency, whether inside or outside the Order limits; and
- (c) any conditions on that planning permission that are inconsistent with this Order or the authorised development cease to have effect from the date the authorised development is begun.

(3) To the extent that development granted planning permission under the 1990 Act is inconsistent with the authorised development or the exercise of any power or right under this Order, the development which is the subject matter of the planning permission may be carried out or used notwithstanding that inconsistency and is deemed not to be a breach of this Order and may not be enforced against under the 1990 Act by reason of such inconsistency.

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<sup>(a)</sup> 1991 c. 59.  
<sup>(b)</sup> 2017 c. 20.

(4) Notwithstanding the terms of paragraph (3) or any other part of the Order, development carried out, operated or used in accordance with the grant of planning permission under the 1990 Act that is inconsistent with the authorised development under this Order is deemed not to constitute a breach of this Order, and does not prevent the undertaker carrying out the authorised development granted development consent under this Order or exercising any other power or right under this Order.

(5) In this article—

- (a) “Green Horizon Park permission” means planning permission reference 17/02300/EIA or any variation of this permission granted under section 96A or section 73 of the 1990 Act; and
- (b) “planning permission” means planning permission granted under the 1990 Act including planning permission deemed to be granted under article 3 (permitted development) and Classes F, G, I, J, K, L, M and N of Part 8 (Transport related development) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(a).

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

**46.**—(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) Accordingly, 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.

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

**47.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(b) in relation to a nuisance falling within paragraph (c), (d), (e), (fb), (g), (ga) and (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 construction or maintenance of the authorised development in accordance with a notice served under section 60 (control of noise on construction

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(a) S.I. 2015/596.

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

site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(a); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use or operation of the authorised development and that it cannot reasonably be avoided.

(2) For the purposes of paragraph (1), compliance with the controls and measures relating to noise, vibration, dust or lighting described in the code of construction practice will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

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

### **No double recovery**

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

### **Protection of interests**

49. Schedule 8 (protective provisions) to the Order has effect.

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

50.—(1) As soon as practicable after the making of this Order the undertaker must submit copies of each of the plans and documents set out in Schedule 9 (documents to be certified) to the Secretary of State for certification that they are true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 9 (documents to be certified) requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

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

### **Service of notices**

51.—(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.

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(a) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to this Order.

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

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

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

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

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

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (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 will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **Arbitration**

**52.** 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 or which falls to be determined under paragraph 37 (appeals to the Secretary of State) of Part 6 (Appeals) of Schedule 2 (requirements) to this Order) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing

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(a) 1978 c. 30.

agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Date	<i>Signed</i> Title Department	<b>Comment [ERR3]:</b> <i>Warning only Low impact [e00120] NOT GLOBAL The signature date has not yet been completed</i>



# SCHEDULES

## SCHEDULE 1

Article 2

### AUTHORISED DEVELOPMENT

**In the administrative area of Luton Borough Council, Central Bedfordshire Council, North Hertfordshire District Council, Hertfordshire County Council and Dacorum Borough Council**

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 23 (airports) of the 2008 Act; and associated development as defined in section 115(2) of the 2008 Act, comprising as follows—

#### **Sitewide works to enable development**

**Work No. 1a** — Within the area of land shown on the Works Plans as Work No. 1a, earthworks involving the excavation of natural material and existing made ground and stockpiles to create a new apron at approximately existing apron height as well as a landform platform suitable for the construction of a new terminal, apron, car parks and ancillary airport facilities.

**Work No. 1b** — Within the area of land shown on the Works Plans as Work No. 1b, landfill remediation works to the former Eaton Green landfill site including the excavation, processing and re-deposit of material and the piling of foundations to support the new airport buildings and infrastructure.

#### **Airfield works**

**Work No. 2a(01)** — Within the area of land shown on the Works Plans as Work No. 2a(01), works to construct up to four new aircraft stands including high mast lighting, linear drainage systems with catch-pits, an oil separator and attenuation storage, the construction of a new taxiway from the east side of existing Taxiway Foxtrot, drainage and aeronautical ground lighting.

**Work No. 2a(02)** — Within the area of land shown on the Works Plans as Work No. 2a(02), works to construct a new surface movement radar including the construction of an access road, security fencing and power and communication cable connections.

**Work No. 2b(01)** — Within the area of land shown on the Works Plans as Work No. 2b(01), works to construct additional taxiways, including a rapid exit taxiway, to tie-in the existing runway including—

- (a) the localised resurfacing of the runway pavement edges;
- (b) the provision of necessary drainage incorporating localised modification of runway edge drainage systems;
- (c) the modification of existing aeronautical ground lighting, specifically existing runway edge lighting and the installation of new aeronautical ground lighting including cabling; and
- (d) the provision of required markings associated with the new taxiway.

**Work No. 2b(02)** — Within the area of land shown on the Works Plans as Work No. 2b(02), works to construct a new airfield equipment. To include—

- (a) Instrument Runway Visual Range system, including the construction of an access track and power and communication cable connections; and
- (b) Precision Approach Path Indicators, including the construction of an access track and power and communication cable connections.

**Work No. 2b(03)** — Within the area of land shown on the Works Plans as Work No. 2b(03), works to construct new apron (including appropriate drainage with full retention separators to collect surface water for appropriate storage and treatment), new taxiways, roads and ground servicing equipment (GSE) areas including car parking areas and electric charging points for the GSE vehicle fleet. The construction of up to 12 new aircraft stands, each aircraft stand to be provided with—

- (a) a fixed electrical ground power unit;
- (b) a below ground fuel hydrant system servicing the stands with fuel to hydrants located on the stands;
- (c) a stand entry guidance system; and
- (d) high mast lighting.

**Work No. 2b(04)** — Within the area of land shown on the Works Plans as Work No. 2b(04), the construction of new taxiways to connect the new apron to the existing taxiway network consisting of a realigned existing parallel Taxiway and the construction of a new Taxiway and the construction of a new isolation stand.

**Work No. 2c(01)** — Within the area of land shown on the Works Plans as Work No. 2c(01), works to construct new apron (including appropriate drainage with full retention separators to collect surface water for appropriate storage and treatment), new taxiways, along with the construction of—

- (a) up to 12 additional aircraft stands;
- (b) up to three additional stands to be connected to the western pier constructed as part of Work No. 3c(01);
- (c) up to seven stands, located to the east of the current apron to provide direct access to the proposed new pier building described in Work No. 3c(02);
- (d) fixed electrical ground power units;
- (e) a below ground fuel hydrant system servicing all the stands within the apron area with fuel to hydrants located on the stands;
- (f) a stand entry guidance system; and
- (g) high mast lighting.

**Work No. 2c(02)** — Within the area of land shown on the Works Plans as Work No. 2c(02), works to construct additional taxiways, including a rapid exit taxiway, to tie-in the existing runway including—

- (a) the localised resurfacing of the runway pavement edges;
- (b) the provision of necessary drainage incorporating localised modification of runway edge drainage systems;
- (c) the modification of existing aeronautical ground lighting, specifically existing runway edge lighting and the installation of new aeronautical ground lighting including cabling; and
- (d) the provision of required markings associated with the new taxiway.

**Work No. 2c(03)** — Within the area of land shown on the Works Plans as Work No. 2c(03), the construction of new hangar aprons required to provide access for aircraft to the new hangars to be constructed under Work No. 4b.

**Work No. 2c(04)** — Within the area of land shown on the Works Plans as Work No. 2c(04), works to upgrade the existing perimeter road from the fire station to the new fire training ground described in Work No. 2d.

**Work No. 2d** — Within the area of land shown on the Works Plans as Work No. 2d, the construction of a new fire training ground facility. To include—

- (a) installation of training rigs and towers;

- (b) drainage infrastructure;
- (c) high mast lighting;
- (d) vehicle and pedestrian access routes;
- (e) ancillary buildings; and
- (f) the demolition of the existing fire training ground facility.

**Work No. 2e** — Within the area of land shown on the Works Plans as Work No. 2e, works to upgrade the existing engine ground run up bay. To include—

- (a) installation of acoustic and blast barriers;
- (b) drainage infrastructure;
- (c) high mast lighting;
- (d) vehicle and pedestrian access routes; and
- (e) dismantling and decommissioning of the facility following construction of Work No. 2f.

**Work No. 2f** — Within the area of land shown on the Works Plans as Work No. 2f, works to construct a new engine ground run up bay. To include—

- (a) relocation and installation of acoustic and blast barriers;
- (b) drainage infrastructure;
- (c) high mast lighting; and
- (d) dismantling and decommissioning of facility following construction of Work No. 2g.

**Work No. 2g** — Within the area of land shown on the Works Plans as Work No. 2g, works to construct a new engine ground run up bay. To include—

- (a) relocation and installation of acoustic and blast barriers;
- (b) drainage infrastructure; and
- (c) high mast lighting.

**Work No. 2h(01)** — Within the area of land shown on the Works Plans as Work No. 2h(01), the construction of a new airside drainage corridor to connect into proposed landside drainage infrastructure. To include—

- (a) pipework and associated drainage infrastructure to serve surface water run-off;
- (b) inspection chamber construction;
- (c) oil separator; and
- (d) below ground surface water attenuation storage facilities.

**Work No. 2h(02)** — Within the area of land shown on the Works Plans as Work No. 2h(02), the extension of the airside drainage corridor to connect into proposed landside drainage infrastructure. To include—

- (a) pipework and associated drainage infrastructure to serve surface water run-off;
- (b) inspection chamber construction;
- (c) oil separator; and
- (d) below ground surface water attenuation storage facilities.

#### **Terminal and associated works**

**Work No. 3a(01)** — Within the area of land shown on the Works Plans as Work No. 3a(01), the construction of a new Pier C to Terminal 1 (T1) accessible from existing Pier B to be built on two levels including the construction of an external canopy from the southern end of the new pier.

**Work No. 3a(02)** — Within the area of land shown on the Works Plans as Work No. 3a(02), works to extend the existing T1 building to its northern side at ground floor level to increase the size of the immigration area.

**Work No. 3a(03)** — Within the area of land shown on the Works Plans as Work No. 3a(03), works to extend the southern area of existing T1 on two levels to accommodate increased security and check-in facilities at ground floor level and to increase the area of the departure lounge at first floor level.

**Work No. 3a(04)** — Within the area of land shown on the Works Plans as Work No. 3a(04), works to extend the northern area of the existing T1 at first floor level over the existing airside road system to increase the area of the departure lounge.

**Work No. 3a(05)** — Within the area of land shown on the Works Plans as Work No. 3a(05), works to expand the area of the existing baggage hall within T1.

**Work No. 3b(01)** — Within the area of land shown on the Works Plans as Work No. 3b(01), the construction of an airport terminal building (T2) to include provision for landside access by light train system (Work No. 3g), a new road system (Works Nos. 6b and 6c), a pedestrian plaza (Work No. 3f) in direct contact with a new apron (Work No. 2a). The terminal buildings to include provision for—

- (a) building superstructure;
- (b) check-in hall;
- (c) passenger security screening;
- (d) baggage handling system;
- (e) departure lounge;
- (f) immigration and customs facilities;
- (g) food kiosks, cafes, restaurants and retail units;
- (h) support accommodation and operational areas for terminal management and welfare facilities for airport staff; and
- (i) waste handling facilities.

**Work No. 3b(02)** — Within the area of land shown on the Works Plans as Work No. 3b(02), the construction of an extension to T2 (Work No. 3b(01) in direct contact with Works Nos. 2a and 2b. To include—

- (a) expansion of passenger and baggage handling facilities;
- (b) localised internal remodelling; and
- (c) additional food kiosks, cafes, restaurants, retail and welfare facilities.

**Work No. 3c(01)** — Within the area of land shown on the Works Plans as Work No. 3c(01), the construction of a pier, connected to the new T2 building (Work No. 3b(01)) and the new apron (Work No. 2a), to serve up to 14 aircraft stands. To include—

- (a) construction of piled foundations;
- (b) vehicle and pedestrian access routes and parking areas;
- (c) vertical circulation nodes to each aircraft stand each with a fixed link bridge connection from pier at upper level; and
- (d) bridge connection from pier to T2.

**Work No. 3c(02)** — Within the area of land shown on the Works Plans as Work No. 3c(02), the construction of a pier, connected to the new T2 building (Work No. 3b(02)) and the new apron (Work No. 2b), to serve up to 14 aircraft stands. To include—

- (a) construction of piled foundations;
- (b) vehicle and pedestrian access routes and parking areas;
- (c) vertical circulation nodes to each aircraft stand each with a fixed link bridge connection from pier at upper level; and
- (d) two storey bridge connection from pier to T2.

**Work No. 3d** — Within the area of land shown on the Works Plans as Work No. 3d, the construction of a new coach station to connect with airport operational roads (Work No. 6c(02)). To include—

- (a) drainage works;
- (b) construction of a canopy;
- (c) hard landscape features;
- (d) wayfinding features; and
- (e) fixtures, fittings and equipment.

**Work No. 3e(01)** — Within the area of land shown on the Works Plans as Work No. 3e(01), the construction of a passenger drop off zone to connect with airport operational roads (Work No. 6c). To include—

- (a) drainage works;
- (b) hard and soft landscaping; and
- (c) parking entry and exit gates, internal roads and parking areas.

**Work No. 3e(02)** — Within the area of land shown on the Works Plans as Work No. 3e(02), the construction of a passenger drop off zone to connect with airport operational roads (Work No. 6c). To include—

- (a) drainage works;
- (b) road access security features;
- (c) hard and soft landscaping; and
- (d) parking entry and exit gates, internal roads and parking areas.

**Work No. 3f** — Within the area of land described shown on the Works Plans as Work No. 3f, the construction of a pedestrianised plaza to the landside part of T2 (Work No. 3b(01)). To include—

- (a) drainage works;
- (b) security features and structures;
- (c) hard and soft landscaping;
- (d) wayfinding features; and
- (e) street furniture and lighting.

**Work No. 3g** — Within the area of land shown on the Works Plans as Work No. 3g, the extension of the Luton DART light rail system connecting T1 with the T2 along with the construction of a new Luton DART station at T2. To include—

- (a) construction of a tunnel;
- (b) construction of T2 station box;
- (c) T2 station fit out works; and
- (d) modifications to T1 Station, including platform screen doors and relocation of transport system maintenance area to T2 station.

**Work No. 3h** — Within the area of land shown on the Works Plans as Work No. 3h, the construction of buildings and other infrastructure supporting the function and operation of T2. To include—

- (a) service yard including loading bays and segregated waste bailing/compaction/storage;
- (b) hard and soft landscaping;
- (c) safeguarded parking zone; and
- (d) energy centre, centralised facility for T2 heating and cooling plant outside the operational envelope of the terminal.

**Work No. 3i** —Within the area of land shown on the Works Plans as Work No. 3i, the construction of airport operations and maintenance buildings supporting the airport including but not limited to a security gatehouse, airside operations facility, ground support equipment maintenance area and airside vehicle maintenance area. To include—

- (a) drainage system;
- (b) external vehicle/pedestrian access and circulation work;
- (c) security systems, including boundary fencing;
- (d) warehouse type buildings;
- (e) internal workshops, management and welfare facilities;
- (f) controlled access operational parking; and
- (g) loading bays.

**Airport support facilities**

**Work No. 4a** — Within the area of land shown on the Works Plans as Work No. 4a, the construction of a hotel. To include—

- (a) external vehicle/pedestrian access and circulation work;
- (b) service yard access for deliveries, loading dock, maintenance access and segregated waste bailing/compaction/storage;
- (c) hard and soft landscaping;
- (d) dedicated sprinkler tank and fire suppression system; and
- (e) controlled access parking provision for hotel residents/staff.

**Work No. 4b** — Within the area of land shown on the Works Plans as Work No. 4b, the construction of up to two hangars. To include—

- (a) external vehicle/pedestrian access routes;
- (b) hard and soft landscaping;
- (c) fire suppression system and dedicated water tank; and
- (d) controlled access internal parking.

**Work No. 4c(01)** — Within the area of land shown on the Works Plans as Work No. 4c(01),the construction of fuel storage and distribution facilities to connect to Work No. 4c(02), and a distribution system that will extend to the apron area (Works Nos. 2b(03) and 2c(01)). To include—

- (a) installation of fuel storage tanks and associated pipework;
- (b) fuel pipework between the new storage facilities and the existing storage facility;
- (c) bund walls;
- (d) drainage and foul infrastructure;
- (e) lighting;
- (f) firefighting facilities and water storage tank;
- (g) vehicle and pedestrian access routes, parking areas;
- (h) security fencing, gates and monitoring systems; and
- (i) ancillary buildings.

**Work No. 4c(02)** — Within the area of land shown on the Works Plans as Work No. 4c(02), the construction of a new fuel pipeline providing a fuel pipe connection between the fuel storage facility (Work No.4c(01)), national fuel delivery pipeline, and existing storage facility. To include—

- (a) earthworks to resolve site levels;
- (b) pipework monitoring systems;

- (c) fuel pumps;
- (d) landscaping
- (e) security fencing, gates and monitoring systems;
- (f) vehicle access track from highway to provide access and parking and loading area adjacent to national pipeline connection.

**Work No. 4d** — Within the area of land shown on the Works Plans as Work No. 4d, the construction of a new water treatment plant. To include—

- (a) primary, biological, secondary and final treatment;
- (b) facilities for processing and storage of sludge;
- (c) odour control plant; and
- (d) soft landscaping.

**Work No. 4e**— Within the area of land shown on the Works Plans as Work No. 4e, the construction of a solar energy battery storage facility.

**Work No. 4f**— Within the area of land shown on the Works Plans as Work No. 4f, the construction of airside security and access including the construction of a vehicle control point facility and associated power, communications, potable water and foul drainage connections.

**Work No. 4g** — Car Park P1. Within the area of land shown on the Works Plans as Work No. 4g, the construction of Car Park P1 being a multi-storey car park to provide up to approximately 1000 parking spaces. To include—

- (a) drainage works including interceptor tanks;
- (b) vehicle connection with highway;
- (c) vehicular and pedestrian access and circulation routes;
- (d) parking entry and exit gates;
- (e) ticket machines;
- (f) firefighting system, dry risers and provision for fire tender access;
- (g) general and emergency lighting;
- (h) statutory and wayfinding signage;
- (i) solar energy production, storage, and distribution provision; and
- (j) security systems.

**Work No. 4h** — Car Park 2. Within the area of land shown on the Works Plans as Work No. 4h, the construction of Car Park P2 being a surface car park to provide up to approximately 470 parking spaces. To include—

- (a) car park surfacing;
- (b) drainage works including interceptor tanks;
- (c) vehicle connection with highway;
- (d) vehicular and pedestrian access and circulation routes;
- (e) parking entry and exit gates;
- (f) ticket machines;
- (g) general and emergency lighting;
- (h) statutory and wayfinding signage;
- (i) solar energy production, storage, and distribution provision; and
- (j) security systems.

**Work No. 4i** — Car Park P3. Within the area of land shown on the Works Plans as Work No. 4i, works to modify the existing Airport Car Park (as a result of Work No. 6a) with realignment of the roadside perimeter fence and circulation road. To include—

- (a) car park surfacing;
- (b) statutory and wayfinding signage; and
- (c) general and emergency lighting.

**Work No. 4j** — Car Park P4. Within the area of land shown on the Works Plans as Work No. 4j, works to reconfigure the existing T1 Multi Storey Car Park 1 to provide additional parking.

**Work No. 4k(01)** — Car Park P5. Within the area of land shown on the Works Plans as Work No. 4k(01), works to reduce the existing long stay surface car park in area and reconfiguration to provide up to approximately 2450 parking spaces. To include—

- (a) car park surfacing;
- (b) statutory and wayfinding signage;
- (c) hard and soft landscaping;
- (d) general and emergency lighting.

**Work No. 4k(02)** — Car Park P5. Within the area of land shown on the Works Plans as Work No. 4k(02), works to reduce the size of the existing long stay surface car park with the construction of a single storey decked car parking area reconfigured to provide up to approximately 1200 parking spaces. To include—

- (a) drainage works including separator tanks;
- (b) vehicle connection with highway;
- (c) vehicular and pedestrian access and circulation routes;
- (d) parking entry and exit gates;
- (e) ticket machines;
- (f) firefighting system, dry riser provision for fire tender access;
- (g) general and emergency lighting;
- (h) statutory and wayfinding signage;
- (i) solar energy production, storage, and distribution provision; and
- (j) security systems.

**Work No. 4l(01)** — Car Park P6. Within the area of land shown on the Works Plans as Work No. 4l(01), works to construct a new temporary surface car park to provide up to approximately 1,250 car parking spaces including works to remove the temporary car park, hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4l(02)** — Car Park P6. Within the area of land shown on the Works Plans as Work No. 4l(02), works to reconfigure and extend the temporary surface car park (Work No. 4l(01)) to provide up to approximately 1,620 car parking spaces including works to remove the temporary car park, hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4m(01)** — Car Park P7. Within the area of land shown on the Works Plans as Work No. 4m(01), works to construct a new temporary surface car park to accommodate up to approximately 3,090 cars. including works to remove the temporary car park, hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4m(02)** — Car Park P7. Within the area of land shown on the Works Plans as Work No. 4m(02), works to reduce the temporary surface car park (Work No. 4m(01)) to accommodate up to approximately 1,230 cars including works to remove the temporary surface car park, hard and soft landscaped areas, signage, and surface treatments.



**Work No. 4n** — Car Park P8. Within the area of land shown on the Works Plans as Work No. 4m, works to construct a temporary surface car park to accommodate up to approximately 600 cars including works to remove the temporary car park, hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4o(01)** — Car Park P9. Within the area of land shown on the Works Plans as Work No. 4o(01), works to reconfigure the existing staff car park and conversion of existing car hire facility into car parking to provide up to approximately 1,075 surface car parking spaces, hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4o(02)** — Car Park P9. Within the area of land shown on the Works Plans as Work No. 4o(02), works to redevelop the area of existing car park not required for the construction of Work No. 6a(02), including the provision of new decked car park with roofing or canopies above the upper deck, to support photovoltaic panels, to accommodate up to approximately 1,200 car parking spaces, hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4p(01)** — Car Park P10. Within the area of land shown on the Works Plans as Work No. 4p(01), works to construct a new car park to accommodate approximately 1,150 cars including hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4p(02)** — Car Park P10. Within the area of land shown on the Works Plans as Work No. 4p(02), works to expand and reconfigure Work No. 4p(01) to accommodate up to approximately 3,165 cars including canopies or roofing above the car park to support photovoltaic panels, and including hard and soft landscaped areas, signage, surface treatments and welfare building.

**Work No. 4q(01)** — Car Park P11. Within the area of land shown on the Works Plans as Work No. 4q(01), works to construct a new surface level car park to accommodate up to approximately 2,700 cars, including canopies or roofing above the car park to support photovoltaic panels, hard and soft landscaped areas, signage, below ground surface water storage tank and surface treatments.

**Work No. 4q(02)** — Car Park P11. Within the area of land shown on the Works Plans as Work No. 4q(02), works to expand Work No. 4q(01) to accommodate up to approximately 5,350 cars including canopies or roofing above the car park to support photovoltaic panels, hard and soft landscaped areas, signage, surface treatments and welfare building.

**Work No. 4r** — Car Park P12. Within the area of land shown on the Works Plans as Work No. 4r, works to construct a new multi-storey car park to accommodate up to approximately 2,225 cars including photovoltaic panels on roof or canopy over upper level, hard and soft landscaped areas, signage, and surface treatments and provision for canopies/roofing.

**Work No. 4s** — Airport Access Road car parking replacement provision. Within the area of land shown on the Works Plans as Work No. 4s, works to construct a temporary car park to accommodate up to approximately 80 car spaces to provide replacement car parking for spaces affected by the construction of Work No. 6a(02) including works to remove the temporary car park, including signage and surface treatments.

**Work No. 4t(01)** — Airport Access Road permanent car parking replacement provision. Within the area of land shown on the Works Plans as Work No. 4t(01), works to construct a new surface level car park to accommodate up to approximately 25 car spaces to provide replacement car parking for spaces affected by the construction of Work No. 6a(02), to include both hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4t(02)** — Airport Access Road permanent car parking replacement provision. Within the area of land shown on the Works Plans as Work No. 4t(02), works to construct three new surface level car parks including associated access roads to accommodate up to approximately 275 car spaces to provide replacement car parking for spaces affected by the construction of Work No. 6a(02), to include both hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4t(03)** — Airport Access Road permanent car parking replacement provision. Within the area of land shown on the Works Plans as Work No. 4t(03), works to construct a new surface level car park to accommodate up to approximately 25 car spaces to provide replacement car parking for spaces affected by the construction of Work No. 6a(02), to include both hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4t(04)** — Airport Access Road permanent car parking replacement provision. Within the area of land shown on the Works Plans as Work No. 4t(04), works to re-provide replacement car parking spaces through amendments to areas of landscaping and existing parking areas for spaces affected by the construction of Work No. 6a(02), to include both hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4t(05)** — Airport Access Road permanent car parking replacement provision. Within the area of land shown on the Works Plans as Work No. 4t(05), works to construct a new surface level car park to accommodate up to approximately 90 car spaces to provide replacement car parking for spaces affected by the construction of Work No. 6a(02), to include both hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4t(06)** — Airport Access Road permanent car parking replacement provision. Within the area of land shown on the Works Plans as Work No. 4t(06), works to construct a new surface level car park to accommodate up to approximately 120 car spaces to provide replacement car parking for spaces affected by the construction of Work No. 6a(02), to include both hard and soft landscaped areas, signage, and surface treatments.

**Work No. 4u** — Within the area of land shown on the Works Plans as Work No. 4u, works to construct a new police station and compound.

**Work No. 4v** — Within the area of land shown on the Works Plans as Work No. 4v, works to construct two underground infiltration tanks and a storage tank.

**Work No. 4w** — Within the area of land shown on the Works Plans as Work No. 4w, works to construct a new primary substation, including a hardstanding area, erection of a perimeter fence and construction of an access track for maintenance.

**Work No. 4x** — Within the area of land shown on the Works Plans as Work No. 4x, works to construct a second primary substation, including a hardstanding area, erection of a perimeter fence and construction of an access track for maintenance.

### **Landscaping and mitigation**

**Work No. 5a** — Terminal Approach and associated development. Within the area of land shown on the Works Plans as Work No. 5a, the provision of structural landscaping to include—

- (a) soft landscaping;
- (b) erection of boundary treatments (including fencing);
- (c) hard landscape finishes to roads and footpaths; and
- (d) installation of street furniture and signage.

**Work No. 5b(01)** — Enhancements to Wigmore Valley Park. Within the area of land shown on the Works Plans as Work No. 5b(01), the provision of structural landscaping to include—

- (a) soft landscaping;
- (b) erection of boundary treatments (including fencing);
- (c) earthworks for the creation of screening bunds;
- (d) installation of habitat creation measures;
- (e) hard landscape finishes and other improvements to footpaths and multi-use tracks; and
- (f) installation of street furniture and signage.

**Work No. 5b(02)** — Replacement Open Space. Within the area of land shown on the Works Plans as Work No. 5b(02), the provision of structural landscaping to include—

- (a) soft landscaping;
- (b) erection of boundary treatments including fencing;
- (c) earthworks for the creation of screening bunds;
- (d) installation of habitat creation measures;
- (e) hard landscape finishes and other improvements to footpaths and multi-use tracks; and
- (f) installation of street furniture and signage.

**Work No. 5b(03)** — Replacement Open Space. Within the area of land shown on the Works Plans as Work No. 5b(03), the creation of a new public right of way (footpath), 140m in length, linking the northern end of Footpath 38 (FP38) with the north-western extent of Footpath 43 (FP43).

**Work No. 5b(04)** — Replacement Open Space. Within the area of land shown on the Works Plans as Work No. 5b(04), the creation of a new public right of way (multi-use bridleway), 1040m in length, connecting Footpath 43 (FP43) to Winch Hill Road.

**Work No. 5b(05)** — Replacement Open Space. Within the area of land shown on the Works Plans as Work No. 5b(05), the creation of a new public right of way (multi-use bridleway), 400m in length, connecting Bridleway 52 (BW52) with Footpath 41 (FP41) via a new at-grade crossing of Winch Hill Road.

**Work No. 5b(06)** — Replacement Open Space. Within the area of land shown on the Works Plans as Work No. 5b(06), the upgrading of Footpath FP41 to a bridleway, from its western extent at the junction with Eaton Green Road and FP43, to the intersection of the new length of bridleway forming Work No. 5b(05) leading south-east to Winch Hill Road.

**Work No. 5b(07)** — Replacement Open Space. Within the area of land shown on the Works Plans as Work No. 5b(07), the upgrading of Footpath FP43 to bridleway, from its western extent at the junction with Eaton Green Road and FP41, to the intersection of the new bridleway forming Work No. 5b(04) leading south-east to Winch Hill Road.

**Work No. 5c(01)** — Landscape Restoration Area. Within the area of land shown on the Works Plans as Work No. 5c(01), the provision of structural landscaping to include—

- (a) soft landscaping;
- (b) erection of boundary treatments including fencing;
- (c) installation of signage; and
- (d) hard landscape finishes to access.

**Work No. 5c(02)** — Landscape Restoration Area. Within the area of land shown on the Works Plans as Work No. 5c(02), the provision of structural landscaping to include—

- (a) soft landscaping;
- (b) erection of boundary treatments including fencing;
- (c) installation of signage; and
- (d) hard landscape finishes to access.

**Work No. 5d(01)** — Habitat Creation Area. Within the area of land shown on the Works Plans as Work No. 5d(01), the provision of structural landscaping to include—

- (a) soft landscaping;
- (b) erection of boundary treatments including fencing;
- (c) installation of signage; and
- (d) hard landscape finishes to footpaths and access.

**Work No. 5d(02)** — Habitat Creation Area. Within the area of land shown on the Works Plans as Work No. 5d(02), the provision of structural landscaping to include—

- (a) soft landscaping;
- (b) erection of boundary treatments including fencing;
- (c) installation of signage; and
- (d) hard landscape finishes to footpaths and access.

**Work No. 5e** — Off-site Hedgerow Restoration and Screening. Within the area of land shown on the Works Plans as Work No. 5e, the provision of structural landscaping. To include—

- (a) soft landscaping; and
- (b) erection of boundary treatments including fencing.

#### **Airport Access Road and Offsite Highway Works**

Within the area of land shown on the Works Plans as Work No. 6—

##### **Airport Access Road**

**Work No. 6a(01)** — Airport Access Road. To include improvements and reconfiguration of the roundabout junction between A1081 New Airport Way, Airport Way and Percival Way to create a form-arm signalised junction.

**Work No. 6a(02)** — Airport Access Road. To include—

- (a) a new dual carriageway link road which connects to A1081 New Airport Way via a new three-arm signalised junction to the immediate west of Work. No. 6a(01). The alignment of the road runs north from the A1081, to a new three-arm roundabout adjacent to Provost Way, the alignment continues south as a short length of dual-carriageway, then connects to the existing alignment of Percival Way via a new three-arm roundabout;
- (b) minor amendments to kerblines and road markings on Percival Way, between Provost Way and Frank Lester Way;
- (c) amendments to Frank Lester Way to make the road one-way in a northbound direction between Percival Way and Eaton Green Road;
- (d) a dual carriageway link between Frank Lester Way and a four-arm roundabout at the junction with President Way, to provide access to a retained length of President Way;
- (e) a dual-carriageway link to the east of the new four arm roundabout with President Way, which continues east for a distance of approximately 200m, to a four-arm signalised junction to give access to T2;
- (f) to the east of the four-arm signalised T2 access junction, the road continues east to a four arm roundabout, which provides access to the Green Horizons Park development, and airport operational areas; and
- (g) minor amendments are proposed to the junction in Work No. 6a(01) in order to accommodate the new dual carriageway alignment; and.
- (h) works to reconfigure access to existing local civic amenity recycling centre and to close the existing access.

**Work No. 6a(03)** — Airport Access Road and link road. To include—

- (a) a new section of dual-carriageway road to connect the eastern and western lengths of dual-carriageway (Work No. 6a(02));
- (b) amendments to the length of Percival Way between Provost Way and Frank Lester Way, together with a new section of dual-carriageway to tie into the works delivered in Work No. 6a(02);
- (c) replacement of a three-arm roundabout along the proposed dual-carriageway to the west of Provost Way with a four-arm signalised crossroads; and
- (d) a realigned link road connects the new signalised junction with the retained section of Percival Way, with a dedicated access to areas of parking and businesses to the north of the proposed junction.

### **Airport Public Roads**

**Work No. 6b(01)** — Within the area of land shown on the Works Plans as Work No. 6b(01), works to modify and extend the existing long stay car park access roads as a two-lane single carriageway.

**Work No. 6b(02)** — Within the area of land shown on the Works Plans as Work No. 6b(02), the provision of a dual carriageway to provide access to T2. The road which continues east to the excavated area is initially formed of a length of dual carriageway over a length of approximately 75m, before joining a four-arm roundabout. East of the roundabout the carriageway continues as a two-lane single carriageway as it travels towards Work No. 4c(01) (Fuel Storage Facility) and Work No. 4d (Water Treatment Plant).

**Work No. 6b(03)** — Within the area of land shown on the Works Plans as Work No. 6b(03), works to realign and widen the section of highway which leads into the excavated area providing additional access to Car Park P11 (Work No. 4q(02) and Car Park P10 (Work No. 4p(02)).

### **Airport Operational Roads**

**Work No. 6c(01)** — Within the area of land shown on the Works Plans as Work No. 6c(01), works to operational airport roads around the stands and the terminal, and roads around the perimeter of the airfield. These roads consist of: inter-stand roadways, head of stand roads, access roads on either side of T2 to access the baggage hall, a road to the vehicle control point east of the terminal, a road from the engine run up bay (ERUB) to the east to connect the apron roads to the airfield perimeter track and part of the perimeter track to west of the airport to be realigned due to the new runway link.

**Work No. 6c(02)** — Within the area of land shown on the Works Plans as Work No. 6c(02), works to the operational airport roads around the new stands and airfield perimeter track consisting of inter-stand roadways, head of stand roads, a road to the ERUB and beyond to connect with the airfield perimeter track.

**Work No. 6c(03)** — Within the area of land shown on the Works Plans as Work No. 6c(03), works to the operational airport roads around the new stands and airfield perimeter track consisting of inter-stand roadways, head of stand roads, a road to the ERUB and beyond to connect with the airfield perimeter track.

**Work No. 6d** — Within the area of land shown on the Works Plans as Work No. 6cd, works to Airport Road adjacent to Winch Hill Lane and barriered junction to fuel pipeline access road, including hard and soft landscaping.

### **Offsite Highway Works**

**Work No. 6e** — Within the area of land shown on the Works Plans as Work No. 6e, various offsite highway works, including works to—

- (a) Windmill Road and Kimpton Road, including the removal of the mini-roundabout and replacement with a signalised junction and realignment and widening of Windmill Road and Kimpton Road;
- (b) A1081 New Airport Way, B653 and Gipsy Lane. To include, the realignment and widening of A1081 New Airport Way (to provide additional traffic lanes), the realignment and widening of A505 Gipsy Lane (to provide additional traffic lanes), the reshaping of the A1081 New Airport Way central reserve islands including the realignment of barriers and the reshaping of the A505 Gipsy Lane splitter island;
- (c) A1081 New Airport Way, A505 Kimpton Road and Vauxhall Way, including the construction of a give-way left turn lane into A505 Kimpton Road;
- (d) Eaton Green Road and Lalleford Road, including the removal of the existing mini-roundabout junction and conversion to a signalised junction and localised realignment of the carriageway;
- (e) Wigmore Lane and Crawley Green Road. To include works to—

- (i) the Junction of Wigmore and Crawley Green Road, including the removal of the existing roundabout junction and conversion to a signalised junction, the provision of signalised pedestrian crossings, the provision of give-way left-turn flares and the realignment and widening of the carriageway;
  - (ii) Wigmore Lane, including the realignment and widening of a lane and removal of a bus stop layby; and
  - (iii) to the junction of Wigmore Lane and Raynham Way, including the removal of the existing roundabout junction and conversion to a signalised junction, the provision of signalised pedestrian crossing and the realignment and widening of the carriageway;
- (f) Eaton Green Road and Wigmore Lane, including works to the junction of Wigmore Lane and existing Asda, the removal of the existing roundabout junction and conversion to a signalised junction the provision of signalised pedestrian crossings and the realignment and widening of the carriageway;
  - (g) A1081/London Road (North), including, realignment and widening to the east side of the roundabout circulatory carriageway, partial signalisation of the roundabout, on the Newlands Park and southern arms and amendments to road marking;
  - (h) A1081/London Road (South), including partial signalisation of the existing roundabout (no kerb line amendments required) and road marking amendments;
  - (i) Windmill Road/Manor Road/St. Mary's Road/Crawley Green Road, including realignment and widening of St. Mary's Road and Windmill Road, realignment and widening of the circulatory carriageway of the junction, amendments and extensions to various pedestrian subway portals, alterations to existing footways and full signalisation of the roundabout junction;
  - (j) Crawley Green Road/Lalleford Road, including replacement of the mini roundabout with a three-arm signalised junction, minor kerb line amendments along Crawley Green Road and Lalleford Road and amendments to road markings;
  - (k) A602 Park Way/A505 Upper Tilehouse Street, including minor widening to the Park Way/Upper Tilehouse Street roundabout entries, to provide increased lengths of two lane entry and amendments to existing retaining structure and vehicle restraint system;
  - (l) A505 Moorhead Hill/B655 Pirton Road/Upper Tilehouse Street, including minor widening and realignment of Upper Tilehouse Street entry to provide an increased length of two lane entry to the existing mini-roundabout;
  - (m) A602 Park Way/Stevenage Road, including minor widening of carriageway and realignment of various kerb lines on A505 Park Way, Hitchin Hill and A602 Stevenage Road to provide increased lengths of two lane entry to the roundabout;
  - (n) M1 J10, including widening to the northbound off-slip to provide a third lane on the approach to the roundabout, widening to the western circulatory carriageway to provide four circulating lanes and amendments to the exit from the roundabout onto the A1081, to allow three diverging lanes from the roundabout;
  - (o) M1 J10, including widening to the A1081 westbound carriageway, to provide two segregated left turn lanes, widening to the A1081 westbound carriageway, to provide two segregated left turn lanes onto the M1 southbound on-slip and amendments to road markings on the southbound on-slip to increase capacity;
  - (p) M1 J10, including widening of the western circulatory carriageway to provide five lanes including realignment of the A1081 exit from the roundabout, to enable three lanes to enter the A1081 from the roundabout, removal of the segregated left turn lane from the M1 southbound, and conversion of the junction between the southbound off-slip and roundabout to a signalised junction and provision of two southbound merging lanes to the M1;
  - (q) Eaton Green Road/Frank Lester Way, including replacement of the roundabout with a three-arm signalised junction and minor kerb line amendments along Eaton Green Road and Frank Lester Way (with Frank Lester Way to be made one-way northbound) and amendments to road markings; and

- (r) A505 Vauxhall Way/Eaton Green Road, including partial signalisation of the roundabout.

**Ancillary works**

In connection with the construction of any of those works, and other development in the Order limits, ancillary or related development consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (c) ramps, means of access, non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;
- (d) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, pollution control devices, wing walls, highway lighting, fencing and culverts;
- (e) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (f) works to place, alter, divert, relocate, remove or maintain the position of apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, lights and cables;
- (g) landscaping, noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (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, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping and storage, site levelling);
- (k) the felling of trees and hedgerows;
- (l) establishment of site construction compounds, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences;
- (m) the provisions of other works including service roads, internal site roads, pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction, operation or maintenance 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 which do not give rise to any materially new or materially different environmental effects in comparison to those reported in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Article 3

### PART 1 GENERAL

#### **Interpretation**

1.—(1) In this Schedule—

“amphibian and reptile mitigation strategy” means Appendix 8.6 of the environmental statement;

“badger mitigation strategy” means Appendix 8.7 of the environmental statement;

“bat mitigation strategy” means Appendix 8.8 of the environmental statement;

“begin” means to carry out any material operation (as defined in section 155 of the 2008 Act) forming part, or carried out for the purposes, of the authorised development;

“bird mitigation strategy” means Appendix 8.9 of the environmental statement;

“commence” means carrying out any material operation (as defined in section 155 of the 2008 Act) forming part, or carried out for the purposes, of the authorised development other than operations consisting of—

- (a) remedial work in respect of any contamination or adverse ground conditions (excluding works carried out as part of Work No. 1b (landfill remediation works));
- (b) environmental (including archaeological) surveys and investigation;
- (c) site or soil surveys;
- (d) erection of fencing to site boundaries or marking out of site boundaries;
- (e) installation of barrier or demarcation fencing to protect required areas of habitats or species;
- (f) the diversion or laying of services;
- (g) ecological mitigation measures;
- (h) receipt and erection of construction plant and equipment;
- (i) erection of temporary buildings and structures;
- (j) site preparation and site clearance (excluding works carried out as part of Work No. 1a (earthworks)); and
- (k) the temporary display of site notices or information,

and “commencement” and “commenced” are to be construed accordingly;

“cultural heritage management plan” means Appendix 10.6 of the environmental statement;

“design principles” means the document of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State;

“drainage design statement” means Appendix 20.4 of the environmental statement;

“ecological mitigation strategies” means together the badger mitigation strategy, the bat mitigation strategy, the bird mitigation strategy, the amphibian and reptile and amphibian mitigation strategy and the orchid and invertebrate mitigation strategy;

“emergency flights” means unplanned air transport movements which do not carry commercial passengers, which includes but is not restricted to—

- (a) flights operated by relief organisations for humanitarian reasons;



- (b) flights operated by the armed forces for military purposes; or
- (c) a particular occasion or series of occasions which are to be disregarded pursuant to a notice published by the Secretary of State under section 78(4) or 78(5)(f) of the 1982 Act or set out in guidance published by the Secretary of State in connection with those provisions;

“ESG” means the independent group established by paragraph 20 of this Part of this Schedule whose functions are relevant to any matter under this Schedule and any approval or agreement required by the ESG under this Schedule is to be construed accordingly;

“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);

“fixed plant noise management plan” means Appendix 16.3 of the environmental statement;

“framework travel plan” means the document of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State;

“movements by aircraft” means either a landing or take off by an aircraft excluding emergency flights;

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

“night quota period” mean the period between the hours of 2330 to 0600;

“orchid and invertebrate mitigation strategy” means Appendix 8.10 of the environmental statement;

“outline construction traffic management plan” means Appendix 18.3 of the environmental statement;

“outline construction workers travel plan” means Appendix 18.4 of the environmental statement;

“outline greenhouse gas action plan” means Appendix 12.1 of the environmental statement;

“outline landscape and biodiversity management plan” means Appendix 8.2 of the environmental statement;

“outline operational air quality plan” means Appendix 7.5 of the environmental statement;

“outline operational waste management plan” means Appendix 19.2 of the environmental statement;

“outline remediation strategy (for the former Eaton Green Landfill site)” means Appendix 17.5 of the environmental statement;

“outline site waste management plan” means Appendix 19.1 of the environmental statement;

“outline soil management plan” means Appendix 6.6 of the environmental statement;

“outline transport related impacts monitoring and mitigation approach” means the document of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State;

“passengers” means commercial airline passengers excluding infants, transit passengers, general aviation passengers, passengers on diverted planes, passengers on emergency flights;

“passengers per annum” means passengers per calendar year; and

“strategic landscape masterplan” means the document of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State.

(2) References in this Schedule to part of the authorised development are to be construed as references to stages, phases or elements of the authorised development in respect of which an

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(a) S.I. 2017/1012.

(b) 1981 c. 69.

application is made by the undertaker under this Schedule, and references to commencement of part of the authorised development in this Schedule are to be construed accordingly.

### **Amendments to approved details**

2.—(1) The undertaker may apply to the relevant planning authority for approval to amend the following—

- (a) the code of construction practice;
- (b) the cultural heritage management plan;
- (c) the fixed plant noise management plan;
- (d) any other plans, details or scheme which require approval by the relevant planning authority in accordance with any paragraph in Part 2 or Part 4 of this Schedule; and
- (e) the parameters specified in paragraph 6 (parameters of authorised development) of this Schedule.

(2) On approval of an application under sub-paragraph (1), those documents, plans, details, schemes or parameters are to be taken to include the amendments approved by the relevant planning authority in accordance with that sub-paragraph.

(3) Approval under sub-paragraph (1) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(4) Where an application is made under sub-paragraph (1) to amend a plan, detail or scheme which requires approval by the relevant planning authority in accordance with any paragraph in Part 2 or Part 4 of this Schedule, where the paragraph specifies that consultation with a consultee is required, that consultee must be consulted prior to any approval being given under sub-paragraph (1).

### **Anticipatory steps towards compliance with any requirement**

3. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Parts 2, 3 or 4 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

## **PART 2**

### **REQUIREMENTS PERTAINING TO CONSTRUCTION**

#### **Time limits**

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

#### **Detailed design**

5.—(1) No part of the authorised development is to commence until details of the layout, siting, scale and external appearance of the buildings, structures and other works within that part have been submitted to and approved in writing by the relevant planning authority, following consultation with the relevant highway authority on matters related to its functions.

(2) The details referred to in sub-paragraph (1) must be in general accordance with the design principles, and subject to article 6(3) (limits of works) be within the limits shown on the works

plans and any relevant parameters set out in paragraph 6 (parameters of authorised development) of this Schedule.

(3) The authorised development must be carried out in accordance with the details approved by the relevant planning authority under sub-paragraph (1).

### Parameters of authorised development

6. The elements of the authorised development listed in columns (1) and (2) of the table below must not exceed the maximum dimensions and levels (as applicable) set out in relation to that element in columns (3) to (5) of that table.

(1) <i>Element of authorised development</i>	(2) <i>Work No.</i>	(3) <i>Maximum building height (metres)</i>	(4) <i>Maximum parameter height (metres AOD)</i>	(5) <i>Maximum work area (m<sup>2</sup>)</i>	(6) <i>Maximum volume in m<sup>3</sup></i>	(7) <i>Notes</i>
Airfield equipment – Surface Movement Radar	2a(02)	14.3	176.2	5,017	7,508	N/A
New Airfield Equipment Instrument Runway Visual Range (IRVR)	2b(02)	3.3	163.7	37,300	123,090	N/A
Fire Training Ground	2d	15.4	177.8	87,346	423,500	N/A
Existing Engine Run Up bay updates	2e	4.4	159.4	16,025	67,320	N/A
Engine Run Up bay	2f	13.2	166.8	12,525	132,000	N/A
Relocated Engine Run Up bay	2g	13.2	166.6	11,512	132,000	N/A
Terminal 1 New Pier C and External Canopy	3a(01)	16.5	173.7	4,133	44,616	N/A
Terminal 1 Immigration extension	3a(02)	9.4	167.6	270	2,525	N/A
Terminal 1 Departure Lounge South extension	3a(03)	18.7	171.1	957	12,155	N/A
Terminal 1 Departure Lounge North extension	3a(04)	9.4	171.4	400	3,740	N/A
Terminal 1 Baggage Hall extension	3a(05)	11.6	164.0	1,104	9,221	N/A
Terminal 2	3b(01)	26.5	180.5	30,470	672,067	N/A
Terminal 2 extension	3b(02)	26.5	180.5	10,635	212,689	N/A
Terminal 2 West Pier	3c(01)	14.4	169.6	15,070	69,364	N/A
Terminal 2 East Pier	3c(02)	14.4	168.5	15,060	69,433	N/A
Coach Station	3d	8.3	161.8	8,675	49,172	N/A
Terminal 2 Plaza	3f	23.7	177.2	5,930	70,950	N/A

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(1) <i>Element of authorised development</i>	(2) <i>Work No.</i>	(3) <i>Maximum building height (metres)</i>	(4) <i>Maximum parameter height (metres AOD)</i>	(5) <i>Maximum work area (m<sup>2</sup>)</i>	(6) <i>Maximum volume in m<sup>3</sup></i>	(7) <i>Notes</i>
Luton DART Terminal 2 Station and Tunnel extension	3g	23.7	177.2	26,790	88,569	Maximum volume relates to above ground areas only and exclude development beneath surface level
Terminal 2 Support Buildings – Energy Centre	3h	12.8	167.2	11,265	95,983	Maximum work area includes Terminal 2 Support Buildings – Service Yard
Terminal 2 Support Buildings – Service Yard	3h	5.0	159.5	Included in maximum work area for Terminal 2 Support Buildings – Energy Centre	941	N/A
Terminal 2 Support Buildings – Emergency Vehicle Assembly Area	3h	5.0	159.2	4,858	2,047	N/A
Airport Operations and Maintenance	3i	15.2	168.7	22,100	335,478	N/A
Hotel	4a	22.0	175.5	9,441	45,980	N/A
Hangar A and B	4b	27.5	185.0	16,641	316,800	N/A
Fuel Storage Facility	4c(01)	24.2	151.4	83,700	459,800	N/A
Fuel Pipeline – above ground installation	4c(02)	4.6	140.4	8,355	38,600	N/A
Water Treatment Plant	4d	13.9	141.0	6,760	69,994	N/A
Solar Energy Battery	4e	7.2	139.8	5,270	37,681	N/A
Airside Security and	4f	5.0	158.0	2,870	545	N/A

(1) <i>Element of authorised development</i>	(2) <i>Work No.</i>	(3) <i>Maximum building height (metres)</i>	(4) <i>Maximum parameter height (metres AOD)</i>	(5) <i>Maximum work area (m<sup>2</sup>)</i>	(6) <i>Maximum volume in m<sup>3</sup></i>	(7) <i>Notes</i>
Access						
Car Park P1	4g	20.4	135.4	14,105	111,588	N/A
Car Park P5 – New Decked Car Park	4k(02)	7.7	163.2	22,536	147,303	N/A
Car Park P9 – New Decked Car Park	4o(02)	7.7	161.6	27,362	163,286	N/A
Car Park P10 – New Long Stay car park	4p(01)	5.0	142.0	28,969	–	The maximum building height applies to the PV canopies, bus shelters and barriers within this work.
Car Park P10 – Reconfiguration of New Long Stay Car Park	4p(02)	5.0	135.0	71,410	2,005	The maximum building volume applies to the welfare buildings within this work.
Car Park 11 – New Long Stay Car Park	4q(01)	5.0	137.0	45,045	2,797	The maximum building volume applies to the welfare buildings within this work.
Car Park P11 – Expanded Long Stay Car Park	4q(02)	5.0	137.0	51,789	644	The maximum building volume applies to the welfare buildings within this work.
Car Park P12 – New Terminal 2 Multi Storey Car Park	4r	17.1	170.6	25,070	315,205	N/A
Police Station	4u	12.1	173.5	6,780	14,520	N/A

(1) <i>Element of authorised development</i>	(2) <i>Work No.</i>	(3) <i>Maximum building height (metres)</i>	(4) <i>Maximum parameter height (metres AOD)</i>	(5) <i>Maximum work area (m<sup>2</sup>)</i>	(6) <i>Maximum volume in m<sup>3</sup></i>	(7) <i>Notes</i>
Substation	4w	7.6	162.0	4,005	9,222	N/A
Substation	4x	7.6	162.1	3,600	12,144	N/A

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#### Notice of commencement of authorised development

7. No part of the authorised development may commence until a written notice of the works comprising that part is given to the relevant planning authority at least 14 days prior to the commencement of that part.

#### Code of Construction Practice

8.—(1) The authorised development must be carried out substantially in accordance with the code of construction practice and the subsequent plans approved under the code of construction practice pursuant to sub-paragraph (2), unless otherwise agreed in writing by the relevant planning authority following consultation with the relevant highway authority on matters related to its functions.

(2) No part of the authorised development may commence until the following management plans identified in the code of construction practice have been developed by the contractor for each part of the authorised development in accordance with the outlines of those plans provided in the code of construction practice and have been approved in writing by the relevant planning authority following consultation with the relevant highway authority on matters related to its functions—

- (a) framework materials management plan;
- (b) carbon efficiency plan;
- (c) construction surface water management strategy;
- (d) construction noise and vibration management plan;
- (e) community engagement plan;
- (f) emergency plan;
- (g) pollution incident control plan;
- (h) dust management plan;
- (i) site waste management plan (to be substantially in accordance with the outline site waste management plan); and
- (j) soil management plan (to be substantially in accordance with the outline soil management plan).

#### Landscaping design

9.—(1) No part of the authorised development containing landscaping mitigation may commence until for that part a landscaping scheme has been submitted to and approved in writing by the relevant planning authority.

(2) The landscaping scheme approved under sub-paragraph (1) must reflect the principles set out in the strategic landscape masterplan and must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;

- (d) hard landscaping and materials, minor structures and street furniture; and
- (e) a timetable for the implementation of the landscaping works.

(3) 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.

(4) The authorised development must be constructed in accordance with the landscaping scheme approved under sub-paragraph (1).

(5) Any tree or shrub planted as part of a landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed in writing with the relevant planning authority

#### **Landscape and biodiversity management plan**

**10.**—(1) No part of the authorised development may commence until for that part a landscape and biodiversity management plan has been submitted and approved in writing by the relevant planning authority.

(2) The landscape and biodiversity management plan approved under sub-paragraph (1) must be substantially in accordance with the outline landscape and biodiversity management plan.

(3) The authorised development must be carried out in accordance with the landscaping and biodiversity management plan referred to in sub-paragraph (1).

#### **Protected species**

**11.**—(1) No part of the authorised development may commence until for that part final pre-construction survey work has been carried out to establish up to date information, in particular whether a European protected species or a nationally protected species is present on any of the land affected, or likely to be affected, by that part of the authorised development.

(2) Where a European protected species or nationally protected species is shown to be present following the pre-construction survey referred to in sub-paragraph (1), the relevant part of the authorised development must not commence until a scheme of mitigation measures, substantially in accordance with the relevant ecological mitigation strategies, has been submitted to and approved by the relevant planning authority or, where appropriate, a protected species licence has been granted by Natural England.

(3) The authorised development must be constructed in accordance with the scheme of mitigation measures approved under sub-paragraph (2) or, where relevant, in accordance with the terms of a protected species licence granted by Natural England.

#### **Contaminated land and groundwater**

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

(2) Where the undertaker determines that remediation of contamination identified in, on, or under land from detailed site investigations, or as an unexpected discovery, is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency on matters related to its functions.

(3) Any required and agreed remediation must be carried out in accordance with the scheme approved under sub-paragraph (2).

(4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation scheme in sub-paragraph (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action must be submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency on matters related to its functions.

(5) Prior to the relevant part of the authorised development being occupied a verification report demonstrating the completion of works set out in the approved remediation scheme and the effectiveness of the remediation will be submitted to, and approved in writing by, the relevant planning authority. The report will include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

### **Surface and foul water drainage**

**13.**—(1) No part of the authorised development may commence until for that part written details of the surface and foul water drainage plan, including means of pollution control and monitoring, have been submitted and approved in writing by the relevant planning authority following consultation with the Environment Agency on matters related to its functions.

(2) The details submitted under sub-paragraph (1) must reflect the principles set out in the drainage design statement.

(3) The authorised development must be constructed in accordance with the details approved under sub-paragraph (1).

### **Construction traffic management**

**14.**—(1) No part of the authorised development may commence until a construction traffic management plan for the construction of that part has been submitted to and approved in writing by the relevant planning authority, following consultation with the relevant highway authority on matters related to its function.

(2) The construction traffic management plan submitted under sub-paragraph (1) must be substantially in accordance with the outline construction traffic management plan.

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

### **Construction workers**

**15.**—(1) No part of the authorised development may commence until a construction workers travel plan for the construction of that part has been submitted to and approved in writing by the relevant planning authority, following consultation with the relevant highway authority on matters related to its function.

(2) The construction workers travel plan submitted under sub-paragraph (1) must be substantially in accordance with the outline construction workers travel plan.

(3) The authorised development must be constructed in accordance with the construction workers travel plan referred to in sub-paragraph (1).

### **Archaeological remains**

**16.**—(1) The authorised development must be carried out in accordance with the cultural heritage management plan and any written scheme of investigation approved under sub-paragraph (2).

(2) Where the cultural heritage management plan provides for the subsequent approval of the relevant planning authority of a written scheme of investigation for certain specified elements of the authorised development, such parts of the authorised development are not to commence until for the construction of that part a written scheme for the investigation of areas of archaeological interest, reflecting the cultural heritage management plan has been submitted to and approved in



writing by the relevant planning authority following consultation, where applicable, with Historic England on matters related to its functions.

(3) A copy of any analysis, reporting, publication or archiving required as part of a written scheme of investigation referred to in sub-paragraph (2) must be deposited with the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme of investigation referred to in sub-paragraph (2).

#### **Remediation of Former Eaton Green Landfill**

**17.**—(1) No part of the authorised development comprising Work No. 1b (Landfill remediation works) may commence until a remediation strategy for the former Eaton Green Landfill has been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency on matters related to its functions.

(2) The remediation strategy to be approved under sub-paragraph (1) above must be substantially in accordance with the outline remediation strategy (for the former Eaton Green Landfill site).

(3) Work No. 1b must be carried out in accordance with the remediation strategy approved under sub-paragraph (1).

### **PART 3**

#### **REQUIREMENTS PERTAINING TO GREEN CONTROLLED GROWTH**

##### **Interpretation**

**18.** In Parts 3 and 6—

“airport capacity declaration” means the parameters in relation to hourly runway capacity submitted by the airport operator for slot allocation in accordance with regulation 6 of the slots regulations;

“consultation period” means the period of 21 days starting on the date of the provision of the relevant report or plan unless another time period is agreed by the undertaker and the ESG;

“council regulation” means Council Regulation (EEC) No 95/93 of 18 January 1993 as retained (and amended in UK domestic law) under the European Union (Withdrawal) Act 2018(a);

“existing capacity declaration” means—

- (a) in relation to a summer season, the last airport capacity declaration issued by the airport operator prior to the date of the submission of the Monitoring Report for a summer season; and
- (b) in relation to a winter season, the last airport capacity declaration issued by the airport operator prior to the date of the submission of the Monitoring Report for a winter season;

“existing number of allocated slots” means —

- (a) in relation to a summer season, the aggregate of the number of slots (in respect of the summer season in the year the Monitoring Report was submitted)—
  - (i) which were eligible for historic precedence at the start of the season together with any slots that became eligible for historic precedence during the season (in each case as determined by the slot co-ordinator for the purposes of article 8(2) of the council regulation; plus
  - (ii) any other slots allocated by the airport operator’s slot co-ordinator; and

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(a) 2018 c. 16.

- (b) in relation to a winter season, the aggregate of the number of slots (in respect of the winter season prior to the date the Monitoring Report was submitted)—
- (i) which were eligible for historic precedence at the start of the season together with any slots that became eligible for historic precedence during the season (in each case as determined by the slot co-ordinator for the purposes of article 8(2) of the council regulation; plus
  - (ii) any other slots allocated by the airport operator’s slot co-ordinator,
- in each case, excluding the number of emergency flights in the relevant season;
- “green controlled growth framework” means the document of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State;
- “Level 2 Plan” means a plan which sets out—
- (a) details of any proposed actions which are designed to avoid or prevent exceedances of a Limit; and
  - (b) the proposed programme for the implementation of those actions;
- “Level 1 Threshold” means, subject to sub-paragraph (2), each of the air quality, noise, greenhouse gas emissions or surface access thresholds of that description identified in the green controlled growth framework;
- “Level 2 Threshold” means, subject to sub-paragraph (2) and paragraph 19 (exceedance of air quality Level 2 Limit or Threshold) of this Part of this Schedule, each of the air quality, noise, greenhouse gas emissions or surface access thresholds of that description identified in the green controlled growth framework;
- “Limit” means, subject to sub-paragraph (2) and paragraph 19 (exceedance of air quality Level 2 Limit or Threshold) of this Part of this Schedule, each of the air quality, noise, greenhouse gas emissions or surface access limit of that description identified in the green controlled growth framework;
- “Mitigation Plan” means a plan which sets out—
- (a) details of the proposed mitigation and actions which are designed to avoid or prevent exceedances of a Limit as soon as reasonably practicable; and
  - (b) the proposed programme for the implementation of that mitigation and those actions;
- “Monitoring Plans” means the following appendices to the green controlled growth framework—
- (a) appendix C: Aircraft Noise Monitoring Plan;
  - (b) appendix D: Air Quality Monitoring Plan;
  - (c) appendix E: Greenhouse Gases Monitoring Plan; and
  - (d) appendix F: Surface Access Monitoring Plan;
- “Monitoring Report” means a report submitted to the ESG containing monitoring and assessments of whether a Level 1 Threshold, Level 2 Threshold, or Limit have been exceeded in accordance with the Monitoring Plan;
- “slots regulations” means the Airports Slot Allocation Regulations 2006(a);
- “Technical Panel” means a forum of individuals and bodies who are able to provide suitable technical support to the ESG; and
- “terms of reference” means—
- (a) for the ESG, the terms of reference in appendix A of the green controlled growth framework and any amendments agreed in accordance with paragraph 20(4) (Environmental Scrutiny Group) of this Schedule; and

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(a) S.I. 2006/2665.

- (b) for each Technical Panel, the terms of reference in appendix B of the green controlled growth framework and any amendments agreed in accordance with paragraph 20(9) (Environmental Scrutiny Group) of this Schedule.
- (2) References to a Level 1 Threshold, Level 2 Threshold, and Limit are to be construed as references to those thresholds and Limits which may be revised in accordance with the green controlled growth framework and paragraph 25 (review of implementation of this Part) of this Schedule.
- (3) References to the 1982 Act, or guidance associated with that Act, are, for the purposes of this Part, to be construed as a reference to those provisions or guidance as amended, substituted or replaced, and with such modifications as are required in those circumstances.
- (4) Paragraphs 23 (exceedance of a Level 2 Threshold) and 24 (exceedance of a Limit) do not have effect until after the remainder of the calendar year after the notice under article 44(1) (interaction with LLAOL planning permission) is served on the relevant local planning authority and the subsequent calendar year (“the transition period”) has elapsed.
- (5) The time periods in paragraphs 21 (monitoring of permitted operations), 23 (exceedance of a Level 2 Threshold), 24 (exceedance of a Limit) or 25 (review of implementation of this Part) of this Part apply unless another time period is agreed by the undertaker and the ESG or it is modified in accordance with the process in paragraph 25 (review of implementation of this Part) and references to the time period in those paragraphs are to be construed as references to any agreed or modified time periods.

**Exceedance of air quality Level 2 Threshold or Limit**

**19.** For the purposes of this Part, the exceedance of a Level 2 Threshold or Limit relating to air quality requires—

- (a) an exceedance of the annual average pollutant concentrations in Table 4.3 of the green controlled growth framework; and
- (b) determination by the undertaker that its contribution to the annual average concentration of a pollutant is at least 5% greater than the contributions specified in Table 4.2 of the green controlled growth framework.

**Environmental Scrutiny Group**

**20.**—(1) The undertaker must establish a body which is hereinafter referred to as the Environmental Scrutiny Group (“ESG”) no later than 56 days prior to the due date for submission of the first Monitoring Report under paragraph 21 (monitoring of permitted operations) of this Part.

(2) The undertaker will request the attendance of the following individuals and officers of the following authorities to a meeting held by the ESG—

- (a) Central Bedfordshire Council;
- (b) Hertfordshire County Council;
- (c) Luton Borough Council;
- (d) North Hertfordshire District Council;
- (e) [representation from an airline industry body];
- (f) an independent chairperson appointed in accordance with the terms of reference; and
- (g) an independent aviation specialist appointed in accordance with the terms of reference.

(3) The individual and officers in sub-paragraph (2) constitute the members of the ESG for the purposes of this Order from—

- (a) in the case of the independent chairperson and the independent aviation specialist, the date of their appointment in accordance with the terms of reference; and
- (b) in the case of any other individual or officer, the date approval is provided by the independent chairperson in accordance with the terms of reference,

and the membership of the ESG may include such additional individuals or bodies as agreed by the ESG and the undertaker.

(4) The ESG must operate, meet and make decisions in accordance with its terms of reference unless otherwise agreed by the ESG and the undertaker, in accordance with the process set out in its terms of reference.

(5) The undertaker, and if different, the airport owner or the airport operator, are permitted to attend the proceedings of the ESG and may make representations at the proceedings and present reports and plans to the ESG.

(6) The undertaker must establish Technical Panels which will provide technical support to the ESG in relation to each of the following matters—

- (a) air quality;
- (b) greenhouse gas emissions;
- (c) noise; and
- (d) surface access.

(7) The bodies invited to nominate technical representative, and the appointment of an independent expert, to each Technical Panel will be determined in accordance with its terms of reference.

(8) The technical representatives nominated under sub-paragraph (7) and the independent technical expert will constitute the members of the Technical Panel for the purposes of this Order from the date approval is provided by the independent chairperson of the ESG in accordance with its terms of reference.

(9) The Technical Panels must operate and make recommendations in accordance with its terms of reference unless otherwise agreed by the ESG and the undertaker, in accordance with the process set out in its terms of reference.

(10) The undertaker, and if different, the airport owner or the airport operator are permitted to attend the proceedings of the Technical Panels and may make representations at the proceedings and present reports and plans to the Technical Panels.

(11) Where the terms of reference impose obligations on the undertaker, the undertaker must act in accordance with the terms of reference.

(12) Part VA (access to meetings and documents of certain authorities, committees and subcommittees) of the 1972 Act and the Public Bodies (Admission to Meetings) Act 1960(a) do not apply to the ESG, or any Technical Panel, or to its meetings or proceedings.

(13) In this article—

“airport owner” means the undertaker on the date this Order is made;

“officers” means suitably qualified senior planning officials from the department dealing with planning functions of the relevant body and excludes any elected councillors;

“independent chairperson” is an independent and suitably qualified person with appropriate aviation experience;

“independent aviation specialist” is an independent and suitably qualified person specialising in aviation;

“independent technical expert” means an independent person that is suitably qualified or has significant technical experience in either air quality, greenhouse gas emissions, noise or surface access; and

“technical representative” means a representative that is suitably qualified or has significant technical experience in either air quality, greenhouse gas emissions, noise or surface access and excludes elected representatives.

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(a) 1960 c. 67.

### **Monitoring of permitted operations**

**21.**—(1) The undertaker must prepare and submit to the ESG the first Monitoring Report no later than 31 July following the end of the first full calendar year after the date the notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order and then a Monitoring Report on or before 31 July is required to be submitted.

(2) Monitoring Reports submitted under sub-paragraph (1) must be prepared in accordance with the Monitoring Plans, which may be amended in accordance with sub-paragraph (3).

(3) The undertaker and the ESG may agree to amend the Monitoring Plans, and such agreement must not be unreasonably withheld.

(4) The undertaker must make a Monitoring Report publicly available as soon as reasonably practicable following submission under sub-paragraph (1).

### **Exceedance of a Level 1 Threshold**

**22.** Where a Monitoring Report submitted to the ESG under paragraph 21 (monitoring of permitted operations) assesses that a Level 1 Threshold has been exceeded, the undertaker must include in the Monitoring Report commentary on the avoidance of the exceedance of a Limit.

### **Exceedance of a Level 2 Threshold**

**23.**—(1) Where a Monitoring Report submitted to the ESG under paragraph 21 (monitoring of permitted operations) assesses that a Level 2 Threshold has been exceeded, the undertaker must, unless sub-paragraph (2) applies and subject to sub-paragraph (9), prepare and submit to the ESG a draft Level 2 Plan no later than 28 days starting from the date the Monitoring Report was submitted to the ESG, unless another time period is agreed by the undertaker and the ESG.

(2) This paragraph applies where the ESG certifies, acting reasonably and in accordance with its terms of reference, that a Level 2 Threshold has been exceeded as a result of circumstances beyond the undertaker's control.

(3) The undertaker must have due regard to any representations provided by the ESG on a draft Level 2 Plan during the consultation period and must provide the ESG with a written account of how any such representations have been taken into account as part of its submission under sub-paragraph (4)(a).

(4) A Level 2 Plan must be—

- (a) prepared and submitted to the ESG no later than 14 days following the last day of the consultation period; and
- (b) approved or refused by the ESG, acting reasonably, no later than 21 days starting the day after the ESG has received the Level 2 Plan under sub-paragraph (a).

(5) A Level 2 Plan may only be refused by the ESG under sub-paragraph (4)(b) where it reasonably concludes that—

- (a) the proposed actions will not avoid or prevent exceedances of a Limit; or
- (b) the proposed programme for the implementation of those actions will not avoid or prevent exceedances of a Limit.

(6) Where the ESG has failed to make a decision under sub-paragraph (4)(b) within the time period specified in that sub-paragraph, it is deemed to have approved the Level 2 Plan.

(7) The undertaker must implement the Level 2 Plan approved by the ESG under sub-paragraph (4)(b).

(8) Unless otherwise agreed by the ESG, where a Monitoring Report submitted to the ESG under paragraph 21 (monitoring of permitted operations) assesses that a Level 2 Threshold has been exceeded, and except where sub-paragraph (2) applies, the undertaker will ensure that any future airport capacity declaration does not increase from the existing capacity declaration until a Level 2 Plan has been approved by the ESG or by the Secretary of State under paragraph 37

(appeals to the Secretary of State) or a Monitoring Report confirms that the relevant environmental effect no longer exceeds the relevant Level 2 Threshold.

(9) Where a Level 2 Plan approved by the ESG or by the Secretary of State under paragraph 37 (appeals to the Secretary of State) specifies a period that plan will have effect then sub-paragraph (1) does not apply during that period unless—

- (a) an airport capacity declaration specifies the capacity of the airport is greater than any amount specified in the Level 2 Plan; or
- (b) the relevant Level 1 Threshold, Level 2 Threshold or Limit is different from the relevant Level 1 Threshold, Level 2 Threshold or Limit which applied on the date of the submission of the Level 2 Plan under sub-paragraph (4)(b).

### **Exceedance of a Limit**

**24.**—(1) Where a Monitoring Report submitted to the ESG under paragraph 21 (monitoring of permitted operations) assesses that a Limit has been exceeded, the undertaker must, unless sub-paragraph (2) applies and subject to sub-paragraph (13), prepare and submit to the ESG a draft Mitigation Plan no later than 28 days starting from the date the Monitoring Report was submitted to the ESG.

(2) This paragraph applies where the ESG certifies, acting reasonably and in accordance with its terms of reference, that a Limit has been exceeded as a result of circumstances beyond the undertaker's control.

(3) The undertaker must have due regard to any representations provided by the ESG on a draft Mitigation Plan in the consultation period and must provide ESG with a written account of how any such representations have been taken into account as part of its submission under paragraph (4)(a).

(4) A Mitigation Plan must be—

- (a) prepared and submitted to the ESG no later than 14 days starting the day after the consultation period; and
- (b) approved or refused by the ESG, acting reasonably, no later than 21 days starting the day after the ESG has received Mitigation Plan under sub-paragraph (a).

(5) Mitigation Plan may only be refused by the ESG under sub-paragraph (4)(b) where it reasonably concludes that—

- (a) the proposed mitigation and actions in the Mitigation Plan will not avoid or prevent exceedances of the Limit as soon as reasonably practicable; or
- (b) the proposed programme for the implementation of those actions will not avoid or prevent exceedances of a Limit as soon as reasonably practicable.

(6) Where the ESG has failed to make a decision under sub-paragraph (4)(b) within the time period specified in that sub-paragraph, it is deemed to have approved the Mitigation Plan.

(7) The undertaker must implement the Mitigation Plan approved by the ESG under sub-paragraph (4)(b).

(8) The undertaker must unless sub-paragraph (2) applies prepare and submit an updated Mitigation Plan no more than 28 days starting the day from the day after—

- (a) the undertaker submits a Monitoring Report 2 years from the adoption of a Mitigation Plan under sub-paragraph (4)(b) which shows an exceedance of a Limit; or
- (b) a Mitigation Plan approved under sub-paragraph (4)(b) sets out a programme for a Limit not being exceeded and a Monitoring Report shows that an exceedance of a Limit which conflicts with that programme,

whichever is sooner.

(9) The updated Mitigation Plan submitted under sub-paragraph (8) must—

- (a) identify whether the application of a local rule (under the slots regulations) to reduce the existing number of allocated slots would reduce, avoid or prevent exceedances of the

Limit where other measures cannot ensure an impact falls below the relevant Limit as soon as reasonably practicable; and

- (b) include the proposed programme for seeking in accordance with the slots regulations the introduction of a local rule identified under sub-paragraph (a).

(10) The updated Mitigation Plan under sub-paragraph (8) must be approved or refused by the ESG no later than 21 days starting the day after the ESG has received the Mitigation Plan.

(11) Where the ESG has failed to make a decision under sub-paragraph (10) within the time period specified in that sub-paragraph, it is deemed to have approved the updated Mitigation Plan.

(12) The undertaker must implement a Mitigation Plan approved under sub-paragraph (10).

(13) Unless otherwise agreed by the ESG, where a Monitoring Report submitted to the ESG under paragraph 21 (monitoring of permitted operations) assesses that a Limit has been exceeded, the undertaker will ensure that until monitoring carried out in accordance with a Mitigation Plan or a Monitoring Report confirms the relevant environmental effect has fallen below the relevant Limit any future airport capacity declaration—

- (a) does not increase from the existing capacity declaration; and
- (b) includes criteria to ensure that the total number of allocated slots (excluding any emergency flights) does not exceed the existing number of allocated slots.

(14) Where a Mitigation Plan approved by the ESG or by the Secretary of State under paragraph 37 (appeals to the Secretary of State) specifies a period that plan will have effect then—

- (a) sub-paragraph (1); and
- (b) sub-paragraph (8),

does not apply during that period unless sub-paragraph (8)(b) applies.

#### **Review of implementation of this Part**

**25.**—(1) The undertaker must undertake a review of the implementation of this Part 12 months following the end of the transition period set out in paragraph 18(4) (interpretation) and every 5 years following this initial review, and produce and submit to the ESG a report which sets out whether any improvements to the operation of this Part are considered necessary to ensure the efficient and effective operation of authorised development within the Limits.

(2) The undertaker may, following a review carried out under paragraph (1) or otherwise, submit an application to modify the specified periods to the ESG where it considers it necessary for effective implementation of this Part of this Schedule.

(3) The undertaker must, following a review carried out in accordance with the green controlled growth framework, which concludes that there are grounds for a modification of a Level 1 Threshold, Level 2 Threshold or Limit, submit an application for that modification to the ESG.

(4) The ESG must, acting reasonably, approve or refuse an application submitted under sub-paragraph (2) and (3) no later 56 days starting from the day after the ESG has received the application.

(5) Where the ESG has failed to make a decision under sub-paragraph (4) within the time period specified, it is deemed to have approved the application.

(6) References to the specified periods in this Part of this Schedule are to be construed as references to any modified periods approved under sub-paragraph (4) by the ESG or approved by the Secretary of State under paragraph 37 (appeals to the Secretary of State).

(7) In this paragraph “specified periods” means any time period set out in relation to consultation, approval or submission of a Monitoring Report, Level 2 Plan or a Mitigation Plan.

## PART 4

### REQUIREMENTS PERTAINING TO OTHER OPERATIONAL MATTERS

#### **Passenger cap for the authorised development**

26. Subject to, and without prejudice to, the provisions of this Order, the undertaker may operate under this Order the airport comprised in the authorised development so that it permits up to 32 million passengers per annum.

#### **Night quota cap**

27. Subject to, and without prejudice to, the provisions of this Order, the undertaker must not operate under this Order the airport so that it permits in excess of 9,650 scheduled movements by aircraft in the night quota period per 12 month period unless a variation is otherwise agreed by the relevant planning authority, following consultation by the undertaker with the ESG and provided that the relevant planning authority is satisfied that the variation does not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

#### **Fixed Plant Noise Management Plan**

28. The authorised development must be carried out in accordance with fixed plant noise management plan.

#### **Offsite highways works**

29.—(1) From the date the notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order, no part of the authorised development is to be operated until a transport related impacts monitoring and mitigation approach for the operation of that part of the authorised development has been submitted to and approved in writing by the relevant planning authority, following consultation with the relevant highway authority on matters related to its function.

(2) The approach submitted under sub-paragraph (1) must be substantially in accordance with the outline transport related impacts monitoring and mitigation approach.

(3) The undertaker must carry out monitoring in accordance with the approach approved under sub-paragraph (1) and where this monitoring identifies that mitigation is required in accordance with the approach, the undertaker must submit a mitigation scheme to the relevant planning authority for approval in writing, following consultation with the relevant highway authority on matters related to its function.

(4) The undertaker must implement any mitigation scheme approved under sub-paragraph (3).

#### **Travel Plans**

30.—(1) From the date the notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order, no part of the authorised development is to be operated until a travel plan for the operation of that part of the authorised development has been submitted to and approved in writing by the relevant planning authority, following consultation with the relevant highway authority on matters related to its function.

(2) The travel plan submitted under sub-paragraph (1) must be substantially in accordance with the framework travel plan and prepared in accordance with the process set out in Figure 8.1 of the framework travel plan.

(3) Every five years following the date a travel plan was submitted for approval under sub-paragraph (1), the undertaker must submit an updated travel plan to the relevant planning authority for approval in writing, following consultation with the relevant highway authority on matters related to its function.



(4) Sub-paragraph (2) applies in relation to an updated travel plan submitted for approval under sub-paragraph (3).

(5) The authorised development must be operated in accordance with the travel plan approved under sub-paragraph (1) or any updated travel plan approved in accordance with sub-paragraph (3).

#### **Operational air quality plan**

**31.**—(1) From the date the notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order, no part of the authorised development is to be operated until an operational air quality plan for the operation of that part has been submitted to and approved in writing by the relevant planning authority.

(2) The operational air quality plan submitted under sub-paragraph (1) must be substantially in accordance with the outline operational air quality plan.

(3) The authorised development must be operated in accordance with the operational air quality plan referred to in sub-paragraph (1).

#### **Greenhouse gas action plan**

**32.**—(1) From the date the notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order, no part of the authorised development is to be operated until a greenhouse gas action plan for the operation of that part has been submitted to and approved in writing by the relevant planning authority.

(2) The greenhouse gas action plan submitted under sub-paragraph (1) must be substantially in accordance with the outline greenhouse gas action plan.

(3) The authorised development must be operated in accordance with the greenhouse gas action plan referred to in sub-paragraph (1).

#### **Operational waste management plan**

**33.**—(1) From the date the notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order, no part of the authorised development is to be operated until an operational waste management plan for the operation of that part has been submitted to and approved in writing by the relevant planning authority.

(2) The operational waste management plan submitted under sub-paragraph (1) must be substantially in accordance with the outline operational waste management plan.

(3) The authorised development must be operated in accordance with the operational waste management plan referred to in sub-paragraph (1).

## **PART 5**

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

#### **Interpretation**

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

“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); and

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(a) 1971 c. 80.

“discharging authority” means the authority from whom a consent, approval or agreement is required or requested by the undertaker under the requirement concerned.

### **Applications made under requirements**

**35.**—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) in Part 1, Part 2 or Part 4 of this Schedule the discharging authority 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 discharging authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 36 (further information); or
- (c) such longer period as may be agreed between the parties.

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

### **Further information**

**36.**—(1) In relation to any part of an application made under Part 1, Part 2 or Part 4 of this Schedule, the discharging authority has the right to request such further information from the undertaker as is reasonably necessary to enable the discharging authority to consider the application.

(2) If the discharging authority considers that further information is reasonably necessary and the requirement concerned does not specify that consultation with a consultee is required, the discharging authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information require.

(3) If the requirement concerned specifies that consultation with a consultee is required, the discharging authority must issue the application to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the relevant planning authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to subsequently request further information without the prior agreement of the undertaker.

(5) 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 35 (applications made under requirements) and in this paragraph.

## **PART 6**

### **APPEALS**

#### **Appeals to the Secretary of State**

**37.**—(1) The undertaker may appeal to the Secretary of State in the event that the ESG, or any other organisation, body or authority (“the discharging body”)—

- (a) issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974<sup>(a)</sup>;
  - (b) refuses an application for any consent, approval, certification or agreement required under this Order or grants such an approval subject to conditions;
  - (c) on receipt of a request for further information under paragraph 36 (further information), the undertaker considers that either the whole or part of the specified information requested by the discharging body is not necessary for consideration of the application; or
  - (d) on receipt of any further information requested under paragraph 36 (further information), the discharging body notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.
- (2) The appeal process applicable under sub-paragraph (1) 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 discharging body;
  - (c) the Secretary of State must appoint a suitably qualified person to consider the appeal (“the appointed person”) as soon as reasonably practicable after the submission under sub-paragraph (b) but in any event no longer than 21 days from the submission under that sub-paragraph 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 discharging body 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 but in any event no longer than 10 business days from the receipt of counter-submissions under sub-paragraph (e).
- (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.
- (6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.
- (7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (f).
- (8) On an appeal under this paragraph, the appointed person may—
- (a) allow or dismiss the appeal; or

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(a) 1974 c. 40.

- (b) reverse or vary any part of the decision of the discharging body (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

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

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

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

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

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

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

(15) 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).

#### **Matters to be considered in an appeal to the Secretary of State**

**38.** The appointed person under paragraph 37 (appeals to the Secretary of State) of this Schedule must, when determining an appeal under that paragraph, have due regard to—

- (a) the need to ensure that the Limits are not exceeded;
- (b) the safe and efficient commercial operation of the airport; and
- (c) any other matters they consider relevant.

#### **Application of Part 8 of the Planning Act 2008**

**39.—**(1) A specified local authority may submit representations to the relevant planning authority requesting that the relevant planning authority considers the need to pursue enforcement action where—

- (a) the ESG, following an attempt to resolve the matter with the undertaker, determines that a Monitoring Report has not been produced in accordance with the Monitoring Plan; or
- (b) the ESG, following an attempt to resolve the matter with the undertaker, determines that the undertaker has not implemented a Level 2 Plan or a Mitigation Plan.

(2) The relevant planning authority must no later than 42 days starting with the day after a representation is submitted under sub-paragraph (1) provide a written notice to the specified local authorities, the ESG and undertaker, which sets out—

- (a) its decision on whether enforcement action is being undertaken;
- (b) reasons for that decision; and

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(a) 1971 c. 80.

(c) if a decision is taken to pursue enforcement action, details of—

(i) any alleged breaches of the Order; and

(ii) the particular provision under Part 8 of the 2008 Act under which enforcement is proposed to be taken.

(3) This paragraph does not modify or otherwise prejudice the provisions of Part 8 of the 2008 Act.

(4) In this paragraph—

“2008 Act” means the Planning Act 2008;

“enforcement action” means any action under any provision contained in Part 8 of the 2008 Act and, without limitation, includes—

(a) entering on land in accordance with section 163 or 164 of that Act;

(b) serving notices requiring information in accordance with section 167 of that Act;

(c) serving notices of unauthorised development in accordance with section 169 of that Act;

(d) executing works in accordance with section 170 of that Act; and

(e) making an application for an injunction in accordance with section 171 of that Act;

“specified local authority” means—

(a) Central Bedfordshire Council;

(b) Hertfordshire County Council;

(c) North Hertfordshire District Council; and

(d) Dacorum Borough Council.

SCHEDULE 3

Article 14

PERMANENT STOPPING UP OF PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Public rights of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
Footpath 38 (FP38)	Between Point A on sheet 1 to Point B on sheet 2 of the Rights of Way Plans – Permanent Stopping Up of Public Rights of Way.
Footpath 29 (FP29)	Between Points B and C on sheet 2 of the Rights of Way Plans – Permanent Stopping Up of Public Rights of Way.
Bridleway 28 (BW28)	Between Points C and D on sheet 2 of the Rights of Way Plans – Permanent Stopping Up of Public Rights of Way.
Bridleway 37 (BW37)	Between Point D on sheet 2 to Point E on sheet 6 of the Rights of Way Plans – Permanent Stopping Up of Public Rights of Way.

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SCHEDULE 4

Article 18

DESIGNATION OF HIGHWAYS

<i>(1)</i> <i>Highway</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Designation</i>
Airport Access Road	The area hatched blue as shown on sheets 1–3 of the Streets, Rights of Way and Access Plans – Airport Access Road	Carriageway and Footway
Work No. 5b(03) – New highway (footpath) linking the northern end of Footpath 38 (FP38) with the north-western extent of Footpath 43 (FP43)	Between point 1 and point 2 as shown on sheet 1 of the Rights of Way Plans – Public Rights of Way Proposals	Footpath
Work No. 5b(04) – New highway (multi-use bridleway) connecting Footpath 43 (FP43) to Winch Hill Road	Between point 3 on sheet 1 and point 4 on sheet 3 as shown on sheets 1 and 3 of the Rights of Way Plans – Public Rights of Way Proposals	Bridleway
Work No. 5b(05) – New highway (multi-use bridleway) connecting Bridleway 52 (BW52) with Footpath 41 (FP41)	Between point 6 and point 7 as shown on sheet 2 of the Rights of Way Plans – Public Rights of Way Proposals	Bridleway
Work No. 5b(06) – Upgrading of Footpath FP41 to a bridleway, from its western extent at the junction with Eaton Green Road and FP43, to the intersection of the new length of bridleway forming Work No. 5b(05) leading south-east to Winch Hill Road	Between point 5 and point 6 as shown on sheet 1 of the Rights of Way Plans – Public Rights of Way Proposals	Bridleway
Work No. 5b(07) – Upgrading of Footpath FP43 to bridleway, from its western extent at the junction with Eaton Green Road and FP41, to the intersection of the new bridleway forming Work No. 5b(04) leading south-east to Winch Hill Road	Between point 5 and point 3 as shown on sheet 1 of the Rights of Way Plans – Public Rights of Way Proposals	Bridleway

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SCHEDULE 5

Article 27

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot Reference Number shown on Land Plans and Crown Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>
<b>Land Plans and Crown Land Plans – Sheet 1 of 10</b>	
1-41	The rights and restrictive covenants to construct, protect, operate, access and maintain the private road beneath the bridge carrying the railway, including the right to erect lighting within the subway crossing, and to maintain or upgrade the surface; and the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without plant and machinery, for all purposes in connection with the use of the footpath as a means of access between the adjacent car parks.
<b>Land Plans and Crown Land Plans– Sheet 3 of 10</b>	
3-32, 3-40, 3-41, 3-42	The rights and restrictive covenants to install, protect, implement, retain, repair, improve, renew, remove, relocate and plant hedgerows, associated plants and supporting infrastructure together with the right to maintain, inspect and replant; and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of hedgerows in connection with the authorised development.
<b>Land Plans and Crown Land Plans – Sheet 4 of 10</b>	
4-01	The right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of hedgerows in connection with the authorised development.
4-02, 4-03, 4-04, 4-05	The rights and restrictive covenants to install, protect, implement, retain, repair, improve, renew, remove, relocate and plant hedgerows, associated plants and supporting infrastructure together with the right to maintain, inspect and replant; and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of hedgerows in connection with the authorised development.
<b>Land Plans and Crown Land Plans – Sheet 6 of 10</b>	
6-01	The rights and restrictive covenants to access, protect, and maintain an area of ancient woodland.
6-03, 6-04	The rights and restrictive covenants to construct, protect, operate, access, renew and maintain a new fuel pipeline and associated installations.
6-04	The rights and restrictive covenants to construct, operate, access, protect, and maintain a habitat mitigation area.
6-05	The right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of hedgerows in connection with the authorised development.
6-06, 6-07, 6-08, 6-21, 6-21a	The rights and restrictive covenants to install, protect,

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<i>(1)</i> <i>Plot Reference Number shown on Land Plans and Crown Land Plans</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>
	implement, retain, repair, improve, renew, remove, relocate and plant hedgerows, associated plants and supporting infrastructure together with the right to maintain, inspect and replant; and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of hedgerows in connection with the authorised development.
<b>Land Plans and Crown Land Plans – Sheet 7 of 10</b>	
7-03, 7-09, 7-10, 7-12, 7-13, 7-14, 7-15, 7-16, 7-17, 7-18, 7-19, 7-20, 7-21, 7-23, 7-24, 7-25, 7-26, 7-27, 7-28, 7-30, 7-31, 7-33, 7-34 7-35, 7-36, 7-37, 7-38, 7-40, 7-41, 7-42, 7-43, 7-44, 7-45, 7-46	The rights and restrictive covenants to install, protect, implement, retain, repair, improve, renew, remove, relocate and plant hedgerows, associated plants and supporting infrastructure together with the right to maintain, inspect and replant; and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of hedgerows in connection with the authorised development.
7-04, 7-05, 7-06, 7-07	The rights and restrictive covenants to construct, operate, access and maintain a habitat mitigation area.
7-29, 7-32, 7-39	The right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of hedgerows in connection with the authorised development.

**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 in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land, subject to the modifications set out in this Schedule.

2.—(1) Without limiting paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2).

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

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

3.—(1) Without limiting 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, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
  - (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) to the London Luton Airport (Expansion) Development Consent Order 202[ ]) to acquire an interest in the land; and
  - (c) the acquiring authority enters on and takes possession of that land,
- the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

*Application of the 1965 Act*

4. The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed;
- or

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(a) 1973 c. 26.

(b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(2) Without limiting sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

**5.** For section 7 (measure of compensation) of the 1965 Act substitute—

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

**6.** 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.

**7.** Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

**8.** Section 20(d) (protection for interests of 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.

**9.** Section 22 (interests omitted from purchase) of the 1965 Act is 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.

**10.** For Schedule 2A of the 1965 Act substitute—

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and S.I. 2009/1307.
  - (b) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
  - (c) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
  - (d) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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

*Introduction*

**1.** This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(a) as applied by article 30 (application of the 1981 Act and modification of the 2017 Regulations) in respect of the land to which the notice to treat relates.

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

*Counter-notice requiring purchase of land*

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

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

*Response to counter-notice*

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

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

**6.** The acquiring authority must serve notice of 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 acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

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

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

*Determination by Upper Tribunal*

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

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

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

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(a) 1981 c. 66, as amended by Part 7 of the Housing and Planning Act 2016 (c. 22).

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

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

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

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

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

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

*Application of the 2017 Regulations*

**11.** References in Schedule 1 to the 2017 Regulations to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

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

SCHEDULE 7

Article 33

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Plot Reference Number shown on Land Plans and Crown Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
1-01, 1-02, 1-03, 1-04, 1-05, 1-06, 1-07, 1-08, 1-09, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17, 1-20, 1-21, 1-26, 1-28, 1-29, 1-35, 3-05, 3-06, 3-11, 3-14, 3-15, 3-17, 3-18, 3-22, 3-23, 3-24, 3-25, 3-26, 3-27, 3-28, 3-29	Offsite highway works, including works at Eaton Green Road and Wigmore Lane, associated laydown areas, access, working space to support construction	Work No. 6e(f)
1-27 1-31, 1-32, 1-33	Airport support facilities, including construction of a multi-storey car park associated laydown areas, access, working space to support construction	Work No. 4g
1-34, 1-37, 1-43, 1-49, 1-50, 1-53, 1-54, 1-57, 1-59, 1-61, 1-63	Airport support facilities, including a surface car park associated laydown areas, access, working space to support construction	Work No. 4h
1-58, 1-60, 1-62, 1-63, 1-64, 1-65, 1-66, 1-67	Offsite highway works, including works at A1081 New Airport Way, A505 Kimpton Road and Vauxhall Way, associated laydown areas, access, working space to support construction	Work No. 6e(c)
1-68, 1-69, 1-69a, 1-71a, 1-87, 1-92	Airport support facilities, including works to modify an existing car park and associated laydown areas, access, working space to support construction	Work No. 4i
1-68, 1-69, 1-69a, 1-70, 1-78, 1-80, 1-81, 1-82, 1-85, 1-87, 1-90, 1-92, 1-93, 2-1139	Works in connection with Airport Access Road, associated laydown areas, access, working space to support construction	Work No. 6a(01)
1-68, 1-69, 1-69a, 1-70, 1-71a, 1-74, 1-74a, 1-75, 1-76, 1-77, 1-77a, 1-78, 1-80, 1-81, 1-82, 1-85, 1-87, 1-88, 1-90, 1-92, 1-93, 1-94, 1-95, 1-99, 1-100, 2-05, 2-08, 2-09, 2-16, 2-27, 2-66, 2-67, 2-68, 2-84, 2-87, 2-90, 2-96, 2-96a, 2-101, 2-114, 2-117, 2-128, 2-133, 2-134, 3-02, 3-04, 3-05, 3-06, 3-08, 3-11, 5-11	Works in connection with Airport Access Road, associated laydown areas, access, working space to support construction	Work No. 6a(02)
1-95, 2-05, 2-08, 2-09, 2-16	Landscape and mitigation works including the provision of structural landscaping, associated laydown areas,	Work No. 5a

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<i>(1)</i> <i>Plot Reference Number shown on Land Plans and Crown Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	access, working space to support construction	
2-27	Airport Access Road permanent car parking replacement provision, associated laydown areas, access, working space to support construction	Work No. 4t(01), Work No. 4t(02)
2-62, 2-65, 2-70, 2-79, 2-80	Offsite highway works, including works at A505 Vauxhall Way/Eaton Green Road, associated laydown areas, access, working space to support construction	Work No. 6e(r)
2-68, 2-71	Construction of new hangar aprons, associated laydown areas, access, working space to support construction	Work No. 2c(03)
2-84, 2-87, 2-90, 2-96, 2-96a, 2-101, 2-117	Works in connection with Airport Access Road, associated laydown areas, access, working space to support construction	Work No. 6a(03)
2-93, 2-99, 2-101, 2-108, 2-114, 2-133	Works in connection with Airport Access Road replacement car parking provision, associated laydown areas, access, working space to support construction	Work No. 4t(03)
2-96a, 2-113, 2-116, 2-120, 2-121, 2-126	Offsite highway works, including works at Eaton Green Road/Frank Lester Way, associated laydown areas, access, working space to support construction	Work No. 6e(q)
2-114, 2-133	Works in connection with Airport Access Road, including replacement car parking provision and substation works, associated laydown areas, access, working space to support construction	Work No. 4t(04), Work No. 4w
2-144	Offsite highway works, including works at Eaton Green Road and Lalleford Road, associated laydown areas, access, working space to support construction	Work No. 6e(d)
3-04, 3-05, 3-06, 3-08, 3-11, 3-15, 3-17, 5-11	Sitewide works to enable development including earthworks, associated laydown areas, access, working space to support construction	Work No. 1a
3-04, 3-06, 5-11	Sitewide works to enable	Work No. 1b

<i>(1)</i> <i>Plot Reference Number shown on Land Plans and Crown Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	development including landfill remediation works, associated laydown areas, access, working space to support construction	
3-18	Landscape and mitigation works including enhancements to Wigmore Valley Park, associated laydown areas, access, working space to support construction	Work No. 5b(01)
3-19, 3-20, 3-21, 7-02	Landscape and mitigation works including the provision of structural landscaping, associated laydown areas, access, working space to support construction	Work No. 5b(02)
3-19, 3-20, 3-21	Landscape and mitigation works including works to Replacement Open Space and upgrade of footpath, associated laydown areas, access, working space to support construction	Work No. 5b(07)
3-27, 3-28, 3-29, 3-30, 3-36, 3-37, 3-38, 3-39,	Offsite highway works, including works at Wigmore Lane and Crawley Green Road, associated laydown areas, access, working space to support construction	Work No. 6e(e)
3-31, 3-33, 3-34, 3-35	Offsite highway works, including works at Crawley Green Road/Lalleford Road, associated laydown areas, access, working space to support construction	Work No. 6e(j)
8-01, 8-02, 8-03, 8-04, 8-05, 8-06, 8-07, 8-08, 8-09, 8-10, 8-11, 8-12, 8-13, 8-14, 8-15, 8-16, 8-17, 8-18, 8-19, 8-22, 8-23	Offsite highway works, including works at M1 J10, including widening to the A1081 westbound carriageway, associated laydown areas, access, working space to support construction	Work No. 6e(o)
8-01, 8-02, 8-03, 8-04, 8-05, 8-06, 8-07, 8-08, 8-09, 8-10, 8-11, 8-12, 8-13, 8-14, 8-15, 8-16, 8-17, 8-18, 8-19, 8-21, 8-22, 8-23	Offsite highway works, including works at M1 J10, including widening of the western circulatory carriageway, associated laydown areas, access, working space to support construction	Work No. 6e(p)
8-03, 8-05, 8-06, 8-07, 8-08, 8-09, 8-10, 8-11, 8-12, 8-13, 8-14, 8-15, 8-16, 8-17, 8-18, 8-19, 8-22, 8-23	Offsite highway works, including works at M1 J10, including widening to the northbound off-slip, associated	Work No. 6e(n)



<i>(1)</i> <i>Plot Reference Number shown on Land Plans and Crown Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	laydown areas, access, working space to support construction	
8-20	Offsite highway works, including works at A1081/London Road (South), associated laydown areas, access, working space to support construction	Work No. 6e(h)
8-24, 8-25, 8-26, 8-27	Offsite highway works, including works at A1081/London Road (North), associated laydown areas, access, working space to support construction	Work No. 6e(g)
9-01, 9-02, 9-03, 9-04, 9-05, 9-06, 9-07, 9-08, 9-09	Offsite highway works, including works at Windmill Road and Kimpton Road, associated laydown areas, access, working space to support construction	Work No. 6e(a)
9-10, 9-11, 9-13, 9-15, 9-17, 9-18, 9-19, 9-20, 9-21, 9-22, 9-23, 9-24, 9-25	Offsite highway works, including works at Windmill Road/Manor Road/St. Mary's Road/Crawley Green Road, associated laydown areas, access, working space to support construction	Work No. 6e(i)
10-01, 10-02, 10-03, 10-04, 10-05, 10-06	Offsite highway works, including works at A602 Park Way/Stevenage Road, associated laydown areas, access, working space to support construction	Work No. 6e(m)
10-07	Offsite highway works, including works at A505 Moorhead Hill/B655 Pirton Road/Upper Tilehouse Street, associated laydown areas, access, working space to support construction	Work No. 6e(l)
10-08, 10-09	Offsite highway works, including works at A602 Park Way/A505 Upper Tilehouse Street, associated laydown areas, access, working space to support construction	Work No. 6e(k)

PROTECTIVE PROVISIONS

PART 1

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

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

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that 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 undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the 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) (adoption of sewers and disposal of works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any inspection chambers, 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;

“utility undertaker” means—

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

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(a) 1989 c. 29.

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(c) 1991 c. 56.

- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991; and
  - (e) 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 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 public rights of way*

4.—(1) Where any public right of way is stopped up under article 14 (permanent stopping up of public rights of way), any utility undertaker whose apparatus is in the public right of way has the same powers and rights in respect of that apparatus in the public right of way as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary alteration, diversion or restriction of any street under the powers conferred by article 13 (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 street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

*Protective works to buildings*

5. The undertaker, in the case of the powers conferred by article 20 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

*Acquisition of land*

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

*Removal of apparatus*

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

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to

remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker 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 52 (arbitration).

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

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

(7) If the utility undertaker fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved, provided that the undertaker has first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such a response.

(8) Any deemed approval under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

#### *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 of the utility 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 or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator will—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or on the land for which the alternative apparatus is to be substituted.

(3) 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) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If 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 unless otherwise agreed with the utility undertaker, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

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

#### *Expenses and costs*

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under subparagraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 52 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this

Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the 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) unless a utility undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of 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 who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

#### *Cooperation*

**12.** Where in consequence of the proposed construction of any 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 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.** Where, under this Part, the utility undertaker is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed.

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

## PART 2

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

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

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

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

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“electronic communications code network” means—

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

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

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

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

**17.** 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.

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

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

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

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(a) 2003 c. 21.

(b) See section 106.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 52 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) In respect of the acquisition of rights under or over or use of the utility undertaker's property, the utility undertaker must co-operate with the undertaker with a view to avoiding undue delay

(7) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### PART 3

#### FOR THE PROTECTION OF LONDON LUTON AIRPORT OPERATIONS LIMITED

**19.**—(1) The provisions of this Part of this Schedule—

- (a) have effect unless otherwise agreed in writing between the undertaker and LLAOL;
- (b) cease to have effect where LLAOL is no longer the airport operator.

(2) For the period that LLAOL is the airport operator, the undertaker must not—

- (a) in relation to land within the airport, exercise any power under this Order except with the consent of LLAOL (including, for the avoidance of doubt, the service of notice to the relevant planning authority in accordance with article 44(1) (interaction with LLAOL planning permission) of the Order); and
- (b) exercise any power under this Order in a manner which would compromise the safe and efficient commercial operation of the airport by LLAOL except with the consent of LLAOL; or
- (c) commence the construction of Works Nos. 6b(01), 6b(02) and 6b(03), until a written notice of the works comprising Works Nos. 6b(01), 6b(02) and 6b(03) has been given to LLAOL at least 56 days prior to commencement.

(3) In this Part of this Schedule “LLAOL” means London Luton Airport Operations Limited (company number 03491213), whose registered office is at Percival House, 134 Percival Way, London Luton Airport, Luton, United Kingdom, LU2 9NU.



SCHEDULE 9

Article 50

DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Version</i>
Airport Access Road and Luton DART Long Section Plans – Regulations 5(2)(o)	TR020001/APP/4.11	1
Airport Boundary Plan – Regulation 5(2)(q)	TR020001/APP/4.12	1
Book of Reference – Regulation 5(2)(d)	TR020001/APP/3.02	1
Design Principles – Regulation 5(2)(q)	TR020001/APP/7.09	1
Environmental Statement –Assessment of Impacts – Regulation 5(2)(a)	TR020001/APP/5.01	1
Environmental Statement – Appendices – Regulation 5(2)(a)	TR020001/APP/5.02	1
Environmental Statement – Figures – Regulation 5(2)(a)	TR020001/APP/5.03	1
Framework Travel Plan – Regulation 5(2)(q)	TR020001/APP/7.13	1
Green Controlled Growth Framework – Regulation 5(2)(q)	TR020001/APP/7.08	1
Land Plans and Crown Land Plans – Regulations 5(2)(i) and (n)	TR020001/APP/4.03	1
Outline Transport Related Impacts Monitoring and Mitigation Approach – Regulation 5(2)(q)	TR020001/APP/7.02	1
Special Category Land Plans –Regulation 5(2)(i)(iv)	TR020001/APP/4.10	1
Strategic Landscape Masterplan – Regulation 5(2)(o)	TR020001/APP/5.10	1
Streets, Rights of Way and Access Plans – Regulation 5(2)(k)	TR020001/APP/4.08	1
Works Plans – Regulation 5(2)(j)	TR020001/APP/4.04	1

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## **EXPLANATORY NOTE**

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

This Order authorises London Luton Airport Limited to undertake works to redevelop Luton Airport in Luton, Bedfordshire and carry out all associated works.

The Order permits London Luton Airport Limited to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance and operation of the authorised development.

A copy of the documents referred to in Schedule 9 to this Order and certified in accordance with article 50 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Hart House Business Centre, Kimpton Road, Luton, LU2 0LA.