

PLANNING ACT 2008  
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)  
RULES 2010

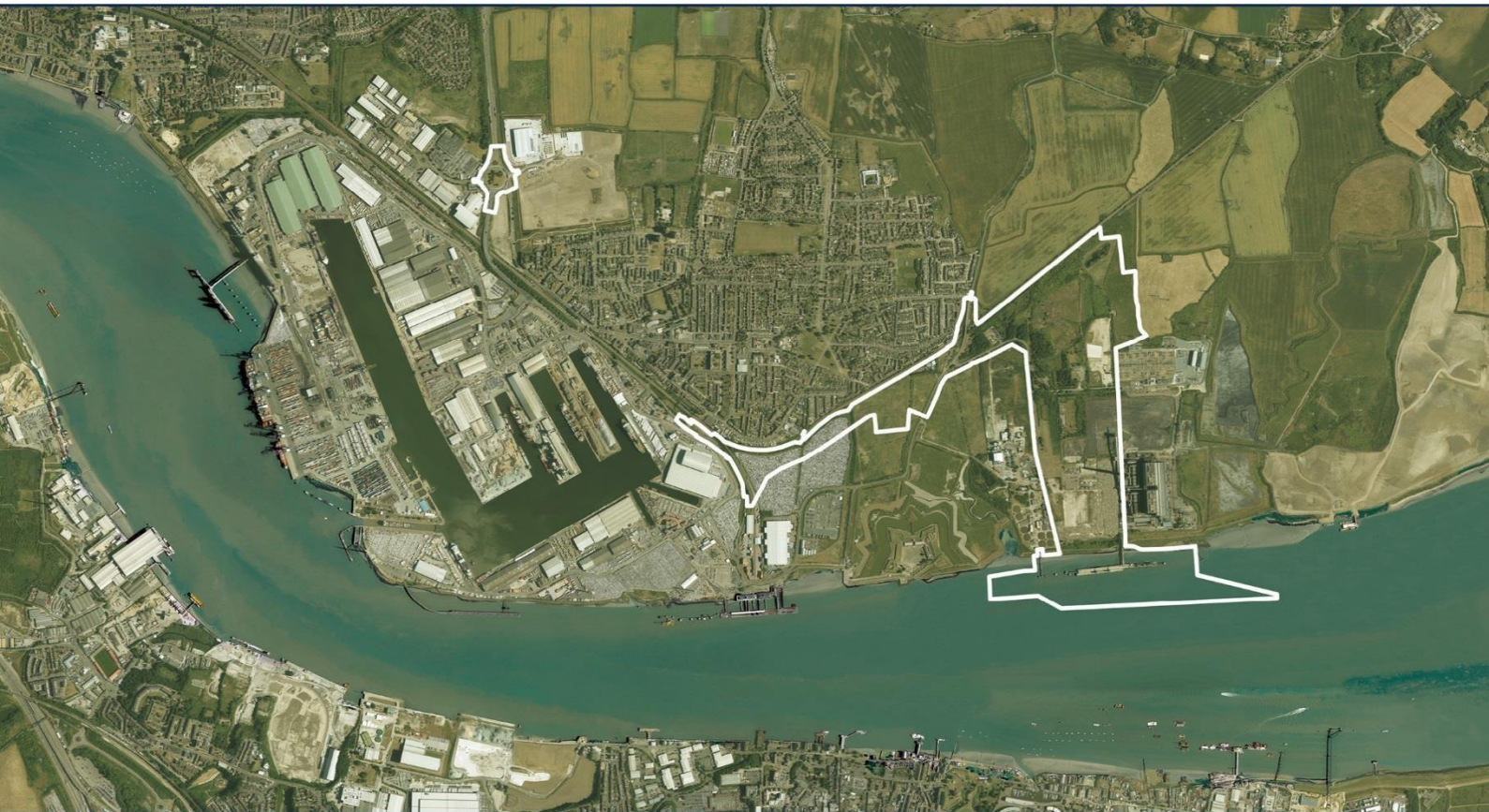
PROPOSED PORT TERMINAL AT  
FORMER TILBURY POWER STATION

**TILBURY2**

TR030003

REVISION 4 OF THE DRAFT DEVELOPMENT CONSENT ORDER  
-CLEAN

TILBURY2 DOCUMENT REF:  
PoTLL/T2/EX/199



**201[9] No.**

**INFRASTRUCTURE PLANNING**

**The Port of Tilbury (Expansion) Order 201[9]**

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

*Coming into force* - - - - - \*\*\*

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

The Panel, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the Panel, has decided to make an Order granting development consent for the development described in the application [with modifications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

[In relation to the compulsory acquisition of the Order land which is common land, the Secretary of State is satisfied, having considered the report and recommendation of the Panel and in accordance with section 131(3) of the 2008 Act, that section [131(4)] OR [131(4A)] OR [131(4B)] OR [131(5)] applies.]

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

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(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).  
 (b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.

# PART 1

## PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Port of Tilbury (Expansion) Order 201[9] and comes into force on [X] 201[9].

### Interpretation

2.—(1) In this Order, unless otherwise stated—

“the 1845 Act” means the Railways Clauses Consolidation Act 1845(a);

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

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

“the 1968 Act” means the Port of London Act 1968(d);

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

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

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

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

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- (a) 1845 c.20.
- (b) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1980 Act which are not relevant to this Order.
- (c) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (d) 1968 c.xxxii.
- (e) 1980 c.66. Section 1(1) was amended by section 21(2) of 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 1(3A) and 1(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 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) of 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.
- (f) 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. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are amendments to the 1981 Act which are not relevant to this Order.
- (g) 1984 c.27.
- (h) 1990 c.8. Section 206(1) was amended by section 192(8) to, 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),(c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

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

“the 1991 Transfer Scheme” means the Port of Tilbury Transfer Scheme 1991 as confirmed by the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992(b) made under section 22 of the Ports Act 1991(c);

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

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

“the 2009 Act” means the Marine and Coastal Access Act 2009(f);

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

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

“the authorised development” means the development described in Schedule 1 (authorised development) and any other development within the meaning of the 2008 Act authorised by this Order;

“authorised officer” means a Police Constable, the Company Harbour Master, a PLA Harbour Master, and a person authorised by the Company for the purpose of enforcing the byelaws;

“the book of reference” means the document of that description set out in Schedule 11 certified by the Secretary of State as the book of reference for the purposes of this Order;

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

“business day” means a day other than a Saturday or Sunday, a bank holiday in England, Good Friday or Christmas Day;

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

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

“the classification of roads plans” means the plans of that description set out in Schedule 11 certified by the Secretary of State as the classification of roads plans for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“the Company” means Port of Tilbury London Limited (company number 02659118) of Leslie Ford House, Tilbury Freeport, Tilbury, Essex, RM18 7EH;

“the Company Harbour Master” means every person having the powers of a harbour master due to their appointment as dock master by the Company under the 1968 Act;

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

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

“the deemed marine licence” means the deemed marine licence granted by article 53;

“electronic transmission” means a communication transmitted—

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

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(a) 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).

(b) S.I. 1992/284.

(c) 1991 c.52.

(d) 2004 c.18.

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

(f) 2009 c.23.

(b) by other means provided it is in an electronic form;

“the engineering sections and plans” means the documents of that description set out in Schedule 11 certified by the Secretary of State as the engineering sections and plans for the purposes of this Order;

“the environmental statement” means the documents of that description set out in Schedule 11 certified by the Secretary of State as the environmental statement for the purposes of this Order;

“the existing river jetty” means the jetty existing in the river Thames at the date of this Order coming into force, as shown shaded blue and labelled *Existing Jetty Superstructure* on sheet 3 of the works plans;

“the extended port limits” means the extended port limits shown on the extended port limits plan;

“the extended port limits plan” means the plan of that description set out in Schedule 11 certified by the Secretary of State as the extended port limits plan for the purposes of this Order;

“flood risk activity” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016(a);

“footpath” and “footway” have the same meaning as in the 1980 Act;

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

“the land, special category land and crown land plans” means the plans of that description set out in Schedule 11 certified by the Secretary of State as the land, special category land and crown land plans for the purposes of this Order;

“landing place” has the same meaning as in the 1968 Act;

“the limits of deviation” means the limits of deviation referred to in article 7 (limits of deviation);

“the limits of dredging plan” means the plan of that description set out in Schedule 11 certified by the Secretary of State as the limits of dredging plan for the purposes of this Order;

“maintain” and any of its derivatives include inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly;

“the MMO” means the Marine Management Organisation;

“National Grid” means National Grid Electricity Transmission plc (company number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“the Order land” means the land shown coloured pink and the land shown coloured yellow on the land, special category land and crown land plans 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(c) (interpretation);

“the PLA” means the Port of London Authority;

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(a) S.I. 2016/1154.

(b) 2006 c.46

(c) 1981 c.67.



“the PLA Harbour Master” means any harbour master of the PLA and any of their authorised deputies and assistants and any person authorised by the PLA to act in that capacity;

“the Port of Tilbury” means the harbour undertaking of the Company at the Port of Tilbury in Essex;

“the relevant planning authority” means the local planning authority for the land in question, being Thurrock Council, or any successor to it as planning authority;

“the rights of way and access plans” means the plans of that description set out in Schedule 11 certified by the Secretary of State as the rights of way and access plans for the purposes of this Order;

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

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

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

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

“the traffic regulation measures plan” means the plan of that description set out in Schedule 11 certified by the Secretary of State as the traffic regulation measures plan for the purposes of this Order;

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

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the UK marine licensing area” has the meaning given to it in Schedule 9;

“vessel” means every description of vessel or water-borne structure, however propelled, moved or constructed, and includes displacement and non-displacement craft, personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over or placement in water and which is at the time in, on or over water;

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

“the works plans” means the plans of that description set out in Schedule 11 certified by the Secretary of State as the works plans for the purposes of this Order.

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

(3) All measurements of distances, directions and lengths referred to in this Order are to be construed as if the words “or thereabouts” were inserted after each such distance, direction and length and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are to be construed as if the words “or thereabouts” were inserted after each such area.

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

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

### **Disapplication of legislation, etc.**

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

- (a) sections 66 to 75 (control of works and dredging) of the 1968 Act;
- (b) Thames Barrier and Flood Prevention Act 1972(a);
- (c) section 24 (restrictions on abstraction) of the Water Resources Act 1991(b);
- (d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991;
- (e) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(c);
- (f) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991;
- (g) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(d) in respect of a flood risk activity only; and
- (h) the provisions of the Neighbourhood Planning Act 2017(e) insofar as they relate to temporary possession of land under articles 32 (temporary use of land for constructing the authorised development) and 33 (temporary use of land for maintaining the authorised development) of this Order.

(2) Any works licence granted by the PLA under section 66 (licensing of works) of the 1968 Act in respect of an existing structure and still having effect immediately before this Order comes into force is extinguished and no longer has effect from the date this Order comes into force.

(3) If such a works licence applies to an existing structure as well as to other works or structures paragraph (2) has effect to extinguish the works licence only in relation to, and so far as it applies to, the existing structure.

(4) Any existing structure may remain and subsist in the river Thames under the authority of, and subject to the terms of, this Order and the requirement to obtain a works licence under section 66 of the 1968 Act does not apply to the structure.

(5) If any part of the ‘B station’ intake structures comes into the ownership of the Company at any time after this Order comes into force—

- (a) on the day after the Company serves a notice on the PLA to that effect, any works licence granted by the PLA under section 66 of the 1968 Act in respect of that part of that ‘B station’ intake structure and still having effect at that time is extinguished and no longer has effect; and
- (b) thereafter that part of the ‘B station’ intake structure in question may remain and subsist in the river Thames under the authority of, and subject to the terms of, this Order and the requirement to obtain a works licence under section 66 of the 1968 Act does not apply to that part of that ‘B station’ intake structure for so long as—
  - (i) it remains in the ownership of the Company; and
  - (ii) the Company continues to operate and maintain the authorised development as a working port facility; and
  - (iii) it is not used as part of the remaining ‘B station’ intake structures.

(6) If after paragraph (5) has taken effect—

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(a) 1972 c.xl.  
(b) 1991 c.57.  
(c) 1991 c.59.  
(d) S.I. 2016/1154.  
(e) 2017 c.20.

- (a) any of the ‘B station’ intake structures—
  - (i) is used as part of the remaining ‘B station’ intake structures; or
  - (ii) ceases to belong to the Company; or
- (b) the Company ceases to operate and maintain the authorised development as a working port facility,

the Company must forthwith serve on the PLA notice of that event with full particulars of the change and details of any new owner or user of the ‘B station’ intake structure in question, and on the day after service of the notice paragraph 3(5)(b) ceases to have effect in relation to the part of the ‘B station’ intake structures to which the notice relates.

(7) The PLA must not grant or vary—

- (a) a river works licence under section 66 of the 1968 Act; or
- (b) a dredging licence under section 73 of that Act,

licensing any works or dredging within the extended port limits without the consent of the Company (acting in exercise of its statutory functions).

(8) Despite the provisions of section 66(1)(b) of the 1968 Act, the grant or variation by the PLA of a river works licence in relation to any part of the river Thames situated within the extended port limits belonging to the PLA and in respect of which the Company has a proprietary interest is not, without the consent of the Company, to be deemed to confer on the holder of the licence such rights in, under or over the land as are necessary to enable the holder of the licence to enjoy the benefit of the licence.

(9) The Company must not unreasonably withhold or delay its consent under paragraph (7) or paragraph (8) but may require reasonable modifications to the proposed works or dredging or impose reasonable terms and conditions on them, and in considering whether to grant consent, require modifications or impose terms and conditions the Company (acting in exercise of its statutory functions) must have regard only to the matters mentioned in paragraph (10).

(10) The matters referred to in paragraph (9) are the prevention of significant interference with—

- (a) the works comprising the authorised development within the extended port limits;
- (b) access to and egress from those works;
- (c) the use of those works or of the land within the extended port limits, by the Company for the purposes of performing its statutory functions or by users of those works in exercise of their right under section 6(1) of the 1968 Act; or
- (d) the performance of any of the Company’s or the Company Harbour Master’s functions connected with environmental protection or health and safety.

(11) Despite the provisions of section 193(2) (general and local lighthouse authorities) of the Merchant Shipping Act 1995(a), nothing in this Order constitutes the Company as a local lighthouse authority.

(12) Despite the provisions of section 2 (port health districts and authorities) of the Public Health (Control of Disease) Act 1984(b), the Company may not be designated as a port health authority in respect of the land and premises within the extended port limits.

(13) In this article—

“the ‘B station’ intake structures” means—

- (a) the two ‘B station’ cold water intake caissons shown on sheet 3 of the works plans;
- (b) the two ‘B station’ intake tunnels shown on sheet 3 of the works plans between those cold water intake caissons and mean high water level; and
- (c) any related ancillary structures, plant or pipework; and

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(a) 1995 c.21  
 (b) 1984 c.22

“existing structure” means any of the following existing structures and parts of existing structures within the river Thames shown on sheet 3 of the works plans:

- (d) the ‘A station’ cold water intake structures and the cold water intake tunnel between those structures and mean high water level;
- (e) the ‘A station’ cold water outfall structures and the cold water intake tunnel between those structures and mean high water level;
- (f) the existing Anglian Water jetty; and
- (g) the existing river jetty insofar as it does not comprise any of the ‘B station’ intake structures.

#### **Application of enactments relating to the Port of Tilbury**

4.—(1) Subject to paragraphs (2), (3) and (6), from the date of the coming into force of this Order the functions under the 1968 Act which were or may have been transferred to the Company by the 1991 Transfer Scheme in relation to the Port of Tilbury apply and have effect in relation to the extended port limits.

(2) Paragraph (1)—

- (a) does not apply to any function conferred by—
  - (i) section 5(1) (general duties and powers) of the 1968 Act;
  - (ii) section 64 (use of Thames Water) of that Act in respect of the discharge of water to the river Thames; or
  - (iii) section 85 (agreements about calling at landing places) of that Act;
- (b) applies the functions exercisable under section 5AA (company’s functions subordinate to Port Authority’s functions) of the 1968 Act subject to the amendments in paragraph (6); and
- (c) applies the functions to which it relates subject to Part 3 of Schedule 10 (protective provisions for the Port of London Authority).

(3) In the application of the functions under the 1968 Act which apply to the extended port limits by virtue of paragraph (1), for the purposes of paragraph 1 of Schedule 4 to the 1991 Transfer Scheme—

- (a) any dock or landing place situated within the extended port limits is to be treated as part of the Company’s docks;
- (b) the works and land within the extended port limits are to be treated as part of the Company’s port premises; and
- (c) the undertaking carried on by the Company within the extended port limits is to be treated as part of the Company’s Port of Tilbury undertaking.

(4) Any part of the extended port limits situated within the river Thames is to be treated as having been designated by the PLA for the purposes of section 112 (special directions to vessels in the Thames) of the 1968 Act as an area in which the power to give special directions under that provision applies.

(5) The General Trading Regulations made by the Company in 2005 under section 22 (charges regulations) of the 1968 Act and which apply to the Port of Tilbury, together with any changes to them, apply to the extended port limits from the date the authorised development opens for operational use unless otherwise notified by the Company.

(6) Section 5AA (Company’s functions subordinate to Port Authority’s functions) of the 1968 Act as applied to the extended port limits by paragraph (1) is treated as being amended in relation to the extended port limits—

- (a) by the substitution of the following for paragraph (a) of that section—

“(a) any enactment (including any provision of this Act or of any subordinate legislation) whether passed or made before or after the date of this Act and relating to or made by the Port Authority; and”;

- (b) by the substitution in paragraph (b) of that section of “enactment” for “local statutory provision”; and
- (c) by the insertion at the end of that section of—

“and is to be exercised in accordance with subsections (2) and (4) of this section.

(2) Subject to subsection (3) of this section, the Port Authority may after consulting the company (except in cases of emergency) notify the company in writing of—

- (a) specified functions of the company, or
- (b) specified circumstances, manner or extent of the carrying out of any function of the company,

which the Port Authority considers may have a significant effect on the need for it to exercise any of its statutory functions in the Thames outside the extended port limits, or significantly affect how the Port Authority exercises those functions.

(3) The Port Authority may not give a notification under subsection (2) of this section in relation to—

- (a) construction of the works specified in Schedule 1 to The Port of Tilbury (Expansion) Order 2019; or
- (b) any specified function or specified work approved by the Port Authority under Part 3 of Schedule 10 to that Order which is carried out by the Company in the exercise of the powers of article 41 for the purposes of the maintenance of the authorised development, or operation of the Company's harbour undertaking.

(4) The company must not—

- (a) exercise any function specified in a notice given under subsection (2)(a) of this section, or
- (b) exercise any function in any circumstances, manner or extent specified in a notice given under subsection (2)(b) of this section,

without the consent of the Port Authority, which must not be unreasonably withheld or delayed.”.

### **Incorporation of the 1845 Act**

5.—(1) The following provisions of the 1845 Act are incorporated in this Order—

- section 24 (penalty for obstructing construction of railway);
- section 47 (provision in cases where roads are crossed on a level);
- section 58 (company to repair roads used by them), subject to paragraph (3);
- section 61 (company to make sufficient approaches and fences to highways crossing on the level);
- section 68 (gates, bridges, etc.);
- section 73 (accommodation works not to be required after five years);
- section 75 (penalty on persons omitting to fasten gates);
- section 86 (company to employ locomotive power, carriages, etc.);
- section 105 (penalty for bringing dangerous goods on railway); and
- section 145 (penalties to be summarily recovered before two justices).

(2) In those provisions, as incorporated in this Order—

“the company” means the Company;

“the goods” includes anything conveyed on the railways authorised to be constructed by this Order;

“the railway” means any railway authorised to be constructed by this Order and, except where the context otherwise requires, any other works associated with the railway; and

“the Special Act” means this Order.

(3) In section 58 of the 1845 Act, as incorporated in this Order, for the words from “the determination of two justices” to the end there is substituted the word “arbitration”.

## PART 2 WORKS PROVISIONS

### *Principal powers*

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

6. Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the Company is granted development consent for the authorised development.

#### **Limits of deviation**

7.—(1) The authorised development listed in Schedule 1 (authorised development) must be constructed within the Order limits but in doing so the Company may deviate—

- (a) in the case of—
    - (i) Work No. 9A, laterally so that the centre line of the work may be situated—
      - (aa) up to 1 metre to the south of the centre line shown on the works plans; and
      - (bb) to the north of the centre line of that work shown on the works plans, up to the centre line of Work No. 12; and
    - (ii) Work No. 12, laterally so that the centre line of the work may be situated—
      - (aa) up to 1 metre to the north of the centre line shown on the works plans; and
      - (bb) to the south of the centre line of that work shown on the works plans, up to the centre line of Work No. 9A;
  - (b) in the case of any other linear work comprised in any part of the authorised development listed in Schedule 1, laterally so that the centre line of the work may be situated up to 1 metre either side of the centre line of that work shown on the works plans;
  - (c) in the case of a non-linear work comprised in any part of the authorised development listed in Schedule 1, laterally from the lines or situations of that work shown on the works plans to the extent of the limits of deviation shown on the works plans for that work;
  - (d) in the case of a linear work comprised in any part of the authorised development listed in Schedule 1, vertically from the levels of the authorised development shown on the engineering sections and plans—
    - (i) to any extent upwards not exceeding 0.5 metres; and
    - (ii) to any extent downwards; and
  - (e) in the case of any dredging within the Order limits carried out during the construction of the authorised development, to any extent downwards to the limits shown on the limits of dredging plan.
- (2) In this article, reference to—
- (a) a “linear work” is a reference to any work shown on the works plans by way of a centre line; and
  - (b) a “non-linear work” is a reference to any other work shown on the works plans.

**Street works**

**8.**—(1) The Company may, for the purposes of the authorised development, enter on so much of any street and may—

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

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

(3) The Company must not construct works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

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

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

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

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial street works);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing, etc., of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the construction of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the Company 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<sup>(a)</sup> referred to in paragraph (4) are—
- section 54<sup>(b)</sup> (advance notice of certain works), subject to paragraph (6);
  - section 55<sup>(c)</sup> (notice of starting date of works), subject to paragraph (6);
  - section 57<sup>(d)</sup> (notice of emergency works);
  - section 59<sup>(e)</sup> (general duty of street authority to co-ordinate works);
  - section 60 (general duty of undertakers to co-operate);
  - section 68 (facilities to be afforded to street authority);
  - section 69 (works likely to affect other apparatus in the street);
  - section 75 (inspection fees);
  - section 76 (liability for cost of temporary traffic regulation); and
  - section 77 (liability for cost of use of alternative route),

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

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

(7) Nothing in article 10 (construction and maintenance of new, altered or diverted streets)—

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

(8) A provision contained in Part 3 of the 1991 Act does not apply to the Company or to the street authority in any case where Part 7 (for the protection of Thurrock Council (as highway authority)) or Part 9 (for the protection of Highways England) of Schedule 10 contains either an equivalent provision or a provision which conflicts with the provision in Part 3.

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

**10.**—(1) Subject to paragraph (4), any street constructed under this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, must be maintained by and at the expense of the Company for a period of 12 months from its completion and thereafter by the street authority.

(2) Subject to paragraph (4), where a street is altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, that part of the street must be maintained by and at the expense of the Company for a period of 12 months from its completion and thereafter by the street authority.

(3) Where land not previously part of the public highway comes to form part of the public highway by virtue of the construction, diversion or alteration of the streets set out in Schedule 4, unless otherwise agreed in writing with the street authority, the land is deemed to have been

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

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

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

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

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



dedicated as public highways on the expiry of a period of 12 months from completion of the street that has been constructed, altered or diverted.

(4) In the case of any bridge or any other structure constructed under this Order to carry a street, both the street surface and structure of the bridge or other structure must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, must be maintained by and at the expense of the Company for a period of 24 months from its completion and thereafter by the street authority.

(5) In any action against the Company in respect of loss or damage resulting from any failure by the Company 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 Company 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.

(6) 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 Company knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the Company 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 Company 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 Company 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.

(7) The date of completion of any works referred to in paragraphs (1), (2) and (3) is to be agreed between the Company and the street authority, acting reasonably.

### **Classification of roads**

**11.**—(1) The roads described in paragraph 1 of Schedule 3 are to be classified as part of the existing A1089 St Andrew's Road from such day as the Company may determine as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(2) The roads described in paragraph 2 of Schedule 3 are to be classified as the classified un-numbered Ferry Road from such day as the Company may determine as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(3) The roads described in paragraph 3 of Schedule 3 cease to be a classified road from such day as the Company may determine as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(4) The roads described in paragraph 4 of Schedule 3 are to be classified as the classified un-numbered link road from such day as the Company may determine as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(5) The Company must publish a notice in the *Thurrock Gazette* or any other local newspaper circulating in the area on each occasion that it makes a determination under this article.

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

12.—(1) Subject to the provisions of this article, the Company may, in connection with the construction of the authorised development, stop up each of the highways and private means of access specified in column (1) of Parts 1, 2 and 3 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) to the extent specified and described in column (2) of those Parts of that Schedule.

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

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

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

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

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

(5) Not less than 28 days prior to the whole or part stopping up of a highway under this article, the Company must erect a notice upon the highway in question at, or as close as reasonably practicable to, each point of stopping up containing the date and extent of the stopping up and, in the case of a highway mentioned in Part 1 of Schedule 4, giving details of the substitute or new highway to be provided.

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

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

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

(8) This article is subject to article 35 (apparatus and rights of statutory utilities in stopped up streets).

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

13.—(1) The Company may, during and for the purposes of constructing the authorised development, temporarily stop up, alter or divert 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 Company may use any street temporarily stopped up under the powers conferred by this article and lying within the Order limits as a temporary working site.

(3) The Company 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 Company must not temporarily stop up, alter or divert any street under this article without the consent of the street authority, which may attach reasonable conditions to its consent.

(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.

### **Access to works**

**14.** The Company may, with the consent of the street authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the Company reasonably requires for the purposes of constructing the authorised development.

### **Agreements with street authorities**

**15.—**(1) A street authority and the Company may enter into agreements in writing with respect to—

- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;
- (b) the strengthening or improvement of any street under the powers conferred by this Order;
- (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
- (e) the construction in the street of any of the authorised development; or
- (f) such other works as the parties may agree.

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

- (a) provide 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 Company and the street authority specifying a reasonable time for completion of the works;
- (c) provide for the dedication of any new street as public highway further to section 38 (power of highway authorities to adopt by agreement) of the 1980 Act; and
- (d) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Use of private roads for construction**

**16.—**(1) The Company may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised development.

(2) The Company must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

## Level crossings

17. Once the powers of article 12 have been exercised in relation to Footpath 144 shown on sheet 2 of the rights of way and access plans, the level crossing which forms part of that footpath is closed and discontinued.

### *Supplementary powers*

## Discharge of water

18.—(1) Subject to paragraphs (3) and (4), the Company may use any watercourse, public sewer or drain for the drainage of water in connection with the construction 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 Company 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 Company must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs, whose consent may be given subject to such terms and conditions as that person may reasonably impose.

(4) The Company 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; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(7) In this article—

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

## Protective works to buildings

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

(2) Protective works may be carried out—

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

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(a) 1991 c.56.

(b) S.I. 2016/1154.

(c) 1991 c.57.

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

(4) For the purpose of carrying out protective works to a building under this article the Company 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),

and if it is reasonably required in either case, the Company may enter and take possession or exclusive possession (in whole or in part) of the building and land for the purpose of carrying out protective works.

(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 and take possession of a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter and take possession of land,

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of 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 60 (arbitration).

(7) The Company 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 constructed 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 construction or use of that part of the authorised development,

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

(9) Without affecting article 40 (no double recovery), nothing in this article relieves the Company 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 the 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(b) (application of compulsory acquisition provisions) of the 2008 Act.

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(a) As amended by sections 62(3) and 139(4)-(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).

- (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 construction, 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 of such operation being disrupted.

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

**20.**—(1) The Company may for the purposes of this Order enter on—

- (a) any land shown within the Order limits; and
- (b) where reasonably necessary, any land which is adjacent to but outside the Order limits, or which may be affected by the authorised development, and—
  - (i) survey or investigate the land;
  - (ii) without limitation to the scope of sub-paragraph (i), make trial holes in such positions on the land as the Company thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
  - (iii) without limitation to the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes;
  - (iv) 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; and
  - (v) enter on the land for the purpose of exercising any of the powers conferred by sub-paragraphs (i) to (iv).

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

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

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

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

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

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

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto 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**

**21.**—(1) The Company may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if the Company 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 Company 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 (determination of questions of disputed compensation) of the 1961 Act.

(4) The Company may, for the purposes of constructing 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).

### **Works in the river Thames: conditions**

**22.**—(1) Subject to the provisions of this article, during the construction of the authorised development the public right of navigation over any part of the river Thames that is situated within the Order limits may be temporarily suspended with the written approval of the PLA.

(2) Not later than 28 business days prior to the proposed commencement date of any suspension of the public right of navigation, the Company must apply to the PLA for approval under paragraph (1) for such suspension (except in the case of an emergency when the Company must give such notice as is reasonably practicable).

(3) An application for approval under paragraph (2) must provide details of the proposed suspension, including particulars of—

- (a) the commencement date;
- (b) the duration; and
- (c) the affected area,

and must include an explanation of the need for the proposed suspension.

(4) The PLA may in relation to any application for approval made under paragraph (2) impose reasonable conditions for any purpose described in paragraph (5).

(5) Conditions imposed under paragraph (4) may include conditions as to—

- (a) the limits of any area subject to a temporary suspension of the public right of navigation;
- (b) the duration of any temporary suspension;
- (c) the means of marking or otherwise providing warning in the river Thames of any area affected by a temporary suspension of the public right of navigation; and
- (d) the use by the Company of the area subject to any temporary suspension so as not to interfere with any other part of the river Thames or affect its use.

(6) Following an approval of any suspension given by the PLA under this article or determined in accordance with article 60 (arbitration), the PLA must issue a notice to mariners within 12 business days of the approval, giving the commencement date and other particulars of the suspension to which the approval relates, and that suspension will take effect on the date specified and as otherwise described in the notice.

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(a) S.I. 1997/1160.

(7) Subject to paragraph (8), an application for approval under this article is deemed to have been refused if it is neither given nor refused within 28 business days of the PLA receiving the application under paragraph (2).

(8) An approval of the PLA under this article is not deemed to have been unreasonably withheld, if approval within the time limited by paragraph (7) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

## PART 3

### POWERS OF ACQUISITION AND POSSESSION OF LAND

#### *Powers of acquisition*

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

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

(2) This article is subject to article 25 (compulsory acquisition of rights), article 26 (acquisition of subsoil or airspace only) and article 32 (temporary use of land for constructing the authorised development).

#### **Time limit for exercise of powers to acquire land compulsorily or to possess land temporarily**

**24.**—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the Compulsory Purchase (Vesting Declarations) Act 1981),

in relation to any part of the Order land.

(2) The authority conferred by article 32 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the Company from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

#### **Compulsory acquisition of rights**

**25.**—(1) Subject to paragraphs (2) to (3), the Company may acquire such rights over, or impose such restrictive covenants affecting, the Order land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence, instead of acquiring the whole of the land.

(2) In the case of—

- (a) the land shown numbered 02/03 and 04/01 on the land, special category land and crown land plans, the Company's powers of compulsory acquisition under article 23 are limited to the acquisition of such wayleaves, easements or other rights over the land, the imposition of restrictive covenants affecting the land or the creation of new rights over the land as the Company may require for or in connection with the authorised development; and
- (b) the land shown numbered 06/02 on the land, special category land and crown land plans, the Company's powers of compulsory acquisition under article 23 are limited to the acquisition of such wayleaves, easements or other rights over the land held otherwise than



by or on behalf of the Crown as the Company may require for or in connection with the authorised development.

(3) Subject to section 8 (other provisions as to divided land) of, and Schedule 2A(a) (counter notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 10 of Schedule 5 (modification of compensation and compulsory purchase enactments for the creation of new rights)), where the Company acquires a right over land or the benefit of a restrictive covenant, the Company is not required to acquire a greater interest in that land.

(4) Schedule 5 (modification of compensation and compulsory purchase enactments for the creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application 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.

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

**26.**—(1) The Company may acquire compulsorily so much of, or such rights over, the subsoil of and the airspace over the Order 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 Company acquires any part of, or rights in, the subsoil of or the airspace over any Order land, the Company is not required to acquire an interest in any other part of the land.

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

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

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

### **Private rights over land**

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

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

whichever is the earlier.

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

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant being imposed in favour of the Company, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the Company under section 11(1) of the 1965 Act (powers of entry); or

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(a) As inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016 (c. 22).

- (c) on the commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) 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 applies, or where article 34 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the Company before—

- (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
- (ii) the Company's appropriation of it;
- (iii) the Company's entry onto it; or
- (iv) the Company'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 Company and the person in or to whom the right in question is vested or belongs.

(7) If any agreement as is referred to in paragraph (6)(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.

(8) 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 including restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Power to override easements and other rights**

**28.—**(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the Company or by any person deriving title from the Company or by any contractors, servants or agents of the Company) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

(a) the erection, construction, operation or maintenance of any part of the authorised development;

(b) the exercise of any power authorised by this Order; or

(c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and including restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the Company by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the Company.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

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

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the Company acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (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 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

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

**30.—**(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges

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

relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 24 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) of the Port of Tilbury (Expansion) Order 201[9].

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

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

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 24 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily) of the Port of Tilbury (Expansion) Order 201[9]”.

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

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

“(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Port of Tilbury (Expansion) Order 201[9], 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 19 (protective works to buildings), 32 (temporary use of land for constructing the authorised development) or 33 (temporary use of land for maintaining the authorised development) of the Port of Tilbury (Expansion) Order 201[9].”

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

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

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

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

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

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

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

(6) In section 5B(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118(d) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 24 of the Port of Tilbury (Expansion) Order 201[9]”.

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

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

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

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

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

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

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

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

“(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Port of Tilbury (Expansion) Order 201[9], which excludes the acquisition of subsoil or airspace only from this Schedule.”

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

### *Temporary possession of land*

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

**32.—**(1) The Company may, in connection with the constructing of the authorised development but subject to article 24 (time limit for exercise of powers to acquire land compulsorily or to possess land temporarily)—

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (1) of Schedule 6 (land of which only 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 of the 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(c) (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from the land referred to in sub-paragraph (a);
- (c) construct temporary works (including the provision of means of access) and buildings on the land referred to in sub-paragraph (a); and
- (d) construct any works on the land referred to in sub-paragraph (a) as are mentioned in Schedule 1 (authorised development).

(2) Not less than 28 days before entering on and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the period for which temporary possession will be taken and the works, facilities or other purpose for which the Company intends to take possession of the land.

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

- (a) in the case of any 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 6; 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 works, use of facilities or other purpose for which temporary possession of the land was taken unless the Company has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

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

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

(c) As amended by section 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c.22).

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

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

(5) The Company 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 (determination of questions of disputed compensation) of the 1961 Act.

(7) Subject to article 40 (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 execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

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

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

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

**33.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, the Company may—

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

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

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

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the period for which temporary possession will be taken and the purpose for which the Company intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be taken.

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

(4) The Company may only remain in temporary 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 temporary possession of the land was taken.

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Subject to article 40 (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 execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

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

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

### *Supplementary*

#### **Statutory undertakers**

**34.**—(1) Subject to the provisions of article 25(2) (compulsory acquisition of rights), Schedule 10 (protective provisions) and paragraph (2), the Company may—

- (a) exercise the powers conferred by articles 23 (compulsory acquisition of land) and 25 (compulsory acquisition of rights) in relation to so much of the Order land as belongs to statutory undertakers; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

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

- (a) Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) article 35 (apparatus and rights of statutory utilities in stopped up streets).

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

**35.**—(1) Where a street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 12 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 Company 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 Company must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the construction 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 construction of the relocation works.

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

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

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

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

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 (street works in England and Wales) 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 Company and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

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

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

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(a) 2003 c.21.



### **Recovery of costs of new connection**

**36.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Company compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 34, any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 35 (apparatus and rights of statutory utilities in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

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

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

### **Special category land: West Tilbury common land**

**37.**—(1) The Company must not exercise a relevant Order power in respect of the special category land until the Company has acquired the replacement land in the Company’s name, or in the name of the persons who owned the special category land on the date this Order came into force.

(2) At the beginning of the day on which a relevant Order power is first exercised by the Company in respect of the special category land—

- (a) the replacement land vests in the same persons who owned the special category land on the date this Order came into force (if the replacement land is not already owned by those persons) and becomes subject to the same rights, trusts and incidents as attach to the special category land; and
- (b) the special category land is discharged from all rights, trusts and incidents to which it was previously subject.

(3) As soon as reasonably practicable after paragraph (2) takes effect, the Company must apply under section 14 (statutory dispositions) of the Commons Act 2006<sup>(a)</sup> and paragraph 8 of Schedule 4 (applications pursuant to section 14: statutory dispositions) to the Commons Registration (England) Regulations 2014<sup>(b)</sup> to amend the relevant register of common land accordingly.

(4) In this article—

“relevant Order power” means—

- (a) a power contained in Part 2 (works provisions) (but not including article 20 (authority to survey and investigate land));

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(a) 2006 c.26.  
(b) S.I. 2014/3038

- (b) the service of a notice to treat under the 1965 Act or a notice under section 134 of the 2008 Act pursuant to article 23 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights); or
- (c) the entry onto and temporary possession of land under article 32 (temporary use of land for constructing the authorised development);

“the replacement land” means the land numbered 03/04a in the book of reference and shown on the land, special category land and crown land plans;

“rights, trusts and incidents” includes all such provisions contained in the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893(a) or having effect under that Act; and

“the special category land” means the land identified as forming part of registered common land and numbered 03/08 and 03/11 in the book of reference and shown on the land, special category land and crown land plans.

### *Compensation*

#### **Disregard of certain interests and improvements**

**38.**—(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 executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the construction of the works or the making of the improvement or alteration 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**

**39.**—(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 25 (compulsory acquisition of rights), 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.

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(a) 1893 (56 and 57) Victoria I, c, cii

### **No double recovery**

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

## **PART 4**

### **OPERATIONAL PROVISIONS**

#### **Maintenance of the authorised development and operation of the Company's harbour undertaking**

41.—(1) The Company may—

- (a) maintain the authorised development; and
- (b) operate it as part of its harbour undertaking within the extended port limits.

(2) For the purposes of operating its harbour undertaking within the extended port limits, the Company may—

- (a) within the extended port limits (other than those parts of the river Thames situated within the extended port limits), construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances;
- (b) without limitation on the scope of sub-paragraph (a), within the extended port limits construct, carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the maintenance, operation or use of the Company's harbour undertaking, including—
  - (i) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
  - (ii) landscaping and other works to mitigate any adverse effect of the maintenance, operation or use of the Company's harbour undertaking or to benefit or protect any person or premises affected by the maintenance, operation or use of the Company's harbour undertaking;
- (c) within the parts of the river Thames situated within the extended port limits construct and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the maintenance, operation or use of the Company's harbour undertaking, including works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons); and
- (d) construct works and carry out development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the maintenance, operation or use of the Company's harbour undertaking.

(3) This article does not authorise any works which are likely to give rise to any significant adverse effects that have not been assessed in the environmental statement.

#### **Power to appropriate**

42.—(1) Regardless of anything in section 6 (public access to port premises) of the 1968 Act or any other enactment, the Company may from time to time set apart and appropriate any part of the authorised development comprised in the extended port limits for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods,

subject to the payment of such charges and to such terms, conditions and regulations as the Company may think fit.

(2) No person or vessel may make use of any part of the authorised development comprised in the extended port limits so set apart or appropriated without the consent of the Company, and the Company Harbour Master may order any person or vessel making use of the authorised development comprised in the extended port limits without such consent to leave or be removed.

### **Powers to dredge**

**43.**—(1) The Company may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore within any part of the Order limits situated within the river Thames as may be required for the purpose of maintaining and operating the authorised development, but only to the depth shown on the limits of dredging plan.

(2) All materials dredged up or removed by the Company in exercise of the powers of paragraph (1) of this article or under Schedule 1 (authorised development) to this Order (other than wreck within the meaning of Part IX (salvage and wreck) of the Merchant Shipping Act 1995(a)) are to be the property of the Company and may be used, sold, deposited or otherwise disposed of as the Company thinks fit.

(3) No materials dredged under the powers of this Order may be disposed of in the UK marine licensing area except in accordance with an approval from—

- (a) the MMO under the deemed marine licence or under any other marine licence granted by the MMO; and
- (b) the PLA under Part 3 (for the protection of the Port of London Authority) of Schedule 10, where such disposal is on the bed of the river Thames.

(4) The exercise of the powers of this article is subject to the requirements of Schedule 10 (protective provisions) as to the PLA's approval of dredging proposals and the payment of compensation for dredged material.

(5) In respect of any activities falling within paragraph (1), this Order is deemed to be 'legislation' falling within section 75(3) (exemptions for certain dredging etc. activities) of the 2009 Act.

### **Power to operate and use railways**

**44.**—(1) The Company, or any person permitted by the Company, may operate and use the railways comprised in the authorised development together with any ancillary works as a system, or part of a system, for the carriage of goods.

(2) The Company may enter into agreements with Network Rail and the Office of Rail and Road in connection with the construction, operation and use of the railways comprised in the authorised development.

### **Byelaws relating to the extended port limits**

**45.**—(1) The byelaws contained in Schedule 7 (port premises byelaws – the Port of Tilbury (Expansion) Byelaws 201[9]) have effect in relation to the extended port limits from such date as the Company may determine and for the purposes of section 168 (confirmation of byelaws) of the 1968 Act are to be treated as byelaws made by the Company under section 161 (byelaws for port premises) of the 1968 Act and subsequently confirmed on the date this Order comes into force.

(2) The byelaws contained in Schedule 7 continue to have effect until such time as they are amended or revoked by further byelaws made by the Company under section 161 (byelaws for port premises) of the 1968 Act.

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(a) 1995 c.21

(3) The Company must publish a notice in *The London Gazette* of the date determined under paragraph (1).

(4) Byelaws made under section 161 (byelaws for port premises) of the 1968 Act are enforceable by the Company and any authorised officer.

(5) The Company must not make any byelaw under section 161 (byelaws for port premises) of the 1968 Act so as to conflict with any byelaw made by the PLA, or with any general direction to vessels given by the PLA or the PLA Harbour Master acting under any enactment.

(6) In the case of conflict between—

(a) a byelaw made by the Company; and

(b) a byelaw made, or direction given, by the PLA or the PLA Harbour Master,

the byelaw or direction of the PLA or of the PLA Harbour Master will prevail.

### **Fixed penalty notices**

**46.**—(1) This article applies where it appears to an authorised officer that a person has committed an offence under byelaws made under section 161 (byelaws for port premises) of the 1968 Act.

(2) The authorised officer may serve on that person a fixed penalty notice in respect of the offence.

(3) Where a person is given a fixed penalty notice under this article in respect of an offence —

(a) no proceedings may be instituted for that offence before the expiration of 14 days after the date of the notice; and

(b) that person may not be convicted of the offence if the fixed penalty is paid before the expiration of 14 days after the date of the notice.

(4) A fixed penalty notice must state—

(a) the amount of the fixed penalty;

(b) particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence;

(c) the time by which and the manner (including the number to be used for payments by credit or debit card) in which the fixed penalty must be paid; and

(d) that proceedings may be instituted if payment is not made within the time specified in the fixed penalty notice.

(5) The amount of the fixed penalty is—

(a) one fifth of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction provided that person pays the fixed penalty in full within 7 days of issue of the fixed penalty notice; or

(b) one half of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction.

(6) An authorised officer may require a person to whom this article applies to pay a deposit of one tenth of the maximum amount of the fine to which a person may be liable under level 3 on the standard scale on accepting a fixed penalty notice if that person fails to provide, when requested, a residential address in the United Kingdom.

(7) Payment of the deposit must be made—

(a) in person to the authorised officer by cash, credit or debit card, if the authorised officer has the necessary means to accept payment in that manner;

(b) by telephone by credit or debit card to the number stipulated in the fixed penalty notice for making payments; or

(c) by App.

(8) The Company must apply the deposit towards payment of the fixed penalty.

- (9) In any proceedings a certificate which—
- (a) purports to be signed on behalf of the chief finance officer of the Company; and
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate, is evidence of the facts stated.
- (10) In this article—
- “App” means a software application for use on an electronic device which provides for payment by credit or debit card and which is provided by the Company for that purpose;
- “credit card” means a card or similar thing issued to any person, use of which enables the holder to defer payment of the deposit;
- “debit card” means a card or similar thing issued by any person, use of which causes the deposit to be paid by the electronic transfer of funds from any current account of the holder at a bank or other institution providing banking facilities; and
- “fixed penalty notice” means a notice offering the opportunity of the discharge of liability to conviction of an offence under byelaws made under section 161 of the 1968 Act.

### **Planning legislation**

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

(2) It does not constitute a breach of the terms of this Order if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits in accordance with any planning permission granted under the 1990 Act (including a planning permission granted under article 3 (permitted development) and Class B (dock, pier, harbour, water transport, canal or inland navigation undertakings) of Part 8 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(a)).

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

**48.**—(1) This article applies to any agreement entered into by the Company under article 51 (consent to transfer of benefit of Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

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

(3) No enactment or rule of law to which paragraph (2) applies is to apply 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.

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(a) S.I. 2015/596

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

**49.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

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

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the construction or maintenance of the authorised development.

## **PART 5**

### **MISCELLANEOUS AND GENERAL**

#### **Benefit of Order**

**50.** Subject to article 51 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the Company.

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

**51.**—(1) Subject to the provisions of this Order the Company 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 (including the deemed marine licence) and such related rights as may be agreed between the Company and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the Company and the lessee any or all of the benefit of the provisions of this Order (including the deemed marine licence) and such related rights as may be so agreed.

(2) The powers conferred by paragraph (1)(a) may only be exercised by the Company or a transferee.

(3) A lessee (‘the granting lessee’) may not make a grant under paragraph (1)(b)—

- (a) for a longer period than the period of the grant to the granting lessee; or
- (b) conferring any benefit or right that is not conferred by the grant to the granting lessee.

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(a) 1990 c.43; there are amendments that are not relevant to this Order.

(b) 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.25. There are other amendments to the 1974 Act which are not relevant to this Order.

(4) Where an agreement has been made in accordance with paragraph (1), references in this Order to the Company, except in paragraphs (2) and (5), include references to the transferee or the lessee.

(5) 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 Company.

(6) Before giving consent under this article, the Secretary of State must consult the PLA, National Grid, Cadent and such other parties as the Secretary of State considers appropriate.

(7) The Company must within 10 business days after entering into an agreement under paragraph (1) in relation to which any of the benefit of the deemed marine licence is transferred to another party, notify the PLA, the Environment Agency and the MMO in writing, and the notice must include particulars of the other party to the agreement under paragraph (1) and details of the extent, nature and scope of the functions transferred or otherwise dealt with which relate to the deemed marine licence.

### **Traffic regulation measures**

**52.**—(1) Subject to the provisions of this article, the Company may, for the purposes of the authorised development—

- (a) make provision, in respect of those roads specified in column (1) of Part 1 of Schedule 8 (traffic regulation measures, etc.), as to the speed limits of those roads as specified in column (2) of that Part of that Schedule;
- (b) make provision, in respect of those roads specified in column (1) of Part 2 of Schedule 8, as to the clearway status of, and the application of other prohibitions to, those roads as specified in column (2) of that Part of that Schedule; and
- (c) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the Company under this paragraph.

(2) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011<sup>(a)</sup> when used in accordance with regulation 3(5) of those regulations.

(3) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the Company may, in so far as necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance and operation 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 Company.

(4) The power conferred by paragraph (3) may be exercised at any time prior to the expiry of 24 months from the opening of Work No.3 for operational use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (3) may have effect both before and after the expiry of that period.

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(a) 2004 c.18.



(5) The Company must not exercise the powers conferred by paragraph (1) or (3) unless the Company has—

(a) given not less than—

(i) 12 weeks' notice in writing of the Company's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of the Company's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated and that notice must include the time periods within which the traffic authority may specify the manner in which, under sub-paragraph (b), the Company must advertise its intention to exercise the powers conferred by paragraph (1) or (3); and

(b) advertised the Company's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the Company's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the Company's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the Company under paragraph (1) or (3)—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject;

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

(c) must be advertised in the same manner as the Company's intention to make the prohibition, restriction or other provision was under paragraph (5)(b).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the Company from time to time by subsequent exercise of the powers conferred by paragraph (1) or (3) within a period of 24 months from the opening of the authorised development for operational use.

(8) Before exercising the powers conferred by paragraphs (1) or (3) the Company must consult such persons as the Company considers necessary and appropriate and have regard to the representations made to the Company by any such person.

(9) An order made under paragraph (3)(a) may be varied or revoked by an order made by the highway authority under the 1984 Act.

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

### **Deemed marine licence**

**53.** The Company is granted a deemed marine licence under Part 4 (marine licensing) of the 2009 Act to carry out the activities specified in Part 1 of Schedule 9 (deemed marine licence), subject to the licence conditions set out in Part 2 of that Schedule.

### **Protective provisions**

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

## **Saving for Trinity House**

**55.** Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

## **Crown Rights**

**56.—**(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 Company—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) 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.

## **Consents, agreements and approvals**

**57.—**(1) Where any application is made to a relevant authority, the consent, agreement, certification or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application fails to notify the Company of its decision before the end of the period of 28 days beginning with the date on which the application was received, the relevant authority is deemed to have given its consent, agreement or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) If before this Order comes into force the Company or any other person has taken any step in relation to an application to which this article applies, that step may be taken into account to determine whether the consent, agreement, certification or approval concerned should be granted provided that step would have been a valid step for the purpose of the application if it had been taken after this Order came into force.

(5) Where any application is made to a relevant authority and the application includes submissions relating to the discharge of an obligation under Part 3 of Schedule 10 (protective provisions) at the same time, paragraph (2) does not apply to that application.

(6) In this article—

“application” means an application or request for any consent, agreement, certification or approval required or contemplated by articles 8 (street works), 10 (construction and maintenance of new, altered or diverted streets), 13 (temporary stopping up and restriction of use of streets), 14 (access to works), 18 (discharge of water), 20 (authority to survey and investigate land) and 52 (traffic regulation measures); and

“relevant authority” means the owner of a watercourse, public sewer or drain, a local authority, a traffic authority, a highway authority or a street authority.

### **Certification of documents**

**58.**—(1) As soon as practicable after the making of this Order, the Company must submit copies of each of the plans and documents set out in Schedule 11 (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 11 (documents to be certified) requires to be amended to reflect the terms of the Secretary of State’s decision to make this Order, that plan or document in the form amended to the Secretary of State’s satisfaction is the version of the document required to be submitted for certification under paragraph (1).

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

(4) The Company must, following certification of the plans and documents in accordance with paragraph (1), make those plans and documents available in electronic form for inspection by members of the public.

### **Service of notices**

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

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

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

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

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

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

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

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is 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;

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(a) 1978 c.30.

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

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

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

(9) This article must 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**

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

Signed by authority of the Secretary of State for Transport

Address  
Date

*Signature*  
Title  
Department for Transport

# SCHEDULES

## SCHEDULE 1

Articles 2 and 6

### AUTHORISED DEVELOPMENT

In the area of Thurrock Council and within the Order limits—

#### **Nationally Significant Infrastructure Project**

**Work No. 1** – as shown on sheet 3 of the works plans being the construction of a Roll on Roll off berth on the river Thames comprising—

- (a) the construction of dolphins in the river bed with associated fenders and walkways;
- (b) the construction of a floating pontoon with associated restraint structures;
- (c) the construction of structures and buildings on the floating pontoon;
- (d) the construction of an approach bridge with abutments, with a roadway, footway and wind barrier on the surface of the bridge;
- (e) the construction of a linkspan bridge between the floating pontoon and the approach bridge, with a roadway, footway and wind barrier on the surface of the bridge;
- (f) the construction of a surface water outfall;
- (g) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;
- (h) the alteration and renewal of an existing flood defence;
- (i) the removal of the existing jetty known as the Anglian Water jetty and its associated structures;
- (j) related dredging works within the river Thames for the above; and
- (k) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames.

**Work No. 2** – as shown on sheet 3 of the works plans being the construction of a Construction Materials and Aggregates Terminal (CMAT) berth on the river Thames comprising—

- (a) the construction of dolphins in the river bed with associated fenders and walkways;
- (b) the construction of a conveyor hopper and supporting structures on the river bed;
- (c) the installation of pipework on the existing river jetty and connections to Work No. 8A;
- (d) the construction of a conveyor and supporting structures in the river bed;
- (e) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;
- (f) related dredging works within the river Thames for the above; and
- (g) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames.

#### **Associated Development**

**Work No. 3** – as shown on sheets 2 and 3 of the works plans being the construction of a Roll on Roll off terminal comprising—

- (a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
- (b) the construction of rail sidings and associated rail infrastructure;

- (c) the laying out of vehicular, cyclist and pedestrian roads and routes including a connection to Work No. 1(d);
- (d) the construction of ancillary buildings, including staff welfare and operational facilities;
- (e) the construction of site lighting infrastructure, including lighting columns;
- (f) the demolition of existing buildings; and
- (g) the installation of above ground and underground drainage infrastructure, including a pumping station.

**Work No. 4** – as shown on sheets 1 and 2 of the works plans and being the construction and laying out of vehicular, cyclist and pedestrian roads and routes for the Roll on Roll off terminal and the construction materials and aggregates terminal comprising—

- (a) the demolition of existing buildings;
- (b) the construction of private means of accesses to land;
- (c) the construction of a gatehouse and associated infrastructure; and
- (d) the construction of a 3 metre high noise barrier.

**Work No. 5** – as shown on sheet 2 of the works plans and being the construction of an operational compound for the for the Roll on Roll off terminal and the CMAT comprising—

- (a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
- (b) the construction of car parking facilities;
- (c) the construction of ancillary buildings including staff welfare facilities; and
- (d) the demolition of existing buildings.

**Work No. 6** – as shown on sheets 1 and 2 of the works plans and being the construction and laying out of storage areas comprising—

- (a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works; and
- (b) the construction of a railway line and associated railway infrastructure.

**Work No. 7** – as shown on drawing sheet 3 of the works plans being the construction of a warehouse comprising—

- (a) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
- (b) the construction of a warehouse;
- (c) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of Work No. 3 overlaps with the location of this Work No. 7);
- (d) the laying out of vehicular, cycling and pedestrian roads and routes; and
- (e) the construction of site lighting infrastructure, including lighting columns.

**Work No. 8** – as shown on drawings sheets 2 and 3 of the works plans being the construction of a construction materials aggregates terminal comprising—

- (a) Work No. 8A
  - (i) the construction of silo facilities and associated piping and pumping infrastructure and road tanker loading facilities;
  - (ii) the construction of weighbridges;
  - (iii) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of Work No. 3 overlaps with the location of this Work No. 8A);
  - (iv) the construction and laying out of vehicular roads and routes; and

- (v) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works.
- (b) Work No. 8B
  - (i) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
  - (ii) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of Work No. 3 overlaps with the location of this Work No. 8B);
  - (iii) the construction of site lighting infrastructure, including lighting columns;
  - (iv) the construction of a conveyor and supporting structures; and
  - (v) the construction and laying out of vehicular roads and routes.
- (c) Work No. 8C
  - (i) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
  - (ii) the construction of an aggregate storage yard;
  - (iii) the construction of a railway line, rail sidings and associated rail infrastructure;
  - (iv) the construction of a conveying system and supporting structures; and
  - (v) the construction and laying out of vehicular and pedestrian access routes and roads.
- (d) Work No. 8D
  - (i) the filling of land for port facilities, port surfacing and port infrastructure with associated civil works, earth works and service works;
  - (ii) the construction of an aggregate storage yard;
  - (iii) the construction of construction materials and aggregate processing facilities including associated buildings and infrastructure;
  - (iv) the construction of a railway line, rail sidings and associated rail infrastructure (to the extent that the location of work No.8C overlaps with the location of this Work No.8D); and
  - (v) the construction and laying out of vehicular and pedestrian access routes and roads.

**Work No. 9** – as shown on sheet 1 of the works plans being the construction of a new highway from Ferry Road to a point 190 metres south-west of the centrepoint of the existing Fort Road bridge over the London to Tilbury railway line comprising—

- (a) Work No. 9A
  - (i) the construction of a new single lane two way highway approximately 1250 metres in length from a point on St Andrew’s Road approximately 1460 metres from the centrepoint of the Asda Roundabout to a point approximately 190 metres southwest of the centrepoint of the existing Fort Road bridge over the London to Tilbury railway line;
  - (ii) the construction of a new junction with a new highway as shown on sheet 2 of the rights of way and access plans at a point approximately 1700 metres southeast of the centre point of the existing Asda roundabout constructed pursuant to Work No. 9B;
  - (iii) the construction of a new junction with a new highway as shown on sheet 1 of the rights of way and access plans at a point approximately 275 metres southwest of the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line constructed pursuant to Work No. 9C;
  - (iv) the improvement of the existing highway known as St Andrew’s Road for a length of approximately 150 metres;
  - (v) the construction of a 3 metre high noise barrier;
  - (vi) the construction of private means of accesses to land;

- (vii) the construction of a footway and cycleway;
  - (viii) the demolition of existing buildings;
  - (ix) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse; and
  - (x) works to alter the position of apparatus, including mains, sewers, drains and cables.
- (b) Work No. 9B
- (i) the construction of a new highway approximately 165 metres in length from a junction with a St Andrew's Road at a point approximately 1825 metres southeast of the centre point of the roundabout known as the Asda roundabout to a point approximately 1700 metres southeast of the of the centre point of the roundabout known as the Asda roundabout; and
  - (ii) the construction of a cycleway.
- (c) Work No. 9C
- (i) the construction of a new highway approximately 100 metres in length from a point on the existing Fort Road approximately 290 metres south-southwest of the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line to a point on the existing Fort Road, approximately 280 metres southwest of the centrepoint of the existing bridge that carries Fort Road over the London to Tilbury railway line;
  - (ii) the construction of a new junction with Fort Road as shown on sheet 1 of the works plans at a point approximately 290 metres south-southwest of the centrepoint of the existing bridge that carries Fort Road over the London to Tilbury railway line; and
  - (iii) the construction of a cycleway.

**Work No. 10** – as shown on sheet 1 of the works plans being the construction of a road overbridge at Fort Road comprising—

- (a) the construction of a new bridge over new highway and new railway (Work No. 9A and Work No. 12) tying into the existing bridge over the London to Tilbury railway line;
- (b) the construction of a new length of highway of approximately 330 metres in length, from a point 330 metres south-southeast of the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line to the centre point of the existing bridge that carries Fort Road over the London to Tilbury railway line;
- (c) the construction of a cycleway;
- (d) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (e) works to alter the position of apparatus, including mains, sewers, drains and cables; and
- (f) the improvement of existing highway known as Fort Road including markings to indicate a mini-roundabout.

**Work No. 11** – as shown on sheet 1 of the works plans being the improvement of a highway known as the Asda Roundabout.

**Work No. 12** – as shown on sheet 1 of the works plans being the construction of a rail line from a point approximately 95 metres southeast of the existing connection of the rail sidings known as the Riverside Sidings to the London to Tilbury railway line to a point approximately 35 metres south of the centrepoint of the existing Fort Road bridge over the London to Tilbury railway line comprising—

- (a) the construction of a railway line, passing loop and associated rail infrastructure of approximately 1325 metres in length from the existing siding off of the London to Tilbury railway line to Work No. 6;
- (b) the construction of a 1.5 metre high noise barrier;
- (c) the construction of private means of accesses to land;



- (d) the demolition of existing buildings;
- (e) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse; and
- (f) works to alter the position of apparatus, including mains, sewers, drains and cables.

### **Ancillary Works**

For the purposes of or in connection with the construction of any of the works and other development mentioned above, ancillary or related development which does not give rise to any significant adverse effects that have not been assessed in the environmental statement, being development consisting of—

works within highways, comprising—

- (a) alteration of the layout of any street permanently or temporarily, including increasing the width of the carriageway of any street by reducing the width of any kerb, footway, cycleway, or verge within the street; and altering the level or increasing the width of any such kerb, footway, cycleway or verge within the street, works for the strengthening, improvement, repair, maintenance or reconstruction of any street;
- (b) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
- (c) relocation or provision of new road traffic signs, signals, street lighting and carriageway lane markings; and
- (d) works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments;

works within the river Thames situated within the Order limits to—

- (e) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including river walls);
- (f) carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations;
- (g) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(a)) obtained in carrying out any such operations;
- (h) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);
- (i) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the river; and
- (j) construct, place and maintain works and structures including piled fenders, protection piles and cofferdams;

other works and development—

- (k) for the strengthening, alteration or demolition of any building;
- (l) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables, lights, cofferdams, fencing and other boundary treatments including bollards and security cameras;
- (m) ramps, steps, footpaths, footways, cycle tracks, cycleways, bridleways, equestrian tracks, non-motorised user routes or links, byways open to all traffic and crossing facilities;

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(a) 1995 c.21

- (n) embankments, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, highway lighting and fencing;
- (o) settlement mitigation measures for the benefit or protection of, or in relation to, any land, building or structure, including monitoring and safeguarding of existing infrastructure, utilities and services affected by the authorised development;
- (p) to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses;
- (q) landscaping, noise barriers, works associated with the provision of ecological mitigation, and other works to mitigate any adverse effects of the construction, operation or maintenance of the authorised development;
- (r) areas of hard or soft landscaping works, or public realm, at various locations adjacent to the proposed highway and associated works;
- (s) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, works of demolition, including demolition of existing structures, and the creation of alternative highways or footpaths) and earthworks (including soil stripping and storage and site levelling);
- (t) construction compounds and working sites, temporary structures, storage areas (including storage of spoil and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;
- (u) service compounds, plant and equipment rooms, offices, staff mess rooms, welfare facilities, and other ancillary and administrative accommodation;
- (v) for the benefit or protection of the authorised development;
- (w) within the Order limits (other than the parts of the river Thames situated within the extended port limits) roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient; and
- (x) of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction of the authorised development.

## SCHEDULE 2 REQUIREMENTS

Article 6

### PART 1 REQUIREMENTS

#### **Interpretation**

**1. In this Part of this Schedule—**

“AOD” means above ordnance datum (Newlyn);

“the birds monitoring and action plan” means the document of that description in Schedule 11 certified by the Secretary of State as the birds monitoring and action plan for the purposes of this Order;

“the construction environmental management plan” means the document of that description in Schedule 11 certified by the Secretary of State as the construction environmental management plan for the purposes of this Order;

“the drainage strategy” means the drainage strategy contained in appendix 16.E of the environmental statement;

“the flood risk assessments” means the level 2 flood risk assessment, the level 3 flood risk assessment and the level 3 flood risk assessment addendum;

“the level 2 flood risk assessment” means the level 2 flood risk assessment contained in appendix 16.A of the environmental statement;

“the level 3 flood risk assessment” means the level 3 flood risk assessment contained in appendix 16.B of the environmental statement;

“the level 3 flood risk assessment addendum” means the document of that description set out in Schedule 11 certified by the Secretary of State as the level 3 flood risk assessment addendum for the purposes of this Order;

“the framework travel plan” means the framework travel plan contained in document reference v2 [PoTLL/T2/EX/140], appendix 13.B of the environmental statement;

“the landscape and ecological management plan” means the landscape and ecological management plan contained in document reference v3 [PoTLL/T2/EX/177], appendix 10.P of the environmental statement;

“the navigational risk assessment” means the navigational risk assessment contained in appendix 14.A of the environmental statement;

“the operational community engagement plan” means the document of that description set out in Schedule 11 certified by the Secretary of State as the operational community engagement plan for the purposes of this Order;

“the operational management plan” means the document of that description set out in Schedule 11 certified by the Secretary of State as the operational management plan for the purposes of this Order;

“the preliminary lighting strategy and impact assessment” means the preliminary lighting strategy and impact assessment contained in appendix 9.J of the environmental statement;

“the requirement 3 colour palette” means the document of that description set out in Schedule 11 certified by the Secretary of State as the requirement 3 colour palette for the purposes of this Order;

“the sustainable distribution plan” means the sustainable distribution plan contained in document reference v2 [PoTLL/T2/EX/142], appendix 13.C of the environmental statement; and

“the terrestrial written scheme of investigation” means the written scheme of investigation for terrestrial archaeological mitigation contained in document reference v3 [PoTLL/T2/EX/104], appendix 12.D of the environmental statement.

**Time limit for commencement of the authorised development**

2. The authorised development must commence within 5 years of the date on which this Order comes into force.

**External appearance and height of the authorised development**

3.—(1) Construction of—

- (a) the proposed ancillary buildings constructed as part of Work No 3(d);
- (b) the proposed ancillary buildings constructed as part of Work No. 5(c);
- (c) the proposed warehouse constructed as part of Work No. 7(b);
- (d) any silo facilities constructed as part of Work No. 8A(i);
- (e) any processing facilities constructed as part of Work No. 8D(iii); and
- (f) any fencing constructed as part of Work Nos. 9 or 12,

must not commence until the details of the external materials to be used in the construction of those works have been submitted to and approved in writing by the relevant planning authority, in consultation with Historic England and Gravesham Borough Council.

(2) All structures constructed as part of the authorised development apart from those listed in sub-paragraph (1) must be constructed in accordance with the requirement 3 colour palette.

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

(4) The diameter of Work No. 8A(i) must not exceed 15m.

(5) The height of the—

- (a) elements of the authorised development; or
- (b) aspect of operation of the authorised development,

set out in column (1) of the below table must not exceed the maximum height set out in column (2)—

<i>Building, structure or operation</i> (1)	<i>Maximum height (AOD)</i> (2)
Buildings constructed as part of Work No. 3(d)	12 metres
Buildings constructed as part of Work 5(c)	12 metres
Processing facilities constructed as part of Work No. 8D	34 metres
Silo facilities constructed as part of Work No. 8A(i)	104 metres
The warehouse constructed as part of Work No. 7(b)	Eaves height: 22 metres Ridge height: 26 metres
The storage of containers within Work No. 3	22 metres
The stockpiling of material within the limits of deviation shown on the works plans of Work No. 6	9 metres
The stockpiling of material within the limits of deviation shown on the works plans of Work No. 8	21 metres

### **Construction environmental management plan**

4. The authorised development must be constructed in accordance with the construction environmental management plan.

### **Off-site mitigation**

5.—(1) No part of the authorised development may be commenced until written details of the proposed off-site ecological mitigation have been submitted to and approved by the relevant planning authority, in consultation with Natural England and the Environment Agency.

(2) The details submitted under sub-paragraph (1) must include a commitment that any habitat provided as part of the off-site ecological mitigation will be managed and maintained for a minimum period of 25 years.

(3) The off-site ecological mitigation must be provided, managed and maintained by the Company in accordance with the written details approved under sub-paragraph (1).

### **Terrestrial written scheme of archaeological investigation**

6. The authorised development must be constructed in accordance with the terrestrial written scheme of investigation.

### **Highway works**

7. Work Nos. 3 and 8 must not be opened for use until—

- (a) Work Nos. 9A, 9B and 11 have been completed and are available for use by the public; and
- (b) the Company has agreed with Highways England:
  - (i) a package of road marking alterations on the A13 eastbound approach to Junction 30 of the M5; and
  - (ii) arrangements (including a financial contribution by the Company not exceeding £[X]) which provide for that package of road marking alterations to be carried out by Highways England within 6 months of Work Nos. 3 and 8 being opened for use.

### **Flood risk assessment**

8. The authorised development must be constructed and operated in accordance with the flood risk assessments.

### **Noise mitigation (noise barriers)**

9.—(1) Work No. 4 must not be opened for operational use until the noise barrier to be constructed as Work No. 4(d) has been constructed.

(2) Work No. 9A must not be opened for public use until the noise barrier to be constructed as Work No. 9A(v) has been constructed.

(3) Work No. 12 must not be opened for operational use until the noise barrier to be constructed as Work No. 12(b) has been constructed.

### **Operational noise monitoring and mitigation (receptors)**

10.—(1) Prior to the commencement of first operational use of any of Work Nos. 1 to 8 inclusive the Company must—

- (a) carry out a re-assessment of the predicted noise impacts arising from the finalised detail design of those works and the operational procedures to be implemented for them; and

- (b) provide the results of the re-assessment to the relevant planning authority and Gravesham Borough Council.

*Initial noise insulation*

(2) Following the re-assessment carried out under sub-paragraph (1), if external noise arising from the operation of Work Nos. 1 to 8 is predicted to be above the Significant Observed Adverse Effect Level (SOAEL) set out in the table below at any noise sensitive receptor, the Company must offer the owner and occupier of that receptor a package of mitigation.

<i>Time period</i>	<i>SOAEL (free-field LAeq,T)</i>
Daytime (07.00 to 23.00)	55dB(A)
Nighttime (23.00 to 07.00)	55dB(A)

(3) The package of mitigation to be offered in accordance with sub-paragraph (2) must include at the noise sensitive receptor concerned the installation of triple glazing, or another form of noise insulation or ventilation, whose effect is predicted to be an improvement in the overall noise insulation of the receptor by a margin that is not less than the amount by which the external noise level is predicted to exceed the SOAEL set out in sub-paragraph (2).

(4) The Company is not required to make a mitigation offer under sub-paragraph (2) in respect of any noise sensitive receptor if the receptor's existing noise insulation, glazing or ventilation is sufficient to ensure that significant health effects arising from noise attributable to operation of Work Nos. 1 to 8 are predicted not to occur within the habitable rooms at the receptor.

(5) If the package of mitigation offered in accordance with sub-paragraph (2) is agreed in writing by the owner and occupier of the receptor within the period specified in the offer, which must not be less than thirty days starting with the day after the offer has been received by the owner and occupier, then the package of mitigation must be implemented at the Company's cost prior to the commencement of first operational use of any of Work Nos. 1 to 8.

*Ongoing noise monitoring and mitigation scheme*

(6) No part of Work Nos. 1 to 8 must be brought into operational use until a written noise monitoring and mitigation scheme for the operation of those works based on the final detailed design of those works and the operational procedures to be implemented for them has been submitted to and agreed in writing with the relevant planning authority and Gravesham Borough Council and has been implemented in accordance with the terms of the scheme.

(7) A scheme agreed under sub-paragraph (6) must, as a minimum, include provision for the following matters—

- (a) the nature, location and temporal length of monitoring including (without limitation) provision as to how noise levels recorded at monitoring locations will be attributed to Work Nos. 1 to 8 rather than background noise;
- (b) provision for variation of the scheme if the design or operational procedures for Work Nos 1 to 8 change from the date of the start of operational use of those works;
- (c) a trigger point comprising noise levels attributable to and during operation of Work Nos. 1 to 8 at which the Company will be required to make an offer of mitigation to an affected noise sensitive receptor during the period of the monitoring, which at a minimum must be no higher than the SOAEL set out in sub-paragraph (2), except where the existing noise insulation, glazing or ventilation at the receptor is sufficient to ensure that significant health effects arising from noise attributable to operation of Work Nos. 1 to 8 are predicted not to occur within the habitable rooms at the receptor.
- (d) that any mitigation offered to an affected noise sensitive receptor must include the offer of the installation of triple glazing or another form of noise insulation or ventilation at that noise sensitive receptor, the effect of which is predicted to be an improvement in the overall noise insulation of the receptor by a margin that is not less than the amount by which the external noise level is predicted to exceed the SOAEL set out in sub-paragraph (2), except where the existing noise insulation, glazing or ventilation at the receptor is sufficient to ensure that significant health effects arising from noise attributable to

operation of Work Nos. 1 to 8 are predicted not to occur within the habitable rooms at the receptor.

- (8) For the purposes of this paragraph “noise sensitive receptor” means—
- (a) any habitable room within a building or part of a building used for residential purposes; and
  - (b) any proposed habitable room within such a building or part of a building for which there is an extant planning permission under the 1990 Act that is capable of being implemented.

### **Operational plans and documents**

**11.** The authorised development must be constructed and operated in accordance with the following documents—

- (a) the birds monitoring and action plan;
- (b) the drainage strategy;
- (c) the framework travel plan;
- (d) the landscape and ecological management plan;
- (e) the navigational risk assessment;
- (f) the operational management plan;
- (g) the operational community engagement plan; and
- (h) the sustainable distribution plan.

### **Lighting Strategy**

**12.—**(1) No part of the authorised development may be brought into operational use until a written scheme of the proposed operational lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the relevant planning authority, in consultation with Historic England and Gravesham Borough Council.

(2) The written scheme submitted under sub-paragraph (1) must be in general accordance with the preliminary lighting strategy and impact assessment.

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

## **PART 2**

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

#### **Interpretation**

**13.** In this Part of this Schedule, “discharging authority” means—

- (a) any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or
- (b) the local authority in the exercise of its functions set out in sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974<sup>(a)</sup>.

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(a) 1974 c.40.

### **Applications made under requirements**

**14.**—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the discharging authority must give notice to the Company of its 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; or
- (b) where further information is requested under paragraph 15, the day immediately following that on which the further information has been supplied by the Company,

or such longer period as may be agreed in writing by the Company and the discharging authority.

(2) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the discharging authority may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision.

### **Further information regarding requirements**

**15.**—(1) In relation to any application referred to in paragraph 14, the discharging authority may request such further information from the Company as it considers necessary to enable it to consider the application.

(2) If the discharging authority considers that further information is necessary and the requirement concerned contained in Part 1 of this Schedule does not specify that consultation with a consultee is required, the discharging authority must, within 10 business days of receipt of the application, notify the Company in writing specifying the further information required.

(3) If the requirement concerned contained in Part 1 of this Schedule 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 Company in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the discharging authority does not give the notification within the period specified in subparagraph (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 request further information without the prior agreement of the Company.

### **Appeals**

**16.**—(1) Where a person (“the applicant”) makes an application to a discharging authority, the applicant may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required by—
  - (i) a requirement contained in Part 1 of this Schedule; or
  - (ii) a document referred to in any requirement contained in Part 1 of this Schedule;
- (b) the discharging authority does not determine such an application within the time period set out in paragraph 14(1), or grants it subject to conditions;
- (c) the discharging authority 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;



- (d) on receipt of a request for further information pursuant to paragraph 15 of this Part of this Schedule, the applicant considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (e) on receipt of any further information requested, the discharging authority notifies the applicant that the information provided is inadequate and requests additional information which the applicant considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the applicant must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 14(1), giving rise to the appeal referred to in sub-paragraph (1);
- (b) the applicant 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 authority and any consultee specified under the relevant requirement contained in Part 1 of this Schedule;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the attention of the appointed person should be sent;
- (d) the discharging authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within 10 business days of the start date specified by the appointed person 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 applicant on the day on which they are submitted to the appointed person;
- (e) the applicant must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to sub-paragraph (d) above; and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the 10 day period for counter-submissions under sub-paragraph (e).

(3) The appointment of the appointed person pursuant to 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 pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the date specified by the appointed person but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

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

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

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

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

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

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

(10) If an approval is given by the appointed person pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the applicant.

(12) On application by the discharging authority or the applicant, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.

### **Amendments to approved details**

**17.**—(1) With respect to the parameters specified in paragraph 3(5), the documents specified in paragraphs 4, 5, 6, 8, 10, 11 and 12 and any other plans, details or schemes or other documents which require approval by the relevant planning authority pursuant to any provision of Part 1 of this Schedule (“the approved plans, parameters, details or schemes”), the Company may submit to the relevant planning authority for approval any amendments to or replacements of the approved plans, parameters, details or schemes and following any such approval by the relevant planning authority the approved plans, parameters, details or schemes are to be taken to include the amendments or replacements approved pursuant to this sub-paragraph.

(2) Approval under sub-paragraph (1) for amendments or replacements to the parameters identified in paragraph 3(5) 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 does not give rise to any significant adverse effects that have not been assessed in the environmental statement.

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

**18.** If before this Order comes into force the Company or any other person has taken any step in compliance with any requirement in Part 1 of this Schedule, that step may be taken into account to determine compliance with that requirement provided that step would have been a valid step for the purpose of the requirement if it has been taken after this Order came into force.

## SCHEDULE 3

Article 11

### CLASSIFICATION OF ROADS, ETC.

In the administrative area of Thurrock Council—

#### **A1089 St Andrew's Road classified road**

1. A 1080 metres of length of new highway to be classified and existing highway to be reclassified (as identified in paragraph (a) and (b) below) as part of the A1089 St Andrew's Road to include—

- (a) reclassification of approximately 914 m of the existing highway known as classified un-numbered St Andrew's Road as the A1089 St Andrew's Road, commencing approximately 914 metres northwest from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge; to the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge;
- (b) reclassification of approximately 216 m of the existing highway known as classified un-numbered Ferry Road as the A1089 St Andrew's Road, commencing from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point approximately 216 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge,

then approximately 1.08 km of new highway—

- (c) commencing from a point 216 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge continuing for approximately 94 metres in a east southeast direction to its junction with the proposed classified un-numbered Ferry Road to be constructed;
- (d) then continuing in an easterly, then north-easterly direction for a distance of approximately 902 metres to a junction with the proposed classified un-numbered Link Road to be constructed;
- (e) then continuing in a north-easterly direction for approximately 84 metres to a point approximately 189 metres west-south-west of the centre point of the bridge where the existing highway known as un-classified Fort Road passes over the existing railway line known as the London to Tilbury line,

identified by a blue line on the classification of roads plans.

#### **Classified un-numbered Ferry Road**

2. A 170 metres length of new highway to be classified as the classified un-numbered Ferry Road (as identified below) to include, commencing from a point at its junction with the proposed A1089 St Andrew's Road, approximately 423 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout and continuing in a southerly direction for approximately 170 metres to the centre point of the existing highway known as classified un-numbered Ferry Road approximately 256 metres north-north-east of the centre point of the existing Riverside Rail Freight Terminal roundabout,

identified by an orange line on the classification of roads plans.

### **Declassification of classified un-numbered Ferry Road**

3. The declassification of approximately 172 metres of the existing highway known as classified un-numbered Ferry Road commencing at a point 215 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge continuing in a south easterly direction to a point approximately 375 metres south-south-east from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge,

identified by a yellow line on the classification of roads plans.

### **Classified un-numbered link road**

4. A length of 96 metres of new highway commencing from a junction with the proposed highway to be classified as A1089 St Andrew's Road to be constructed at a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line and continuing in a south-easterly direction to a junction with the proposed improved highway known as unclassified Fort Road at a point 287 metres south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line,

identified by a purple line on the classification of roads plans.

## SCHEDULE 4

Articles 10 and 12

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

In the administrative area of Thurrock Council

1. In relating this Schedule 4 to its corresponding rights of way and access plans, the provisions described in this Schedule are shown on the rights of way and access plans in the following manner—

- (a) new highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided) as are included in column 3 of Part 1 of this Schedule, are shown by red stipple (as shown in the key on the rights of way and access plans) and are given a reference label (a capital letter in a circle) and will be a road unless the word ‘footpath’ appears beneath its reference letter in column 3.
- (b) private means of access to be stopped up, as described in column 2 of Part 3 of this Schedule, are shown by a solid black band (as shown in the key on the rights of way and access plans), over the extent of stopping up described in column 2 of Part 3 and are given a reference label (a lower case letter in a circle).
- (c) new private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided) as are included in column 3 of Part 3 of this Schedule, are shown by thin diagonal hatching (as shown in the key on the rights of way and access plans) and are given a reference label (a number in a circle).

### PART 1

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

<i>(1)</i> <i>Highway to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted/provided</i>
<i>The rights of way and access plans - sheet 2</i>		
-	-	Reference A A length of new highway from a point 45 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge running in a north-easterly then easterly direction to a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to

		Tilbury line.
-	-	Reference B A length of new highway from a point approximately 423 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout running in a south-westerly direction to a point 256 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout.
-	-	Reference C A length of new highway from a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line and running in a south-easterly direction to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.
-	-	Reference D A length of new highway from a point 11 metres south-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line running in a southwest direction to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.
<i>The rights of way and access plans sheet 4</i>		
Footpath 146	A length from a point 82 metres east of the centre point of where it passes under the existing Anglian Water jetty in an easterly direction for a distance of 40 metres.	Reference A To be substituted by a new footpath from a point 82 metres east of the centre point of where the existing footpath passes under the existing

		Anglian Water jetty in an easterly direction for a distance of 40 metres.
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## PART 2

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

(1) <i>Highway to be stopped up</i>	(2) <i>Extent of stopping up</i>
<i>The rights of way and access plans – sheet 2</i>	
Footpath 144	A length of approximately 345 metres from a point 162 metres south of its junction with the existing highway known as the Beeches in a southerly then easterly then southerly direction to the southern highway boundary of the proposed A1089 St Andrew's Road to be constructed.

## PART 3

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

(1) <i>Private means of access to be stopped up</i>	(2) <i>Extent of stopping up</i>	(3) <i>New private means of access to be substituted/provided</i>
<i>The rights of way and access plans – sheet 2</i>		
Reference a	A length from its junction with the existing unclassified Fort Road eastwardly for a distance of approximately 165 metres.	Reference 1 To be substituted by a new private means of access connecting to the proposed A1089 St Andrew's Road to be constructed at a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line and continuing in an easterly direction for approximately 250 metres to connect to the existing private means of access.
		Reference 2 A new private means of access to statutory undertakers' apparatus from the new unclassified unnumbered link road between the existing Fort Road and the new A1089 St Andrew's Road.

		Reference 3 A new private means of access to statutory undertakers' apparatus from the new A1089 St Andrew's Road.
		Reference 4 A new private means of access to statutory undertakers' apparatus from the new A1089 St Andrew's Road.



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

### Compensation enactments

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

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

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

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

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

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

“(5A) If—

- (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) (powers of entry) of the 1965 Act (as modified by paragraph 7 of Schedule 5 to the Port of Tilbury (Expansion) Order 201[9]);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 10 of Schedule 5 to the Port of Tilbury (Expansion) Order 201[9]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

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

### Application of Part 1 of the 1965 Act

**4.—(1)** Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and modified by article 30 (modification of Part 1 of the Compulsory Purchase Act 1965) to the acquisition of land under article 23 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 25 (compulsory acquisition of rights)—

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

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

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

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

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

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right 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 (persons without power to sell their interests);
- (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 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 to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 23), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restriction; and sections 11A(b)(powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on a specified date), 12(d) (unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

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

9. Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30(4) is also modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
  - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
  - (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
  - (d) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
  - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
  - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

10. For Schedule 2A to the 1965 Act substitute—

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

**Introduction**

1. —(1) This Schedule applies where an acquiring authority serve 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 have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Port of Tilbury (Expansion) Order 201[9] in respect of the land to which the notice to treat relates.

(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Tilbury (Expansion) Order 201[9] which excludes the acquisition of subsoil or airspace only from this Schedule.

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

**Counter-notice requiring purchase of land**

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

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

**Response to counter-notice**

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

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

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

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

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

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

**Determination by Upper Tribunal**

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

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

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

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

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

**13.** If the Upper Tribunal determines that the 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 authority ought to be required to take some or all of the house, building or factory, the 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 they 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.”

## SCHEDULE 6

Article 32

### LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Plot Reference Number(s) shown on land, special category land and crown land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
01/01, 01/02, 01/03, 01/04, 01/05, 01/06, 01/07	Temporary possession of land for working space and to undertake works to improve the Asda roundabout and its slip roads, including to associated footways, cycleways and utilities.	Work No. 11
02/01	Temporary possession of land to undertake works to the existing St Andrew's Road, a tie in to the new road, to create the new road, to create a new pedestrian and cycle crossing and to divert utilities.	Work No. 9A
02/02	Temporary possession of land to undertake works to the existing St Andrew's Road and Ferry Road, a tie in to the new road, to create the new road, to undertake works, to modify and create new footways and cycleways and to divert utilities.	Work Nos. 9A and 9B
02/04	Temporary possession of land to stop up existing footpath 144 and existing level crossing.	Work Nos. 9A and 12
03/06	Temporary possession of land to undertake works to the existing Fort Road, the creation of a junction with a new road, and to modify and create new footways and cycleways and to divert utilities.	Work Nos. 9C and 10
03/07	Temporary possession of land to provide working space to undertake earthworks; divert utilities and undertake ecological restoration.	Work No. 10
03/13	Temporary possession of land for the improvement and raising of the existing Fort Road and the construction of a new bridge structure, and tie in of the raised highway to the highway on the existing bridge.	Work No. 10
03/14	Temporary possession of land to undertake works to the surface of the highway on the existing bridge and undertake utilities diversions.	Work No. 10
03/15	Temporary possession of land to construct traffic management measures and working space for works associated	Work No. 10

<i>(1) Plot Reference Number(s) shown on land, special category land and crown land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
	with the highway on the existing bridge and for the creation of the new bridge and undertake utility diversions.	
06/01	Temporary possession of land to provide working space for the construction of jetty facilities.	Work No. 1
06/03, 06/07, 06/08, 06/09	Temporary possession of land to provide working space for the construction of works for the accommodation and convenience of vessels and their protection zones.	Work Nos. 1 and 2
06/04	Temporary possession of land to remove the existing Anglian Water jetty.	Work No. 1
06/05	Temporary possession of land (including river bed) to remove the existing Anglian Water jetty.	Work No. 5

PORT PREMISES BYELAWS- THE PORT OF TILBURY  
(EXPANSION) BYELAWS 201[9]

PART 1

PRELIMINARY

**Citation and commencement**

1.—(1) These byelaws may be cited as the Port of Tilbury (Expansion) Byelaws 201[9] and were made by Port of Tilbury London Limited under section 161 (byelaws for port premises) of the Port of London Act 1968 and confirmed under section 168 (confirmation of byelaws) of that Act, as provided for by article 45 of the Port of Tilbury (Expansion) Order 201[9].

**Interpretation**

2.—(1) In these byelaws, unless the context otherwise requires—

“the 1968 Act” means the Port of London Act 1968;

“aquatic sport” includes angling, diving, swimming, snorkelling, water skiing, aquaplaning, paragliding, power boat racing, para-kiting or parachute towing, use of personal water craft and paddleboards or any similar activity;

“authorised officer” means a Police Constable, the Company Harbour Master, a PLA Harbour Master, and a person authorised by the Company for the purpose of enforcing the byelaws;

“the Company” means Port of Tilbury London Limited (company number 02659118) of Leslie Ford House, Tilbury Freeport, Tilbury, Essex, RM18 7EH;

“Company property” means property within the Port Premises and which is owned by, or is under the administration management or control of the Company and includes any property under lease, tenancy or licence, from or to the Company;

“the Company Harbour Master” means every person having the powers of a harbour master due to their appointment as dock master by the Company under the 1968 Act;

“dangerous goods” means—

- (a) any dangerous substance within the meaning of the Dangerous Goods in Harbour Areas Regulations 2016; or
- (b) any dangerous substances within the meaning of the Merchant Shipping (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996; or
- (c) any dangerous goods within the meaning of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997;

“exhaust muffler” means a device used to decrease the amount of noise emitted from the exhaust of an engine;

“the extended port limits” means the extended port limits shown on the extended port limits plan;

“the extended port limits plan” means the plan of that description certified by the Secretary of State under article 58 of the Port of Tilbury (Expansion) Order 201[9];

“goods” means all wares, merchandise, articles or things of every description, other than vessels, and includes containers, trailers, flats and livestock;

“hovercraft” has the meaning assigned to it by section 4 (interpretation etc.) of the Hovercraft Act 1968;

“Master” when used in relation to any vessel means any person having the command, charge or management of the vessel for the time being;

“motor vehicle” means a mechanically propelled vehicle;

“the Order” means the Port of Tilbury (Expansion) Order 201[9];

“owner” when used in relation to goods includes any consignor, consignee, shipper or agent for the sale custody or control of such goods and, when used in relation to any vessel includes any part owner, charterer consignee or mortgagee in possession;

“the PLA” means the Port of London Authority constituted in the 1968 Act;

“PLA Harbour Master” means any harbour master of the PLA and any of their authorised deputies and assistants and any person authorised by the PLA to act in that capacity;

“Police Constable” includes any constable appointed by the Company under section 154 (appointment, etc., of constables) of the 1968 Act;

“the Port Premises” means any land (including land covered by water) and premises as are situated within the extended port limits;

“the River” means that part of the river Thames within the limits of the PLA, as described in Schedule 1 (description of port limits) to the Port of London Act 1968;

“surveillance aircraft” means an unmanned aircraft which is equipped to undertake any form of surveillance or data acquisition;

“vehicle” means a motor vehicle or pedal cycle;

“vessel” means every description of vessel or water-borne structure, however propelled, moved or constructed, and includes displacement and non-displacement craft, personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over or placement in water and which is at the time in, on or over water; and

“works” means construction or repair works undertaken and the product of such works.

(2) Unless the context otherwise requires references in these byelaws to any Act whether public, general or local, or any instrument made under an Act, or any provision in any Act or any such instrument, is to be construed as references to that Act or instrument as amended by any other Act or instrument.

### **Application of the byelaws**

3. These byelaws apply to the Port Premises.

### **Offences and defences**

4.—(1) Contravention of any of byelaws 5, 8, 9, 10, 11, 12, 14, 22, 24, 28, 33, 37, 43, 48, 49, 50, 51, 56, 57 and 58 is punishable with a fine not exceeding level 3 on the standard scale.

(2) Contravention of any of byelaws 6, 7, 13, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 29, 30, 31, 32, 34, 35, 36, 38, 39, 40, 41, 42, 44, 45, 46, 47, 52, 53, 54, 55, and 59 is punishable with a fine not exceeding level 2 on the standard scale.

(3) Where the commission by any persons of an offence under these byelaws is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this byelaw whether or not proceedings are taken against any other person.

(4) In any proceedings for an offence under these byelaws it is a defence for the person charged to prove—

- (a) that the person took reasonable precautions and exercised all due diligence to avoid the commission of such an offence; or
- (b) that the person had a reasonable excuse for their act or failure to act.



(5) If in any case the defence provided by this byelaw involves the allegation that the commission of the offence was due to the act or default of some other person, any person charged may not, without leave of the Court, rely on that defence unless, within a period ending 7 clear days before the hearing, the person charged has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as is then in their possession.

(6) Where a breach of these byelaws is committed by a body corporate and that breach is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, company secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity, that person, as well as the body corporate, is guilty of that offence and is liable to be proceeded against under this byelaw.

(7) The institution of any proceedings under these byelaws is without prejudice to the recovery of damages or to the pursuance and enforcement of any other civil remedy in respect of any act or omission which is in contravention of the byelaws.

(8) A person who is suspected of a breach of the byelaws must provide their correct name and address when required to do so by an authorised officer.

## PART 2 OPERATION

### **Fouling and obstruction of the Port Premises**

**5.—**(1) A person must not intentionally and without authority from the Company Harbour Master, within the Port Premises, do, cause or permit to be done or omit to do anything tending to cause—

- (a) an encumbrance, pollution or fouling of any water or foreshore of any part of the Port Premises;
- (b) an obstruction or danger to navigation within the Port Premises;
- (c) a danger to life or health within the Port Premises; or
- (d) any nuisance.

(2) A person must not place, leave, tranship or dispose of ballast, rubbish or refuse except at such places within the Port Premises as may be designated by the Company.

(3) A person carrying out any activities referred to in paragraph (2) must ensure they are carried out in accordance with all necessary consents and approvals and such activities are carried out at the sole risk of the person placing, leaving, transhipping or disposing of the same.

(4) The Master of a vessel must not load or discharge any cargo, ballast, fuel, refuse or rubbish any part of which is liable in the course of such loading or discharging to fall into any part of the River within the Port Premises without taking such precautions by affixing canvas or tarpaulins or other suitable material or thing as will effectually prevent any such cargo ballast fuel refuse or rubbish from falling into the River.

### **Aids to navigation**

**6.—**(1) A person must not without lawful excuse, place, move in to or remove from the Port Premises, or otherwise interfere with, any light, fog signal, buoy, radar, reflector or other object used as an aid to navigation.

(2) A person must not within the Port Premises shine or direct a light, laser or other object in such a way as may mislead vessels or endanger navigation.

### **Plant and machinery, etc.**

7.—(1) Any person in charge of any plant, machinery, equipment or appliance situated on the Port Premises must remove that plant, machinery, equipment or appliance from the Port Premises upon order of the Company, giving reasonable notice depending on the nature of the plant, machinery, equipment or appliance involved and the reasons for the removal.

(2) If the owner or operator of any plant, machinery, equipment or appliance fails to comply with such an order by the Company, the plant, machinery, equipment or appliance may be removed by the Company at the risk and expense of the owner or operator.

(3) All persons operating plant, machinery, equipment or appliances within the Port Premises must comply with any reasonable written notices given by the Company as to the use of safety devices in addition to those as may be required by law.

(4) Except with written permission of the Company, no person may store in or about the Port Premises any plant, machinery, equipment or appliance unless that plant, machinery, equipment or appliance is used for the purpose of loading, unloading or handling goods.

### **Yacht races and aquatic sports**

8. A person must not conduct or participate in a yacht or boat race or other aquatic sport, or in any other similar activity, within the Port Premises.

## **PART 3**

### **PROTECTION AND CONTROL OF PORT PREMISES**

#### **Entry upon Port Premises**

9.—(1) A person must not enter or be upon the Port Premises except pursuant to express statutory authority or written licence, pass or other permission from the Company and upon the terms and conditions of that licence, pass or permission.

(2) A licence, pass or permission may be restricted to allow entry to certain areas of the Port Premises only. No person may enter an area of the Port Premises for which that person does not have a licence, pass or permission.

(3) The Company may withhold, delay, refuse or revoke any licence, pass or permission referred to in this byelaw in relation to any person.

(4) Every person on the Port Premises must at the instruction of any authorised officer, produce any pass or other evidence of their licence or permission to be on the Port Premises.

(5) A person must not break or get over, through or under a boundary or other fence, or trespass upon the Port Premises.

(6) No person or vehicle is permitted to be or remain upon or within the limits of any railway lines as designated by the Company without the permission of the Company.

(7) A person must not write upon or soil, deface, mark or injure any wall, shed, barricade, railing, fence, post, or any other property belonging to the Company.

(8) A person must not use or have in their possession any key (including an electronic key) with which they can obtain entry or exit to or from any of the docks, warehouses, sheds or other buildings belonging to the Company unless such key has been issued to the person by the Company with permission for use.

(9) Every person in charge of a vehicle must stop at the designated barriers or security posts at the entrances to the Port Premises as directed by the Company.

(10) A person must not enter or remain on board any vessel without permission of the Master or other lawful excuse.

(11) The Master of every vessel must not refuse any authorised officer entry upon the vessel if the authorised officer has a reasonable suspicion of the contravention of any byelaw or the commission of an offence.

(12) A person on Port Premises who is suspected of an offence or being in breach of a byelaw or who is without proper business at the Port Premises must surrender any pass in their possession and leave the Port Premises immediately on being required to do so by an authorised officer.

### **Photography**

**10.** A person must not take photographs within the Port Premises without the Company's permission.

### **Climbing**

**11.** A person must not climb, scale or otherwise ascend any structure or building within the Port Premises without the Company's permission.

### **Intoxicating substances**

**12.—(1)** A person must not be in an intoxicated condition within the Port Premises.

(2) A person must not, without permission of the Company consume alcohol within the Port Premises.

### **Inspection of bags, parcels, etc.**

**13.** A person must not refuse to produce for inspection, at the request of any authorised officer, the contents of any outer clothing, article, bag, case, parcel, vehicle, box or container of any kind in their possession, on the Port Premises.

### **Non-permitted activities**

**14.—(1)** A person who is on the Port Premises must not, without the prior consent of the Company—

- (a) sell or offer for sale any goods or services;
- (b) distribute, post or leave any circulars, leaflets or advertising matter;
- (c) undertake personal solicitation;
- (d) organise any general meeting; or
- (e) deliver any address to any audience or gather together any persons whereby any work or business within the Port Premises or the control, management or use of the Port Premises is, or is likely to be, obstructed, impeded or hindered.

### **Structures and works**

**15.—(1)** No structure or work which interferes with the operation of the Port Premises may be placed or erected on the Port Premises except with written permission from the Company and upon such terms and conditions as the Company may stipulate.

(2) Every structure or work placed or erected in contravention of this byelaw must, upon order of the Company, be removed forthwith by the owner of such structure or work thereof or by the person by whom such structure or work was so placed or erected.

(3) Where a structure or work is not removed pursuant to an order of the Company under this byelaw, the Company may at the risk and expense of the owner or person referred to in this byelaw undertake such removal.

### **Leaving of goods**

**16.**—(1) A person must not place or leave any goods on the Port Premises in such a manner as to create an obstruction or interference.

(2) A person must not, without written permission of the Company, place or leave any goods on the Port Premises except goods for use:

- (a) by vessels;
- (b) in connection with shipping;
- (c) by the Company; or
- (d) in connection with railway wagons, road transport, sheds or harbour facilities.

(3) A person must not place or leave goods on the Port Premises, including any goods coming within paragraphs (2)(a) to (2)(d) of this byelaw, which are likely to cause a nuisance or endanger life or health.

### **Artificial lights**

**17.**—(1) Subject to paragraph (2), a person must not use any artificial light on the Port Premises without the prior permission of the Company.

(2) Electric lights that do not pose a potential risk to the navigational safety of vessels or present a health and safety or fire risk may be used on the Port Premises.

(3) In any event, any person in control of any electric light at the Port Premises must immediately comply with any direction of the Company Harbour Master in relation to the use, extinction or screening of such electric light.

### **Railway rolling stock**

**18.** Railway rolling stock or locomotives must not be brought on to the Port Premises except with the Company's permission and upon such terms and conditions as the Company may determine.

### **Live animals**

**19.**—(1) A live animal must not be brought into the Port Premises without the express prior permission of the Company.

(2) Paragraph (1) does not apply to—

- (a) dogs in the custody of a police officer or member of HM Forces or UK Border Forces on duty;
- (b) guide dogs for the visually impaired;
- (c) a dog trained by Hearing Dogs for Deaf People (registered charity number 293358); or
- (d) any other dog that is similarly specifically trained by a registered charity to assist any person with any disability within the meaning of the Equality Act 2010.

### **Compliance with signage and notices**

**20.**—(1) A person must not act in contravention of any printed or written notice, direction or sign displayed by the Company within the Port Premises unless otherwise directed by the Company.

(2) A person must not remove, or interfere with any mark, printed or written notice, direction, sign or device, order, byelaw or regulation of the Company which is posted, attached, or affixed to or on the Port Premises.

### **Erection of signs**

21. A person must not display, place or erect on the Port Premises without written permission of the Company any placard, hoarding, poster, advertisement, sign, device or similar article.

### **Removal of Company property**

22. A person must not remove from Port Premises without permission of the Company any Company property.

### **Reporting of accidents**

23.—(1) Every person involved in an accident within the Port Premises that causes the death of or an injury to any other person or loss of or damage to property, must as soon as reasonably practicable and in any event within 7 days of being requested to do so by the Company, deliver to the Company a written report giving full details of the accident.

### **Surveillance**

24. A person must not operate surveillance aircraft within or over the Port Premises without the Company's permission.

### **Authority for removal of goods**

25. A person removing goods from the Port Premises must, on request, provide the Company with a copy of their authority to remove those goods in writing or electronically as stipulated by the Company.

## **PART 4**

### **OPERATION OF VEHICLES**

#### **Driving of vehicles**

26.—(1) A person must not drive or otherwise operate a vehicle within the Port Premises without the due care and attention or without reasonable consideration for other persons within the Port Premises.

(2) A person driving or otherwise operating a road vehicle within the Port Premises must give way to any locomotive, railway rolling stock or other rail or rail-mounted vehicle.

#### **Compulsory weighing**

27. The Company may at any time require the operator of any vehicle, (whether loaded or unloaded), to submit the vehicle to compulsory weighing at weight scales designated by the Company for the purpose. Weighing will be carried out in accordance with any requirement as the Company may stipulate.

#### **Restrictions on operation of vehicles**

28.—(1) A person must not operate a vehicle within the Port Premises—

- (a) in a shed, warehouse or open storage area, except to pick up or deliver goods or for other purposes permitted by the Company;
- (b) between railway tracks;
- (c) across railway tracks except at a signed railway crossing;

- (d) at speeds greater than those indicated by speed restriction signs or in a manner which may cause a nuisance, death or injury to persons or damage to property;
- (e) which is loaded in excess of its permitted load limit, or whose load is not adequately secured and supported;
- (f) from which petrol, oil, or any other substance likely to be dangerous or to constitute a nuisance, is dripping, leaking, escaping or falling; or
- (g) which, in the reasonable opinion of the Company is improperly loaded or unserviceable or likely to cause damage to roadways or other property.

(2) All persons operating vehicles within the Port Premises must comply with the provisions of the rules in the Highway Code England, Scotland and Wales (as updated).

### **Restrictions on parking vehicles**

**29.**—(1) A person must not park a vehicle within the Port Premises—

- (a) unless the Company has first issued a permit for such person to do so;
- (b) in such a manner as to create an obstruction or interference;
- (c) elsewhere than in a parking area approved and designated as such by the Company;
- (d) which is loaded in excess of its permitted load limit, other than at an appropriate place for the purpose of immediately reducing its load; or
- (e) from which petrol, oil, or any other substance likely to be dangerous or to constitute a nuisance, is dripping, leaking, escaping or falling.

(2) Subject to paragraph (3), for the purposes of this byelaw, a vehicle is parked wherever it is stopped, whether or not the driver remains in the vehicle and whether or not the engine of the vehicle is running, and the term includes any vehicle apparently abandoned.

(3) A vehicle is not parked contrary to this byelaw where it is stopped—

- (a) as required by a traffic control device or by an authorised officer; or
- (b) whilst the vehicle cannot move due to an obstruction or failure of the vehicle.

### **Supply and discharge of fuels and oils**

**30.** A person must not supply to, receive into or discharge from, a vehicle on the Port Premises any petrol or other fuel or oil except at locations and times approved by the Company.

## **PART 5**

### **BERTHING, MOORING AND ANCHORING**

*Information note:*

*These Byelaws only relate to the Port Premises.*

*The PLA's Thames Byelaws 2012 ("the PLA's Byelaws") apply throughout the River, including within the Port Premises.*

*The PLA's General Directions for Navigation in the Port of London 2016 ("the PLA's General Directions") apply throughout the River, including within the Port Premises.*

*Details of the PLA's Byelaws and General Directions can be found at:*

*<https://www.pla.co.uk/Safety/Regulations-and-Guidance/Byelaws-Rules-and-Regulations-Governing-Navigation>*

### **Vessels to be berthed only with permission of the Company Harbour Master and as directed**

**31.**—(1) The Master of any vessel may only berth or moor that vessel within the Port Premises with the permission of the Company Harbour Master and then only at such place and in such manner as directed by the Company Harbour Master.

(2) The permission referred to in paragraph (1) must be obtained before such vessel enters the River or, as the case may be, moves from any place within the River.

(3) The Master of any vessel may only permit such vessel to move from one berth to another berth within the Port Premises with the prior permission of the Company Harbour Master.

(4) The Master of a vessel clearing from the Port Premises must give notice to the Company Harbour Master of their intention to vacate the berth occupied by such vessel.

(5) A vessel must not use its anchor within the Port Premises, whether to facilitate berthing or mooring or otherwise, unless it is (i) in an emergency or to ensure a safe berthing and (ii) the Company Harbour Master has given prior consent.

*Information note:*

*See also the reporting, passage plan and vessel movement requirements of the PLA's General Directions.*

### **Vessels to be able to move on short notice and to have crew available at all times**

**32.** The Master of every power-driven vessel berthed or moored within the Port Premises must ensure that, unless exempted by the Company, such vessel must at all times have—

- (a) sufficient power and crew available to enable the vessel to move under its own power on short notice;
- (b) sufficient crew on board to operate winches and handle mooring lines; and
- (c) sufficient crew to ensure that the vessel is at all times securely made fast and that the moorings are adjusted as necessary to allow for the rise and fall of the tide and for the loading and unloading of cargo.

### **Lines to be made fast**

**33.**—(1) The Master of every vessel berthed or moored within the Port Premises must ensure that the lines of such vessel are made fast only to facilities provided for berthing or mooring purposes.

(2) Lines may not be laid across any quay or over the River in such manner as to obstruct the passage of any other vessel.

### **Vessels berthing alongside other vessels**

**34.**—(1) The Master of every vessel must ensure that—

- (a) such vessel does not make fast to or secure alongside any other vessel within the Port Premises without permission of the Company Harbour Master and the approval of the PLA Harbour Master;
- (b) when ordered by the Company Harbour Master, the Master permits any other vessel of no greater tonnage, measurement or deadweight, to make fast to, or secure alongside, such vessel;
- (c) where the Master's vessel has another vessel secured alongside—
  - (i) the Master allows a free and unencumbered passage over such vessel to the outer vessel for loading, unloading and access to and from the quay; and
  - (ii) the lines by which the outer vessel is made fast or secured must not, except in any emergency, be cut or cast off without permission of the Company Harbour Master

and without notice of the intention to do so having been given to the Master of the outer vessel which is so made fast or secured.

#### **Delays in departure to be reported**

**35.** Where a vessel is delayed in leaving the Port Premises the Master of that vessel must report immediately to the Company Harbour Master the reason and the probable duration of the delay.

*Information note:*

*See also the reporting and passage plan requirements of the PLA's General Directions.*

#### **Vessels not to test equipment without permission of the Company Harbour Master or shut down engines**

**36.** The Master of every vessel must ensure that such vessel—

- (a) when berthed at the Port Premises or alongside another vessel within the Port Premises does not without the permission of the Company Harbour Master engage in equipment or machinery tests or any operations likely to endanger property at the Port Premises or other vessels;
- (b) when berthed or moored within the Port Premises, operates its engines in accordance with any directions given by the Company Harbour Master; and
- (c) does not use any propulsion or other manoeuvring machinery or equipment in such manner as to cause damage to Company property.

#### **Bunkering**

**37.—**(1) A Master of any vessel berthed at the Port Premises must not permit the same to receive bunkers except with the permission of the Company Harbour Master.

(2) When bunkers are being supplied every Master must ensure that all scuppers and other openings are blocked off to the Company Harbour Master's satisfaction.

(3) All vessels providing bunker services within the Port Premises must carry oil spill response and clean-up equipment, including containment booms and must have crew trained in its use.

*Information note:*

*See also the reporting and passage plan requirements in the PLA's General Directions.*

#### **Vessels to display name and draught marks**

**38.** The owner of every vessel of over 60 tonnes gross registered tonnage within the Port Premises must ensure that such vessel conspicuously displays its name and accurate draught marks.

#### **Vessels to have sufficient means of access and egress**

**39.** The Master of every vessel when berthed within the Port Premises must ensure—

- (a) that the vessel has suitable means of access and egress, clearly illuminated at night, for the use of persons boarding or leaving the vessel;
- (b) that every means of access and egress is attended at all times by a watchman or other responsible person and has a suitable heaving line and lifebuoy conveniently located thereby; and
- (c) that suitable safety nets are used beneath every means of access and egress and in such other places as may be necessary to prevent persons or goods from falling into the River.



### **Cargo handling equipment not to obstruct and to be well lit**

**40.** Any person placing or leaving equipment for loading cargo on to, or unloading cargo from or handling cargo on a vessel within the Port Premises must—

- (a) ensure that it is placed in such a manner as to give clear and uninterrupted access to and from the vessel and does not interfere with any other operation within the Port Premises; and
- (b) ensure that, from sunset to sunrise, any such equipment is clearly illuminated.

### **Side ports**

**41.** The Master of every vessel must ensure that the side ports of such vessel whilst within the Port Premises from sunset to sunrise are—

- (a) clearly illuminated when open; and
- (b) closed when not in use.

### **Display of signals and use of lights for loading and unloading**

**42.** The Master of every vessel must ensure that—

- (a) when that vessel is loading or unloading in the Port and is using lights for such purpose, those lights are used in safe positions and are of a type approved by the Company, and any connecting wires between ship and shore for those lights are properly insulated, protected against damage, do not constitute a hazard to the movement of persons or equipment and are connected in accordance with the directions of the Company;
- (b) where that vessel is turning its propeller while berthed at the Port Premises, the vessel indicates such activity by hanging signboards illuminated at night over each quarter in line with such propeller; and
- (c) that vessel displays correct night and day shapes, flags and lights for the operation in which it is engaged.

### **Rodents**

**43.** The Master of a vessel must not permit the passage of any rodents between the vessel and the Port Premises or onto any other vessel and must take all necessary precautions including the attachment of suitable devices to the lines of the vessel, for that purpose.

### **Exhaust mufflers to be used at all times**

**44.** The Master of every vessel must ensure that the internal combustion engines on such vessel when operating within the Port Premises are equipped with efficient exhaust mufflers, which must be used continuously when the engines are running.

### **Rigging gear etc., not to overhang side of vessel**

**45.** The Master of every vessel must ensure that no rigging gear or other equipment of such vessel when within the Port Premises overhangs or projects from the side of the vessel in a manner that may endanger life or property.

### **Whistles, sirens, etc. not to be sounded unnecessarily**

**46.** The Master of every vessel must ensure that no whistle, siren or fog-horn on such vessel when within the Port Premises is sounded unnecessarily.

### **All vessels to maintain adequate watch and notify any accident, fire etc.,**

47. Unless exempted in writing by the Company, the Master of every vessel must ensure that when within the Port Premises such vessel maintains an adequate watch and, in the event of any danger, accident, disturbance or fire on that vessel, that such watch immediately gives an alarm and notifies:

- (a) the nearest Police Constable;
- (b) the Company's Health and Safety Manager;
- (c) the Company Harbour Master;
- (d) the PLA Harbour Master; or
- (e) any other authorised officer.

### **Vessels not to be abandoned, sunk etc.,**

48. A person must not abandon, sink, burn, break up, dismantle or cast adrift within the Port Premises any vessel or any other material.

### **All accidents, collisions and groundings within the Port Premises to be reported**

49.—(1) The Master of a vessel involved in:

- (a) an accident causing death or injury to persons or loss or destruction of or damage to property;
- (b) a collision;
- (c) a grounding; or
- (d) any pollution or fouling of any water or foreshore of the River,

within the Port Premises, must as soon as reasonably practicable deliver to the Company Harbour Master log extracts covering the incident and a detailed written report of such accident, collision or grounding.

(2) Notwithstanding any other report required by this byelaw, the Master of any vessel involved in an accident, collision or grounding within the Port Premises must immediately report the incident by the quickest possible means to the Company Harbour Master.

(3) Nothing in this byelaw relieves the Master of, or discharges, any legal obligation to make any other notification to any other person or body.

*Information note:*

*See also the accident and incident reporting requirements in the PLA's Byelaws.*

### **No dredging or removal of obstructions to be carried out without permission**

50.—(1) A Master of any vessel must not engage in dredging or the removal of obstructions within the Port Premises without the permission of the Company.

(2) In the case of dredging, the Company must not grant permission unless the Master will be acting in accordance with plans approved under Part 3 of Schedule 10 to the Order or a licence granted by the PLA under section 73 of the 1968 Act.

### **Recovery of lost cargo or gear**

51.—(1) The Master of a vessel which has lost cargo or ship's gear within the Port Premises must, after obtaining permission from the Company Harbour Master, quickly recover the lost article if practicable, but if such recovery is not made, the Master of that vessel, must deliver to the Company a written report of the loss giving:

- (a) the appropriate location of the lost article;

- (b) a description of the lost article; and
- (c) other pertinent details relating to the loss.

(2) Where the Company receives a report pursuant this byelaw, the Company may, at the risk and expense of the owner of the vessel which lost the article, recover the lost article.

*Information note:*

*See also the accident and incident reporting and foreshore protection requirements in the PLA's Byelaws.*

## PART 6

### NOTICE, CERTIFICATES AND MANIFESTS

#### **Notice, certificates and manifests**

**52.**—(1) The owner of every vessel must, wherever possible, give notice to the Company of the expected date and approximate time of arrival of their vessel at the berth.

(2) The Master of a vessel arriving at the Port Premises must, not less than 24 hours before the vessel's arrival, deliver to the Company a certificate signed by the Master setting forth as much of the following information as is required in respect of that vessel by the Company:

- (a) name of vessel;
- (b) port of registry;
- (c) gross tonnage;
- (d) gross registered tonnage;
- (e) draught upon arrival;
- (f) time of arrival;
- (g) last port of call;
- (h) name of Master;
- (i) name of owner or agent;
- (j) tonnage of goods to be unloaded;
- (k) number of passengers to be landed;
- (l) port of origin;
- (m) number of bags of mail to be landed;
- (n) official number;
- (o) length overall; and
- (p) details of all dangerous goods either for discharge at the Port or which are to remain on board the vessel.

(3) The Master in charge of a vessel arriving at the Port Premises must immediately deliver to the Company one copy, or more copies as requested by the Company, of the manifest of the vessel (certified by HM Revenue & Customs in the case of a vessel engaged in foreign trade or by the person in charge of the vessel engaged in domestic trade) setting forth details of cargo to be unloaded at the Port Premises including marks and numbers of consignments on each Bill of Lading, weigh bill or similar document, together with the weight and measurement of such cargo.

#### **Delivery of manifest on departure**

**53.** The Master of a vessel clearing from the Port Premises must, within 7 days after the vessel's departure, deliver to the Company one copy, or more copies as requested by the Company, of the manifest of the vessel (certified by HM Revenue & Customs in the case of a vessel engaged in

foreign trade or by the Master of the vessel if engaged in domestic trade) setting forth details of cargo that was carried on the vessel including marks and numbers of consignments on each Bill of Lading, weigh bill or similar document, together with the weight and measurement of such cargo.

## PART 7

### AIRSHIPS, HYDROFOIL AND AIR CUSHION CRAFT

#### **Use of Port Premises by hydrofoil and air cushion craft**

**54.** An airship, hydrofoil, hovercraft or other air cushion craft must not land on, take off from or operate in the water within the Port Premises except with prior permission of the Company and at locations designated by the Company.

## PART 8

### FIRE PREVENTION

#### **Compliance with fire protection and prevention standards**

**55.**—(1) Every person within the Port Premises must comply with all such standards and policies for fire prevention and protection against fire within the Port Premises as are from time to time published by the Company.

(2) The Master of any vessel must give reasonable facility and assistance to the fire, police, ambulance or other emergency services for dealing with alleviating or preventing any emergency.

#### **Hot working**

**56.**—(1) A person must not use any naked flames, hot rivets, welding, grinding or burning equipment within the Port Premises, or in any vessel berthed within the Port Premises, except with permission of the Company and in accordance with the terms of that permission.

(2) A person must not burn, boil or heat by fire any article or substance on the Port Premises except with permission of the Company and in such place and in such manner as the Company directs.

#### **No rockets etc., to be set off and no blasting operations to be carried out without permission**

**57.** A person, other than a person authorised by HM Coastguard or the Company, must not set off rockets or fireworks or carry out blasting operations within the Port Premises.

#### **Prohibition of smoking etc.**

**58.**—(1) A person must not smoke in any part of the Port Premises except at locations designated as smoking areas where notices are displayed permitting the possession of such lights or device.

(2) In any place within the Port Premises, including any vessel moored within the Port Premises, where explosives or dangerous goods (including highly inflammable goods) are located, a person must not have in their possession any match or other fire-producing device or wear or have in their possession any article or substance which may cause explosion or fire, except with the permission of the Company Harbour Master.

**Fire hydrants**

**59.** A person must not use a fire hydrant located on Company property for any purpose other than putting out a fire or in connection with a fire drill without permission of the Company and then only in accordance with the terms of such permission.

## SCHEDULE 8

Article 52

### TRAFFIC REGULATION MEASURES, ETC.

In the administrative area of Thurrock Council—

#### PART 1

#### SPEED LIMITS & RESTRICTED ROADS

As shown on the traffic regulation measures plan—

<i>Road name, number and length</i> (1)	<i>Speed limit</i> (2)
<i>The traffic regulation measures plans – sheet 1</i>	
<p>St Andrew's Road, A1089 From a point 10 metres southeast of the southern kerb of the access road to Tilbury Port to a point 30 metres northwest of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.</p>	40mph speed limit
<p>St Andrew's Road, A1089 From a point 30 metres northwest of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point 440 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.</p>	Restricted Road
<p>St Andrew's Road, A1089 From a point 440 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.</p>	40 mph speed limit
<p>Ferry Road, Classified un-numbered From a point approximately 420 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout to a point 130 metres south of the centre point of the existing Riverside Rail Freight Terminal roundabout.</p>	Restricted Road
<p>Fort Road, Unclassified From the centre point of the existing highway known as unclassified Fort Road at a point 90 metres north of its junction with the existing highway known as Brennan Road to a point 335</p>	40 mph speed limit

metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	
Fort Road, Unclassified From a point 335 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 875 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	20 mph speed limit
Fort Road, Unclassified From a point 875 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 130 metres south of the centre point of the existing Riverside Rail Freight Terminal roundabout.	Restricted Road
Link Road, Classified un-numbered From a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	40mph speed limit
<i>The traffic regulation measures plans - sheets 1 and 2</i>	
St Andrew's Road, A1089 From a point 10 metres southeast of the southern kerb of the access Road to Tilbury Port to a point 30 metres northwest of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.	40mph speed limit
<i>The traffic regulation measures plans – sheet 2</i>	
Dock Road, A1089 From a point 80 metres north of the point where the existing A1089 Dock Road meets the Asda roundabout, to a point 80 metres south of the point where the existing A1089 St Andrew's Road meets the Asda roundabout, including the entire circumference of the entire Asda Roundabout.	30mph speed limit
St Andrew's Road, A1089 From a point 80 metres south of the point where the existing A1089 St Andrew's Road	40mph speed limit

meets the Asda roundabout to a point 10 metres southeast of the southern kerb of the existing access road to Tilbury Port.	
<i>The traffic regulation measures plans – sheets 2 and 3</i>	
Dock Road, A1089 From a point 300 metres southwest of the centre point of the bridge where the existing highway known as unclassified Marshfoot Road passes over the existing A1089 Dock Road to a point 80 metres north of the point where the existing A1089 Dock Road meets the Asda roundabout.	50mph speed limit

## PART 2 PROHIBITIONS

As shown on the traffic regulation measures plan—

<i>Road name, number and length (1)</i>	<i>Measures (2)</i>
The traffic regulation measures plans - sheet 1	
St Andrew's Road, A1089 From a point 440 metres southeast of the point where the existing highway currently known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	No waiting at any time.
Ferry Road, Classified un-numbered From a point approximately 420 metres north of the centre point of the existing Riverside Rail Freight Terminal roundabout to a point 130 metres south of the centre point of the existing Riverside Rail Freight Terminal roundabout.	No waiting at any time.
Declassified Ferry Road classified un-numbered From a point 215 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge to a point approximately 375 metres southeast from the centreline of the point where the existing highway known as classified un-numbered Ferry Road meets the existing footway to the footbridge known as the Hairpin Bridge.	Prohibition of motor vehicles.
Fort Road, Unclassified From the centre point of the existing highway known as unclassified Fort Road at a point 90 metres north of its junction with the existing highway known as Brennan Road to a point 130 metres south of the centre point of the existing	No waiting at any time.



Riverside Rail Freight Terminal roundabout.	
Link Road, Classified un-numbered From a point 273 metres west-south-west of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line to a point 287 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	No waiting at any time.
The traffic regulation measures plans – sheets 1 and 2	
St Andrew's Road, A1089 From a point 10 metres southeast of the southern kerb of the access Road to Tilbury Port to a point 186 metres southwest of the centre point of the bridge where the existing highway known as unclassified Fort Road passes over the existing railway line known as the London to Tilbury line.	No waiting at any time.

### PART 3

#### REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

As shown on sheet 4 of the traffic regulation measures plan—

<i>Road name, number and length</i> (1)	<i>Title of Order</i> (2)	<i>Revocations or Variations</i> (3)
St Andrew's Road, A1089 From a point 50 metres southeast of the south eastern kerblines of the Dock entrance road extending in a south easterly direction for a distance of approx. 845 metres.	(St Andrew's Road, Tilbury) (40 mph Speed Limit) Order 2010.	Order to be revoked.

### SCHEDULE 9

Article 53

#### DEEMED MARINE LICENCE

### PART 1

#### GENERAL

#### Interpretation

1. In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“the authorised development” has the meaning given in paragraph 3(2);

“business day” means a day other than a Saturday or Sunday or bank holiday in England;

“commence” means beginning to carry out any part of a licensed activity and “commenced” and “commencement” are to be construed accordingly;

“condition” means a condition in Part 2, Part 3 and Part 4 of this licence and references in this licence to numbered conditions are to the conditions with those numbers in Part 2;

“construction environmental management plan” means the document of that description in Schedule 11 to the Order, certified by the Secretary of State as the construction environmental management plan for the purposes of the Order;

“the environmental statement” means the document of that description in Schedule 11 (documents to be certified) to the Order, certified by the Secretary of State as the environmental statement for the purposes of the Order;

“the existing river jetty” means the jetty existing in the river Thames at the date of this Order coming into force, as shown shaded blue and labelled *Existing Jetty Superstructure* on sheet 3 of the works plans;

“the licence holder” means Port of Tilbury London Limited and any transferee pursuant to article 51 of the Order;

“licensed activity” means any of the activities specified in Part 1 of this licence;

“marine written scheme of investigation” means the marine archaeological written scheme of mitigation contained in document reference v5 [PoTLL/T2/EX/197], appendix 12.E of the environmental statement;

“mean high water springs” means the average throughout the year of the heights of two successive high waters during those periods of 24 hours when the range of the tide is at its greatest;

“the MMO” means the Marine Management Organisation;

“the Order” means the Port of Tilbury (Expansion) Order 201[9];

“the River” means so much of the river Thames and the Thames estuary, as is within the UK marine licensing area; and

“the UK marine licensing area” has the meaning given to it in section 66(4)(licensable marine activities) of the 2009 Act.

## Contacts

2.—(1) Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence are as follows—

- (a) Marine Management Organisation
  - Marine Licensing Team
  - Lancaster House
  - Hampshire Court
  - Newcastle upon Tyne
  - NE4 7YH
  - Tel—0300 123 1032
  - Fax—0191 376 2681
  - Email—marine.consents@marinemanagement.org.uk
- (b) Marine Management Organisation
  - MMO Lowestoft
  - Pakefield Road
  - Lowestoft

Suffolk  
NR33 0HT  
Tel—01502 573 149 or 01502 572 769  
Email—lowestoft@marinemanagement.org.uk

(2) The contact details for the MMO Marine Pollution Response Team are—

Tel (during office hours)—0300 200 2024  
Tel (outside office hours)—07770 977 825 or 0345 051 8464  
Email—dispersants@marinemanagement.org.uk  
or such replacement contact details notified to the licence holder in writing by the MMO.

### **Details of licensed marine activities**

3.—(1) Subject to the licence conditions in Part 2, this licence authorises the licence holder (and any agent, contractor or subcontractor acting on their behalf) to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemptions specified by order) of the 2009 Act.

(2) In this paragraph “the authorised development” means:

- (a) the construction of a Roll on Roll off berth on the river Thames comprising—
  - (i) the construction of dolphins in the river bed with associated fenders and walkways;
  - (ii) the construction of a floating pontoon with associated restraint structures;
  - (iii) the construction of structures and buildings on the floating pontoon;
  - (iv) the construction of an approach bridge with abutments, with a roadway, footway and wind barrier on the surface of the bridge;
  - (v) the construction of a linkspan bridge between the floating pontoon and the approach bridge, with a roadway, footway and wind barrier on the surface of the bridge;
  - (vi) the construction of a surface water outfall;
  - (vii) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;
  - (viii) the alteration and renewal of an existing flood defence;
  - (ix) the removal of the existing jetty know as the Anglian Water jetty and its associated structures;
  - (x) related dredging works within the river Thames for the above and the disposal of any arisings from such dredging; and
  - (xi) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames;
- (b) the construction of a Construction Materials and Aggregates Terminal (CMAT) berth on the river Thames comprising—
  - (i) the construction of dolphins in the river bed with associated fenders and walkways;
  - (ii) the construction of a conveyor hopper and supporting structures on the river bed;
  - (iii) the installation of pipework on the existing river jetty and connections to Work No. 8A;
  - (iv) the construction of a conveyor and supporting structures in the river bed;
  - (v) the alteration, renovation and renewal of the existing river jetty and its associated structures including fenders and piles;

- (vi) related dredging works within the river Thames for the above and the disposal of any arisings from such dredging; and
  - (vii) piling works and construction operations (including piling and scour preventative and remedial works) within the river Thames;
- (c) activities to—
- (i) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including river walls);
  - (ii) carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations;
  - (iii) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(a)) obtained in carrying out any such operations;
  - (iv) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);
  - (v) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the river; and
  - (vi) construct, place and maintain works and structures including piled fenders, protection piles and cofferdams;
- (d) other works and development—
- (i) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables, lights, cofferdams, fencing and other boundary treatments including bollards and security cameras;
  - (ii) embankments, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, highway lighting and fencing; and
  - (iii) to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses;
- (e) such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, including—
- (i) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
  - (ii) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works;
- (f) such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons); and
- (g) activities to carry out works and development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the operation and maintenance of the authorised development,
- and any other element of the authorised development as defined by article 2 of the Order.

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(a) 1995 c.21

(3) Subject to condition 3(4), the grid coordinates seaward of mean high water springs within which the licence holder may carry out a licensed activity are specified below—

<i>Point reference</i>	<i>Easting (m)*5</i>	<i>Northing (m) *5</i>
P01	565744.828	175345.292
P02	565749.328	175329.143
P03	565673.531	175323.596
P04	565673.001	175342.102
P05	565649.201	175339.000
P06	565649.686	175339.000
P07	565632.366	175321.567
P08	565638.047	175320.177
P09	565588.000	175253.280
P10	565432.000	175252.020
P11	565436.958	175225.590
P12	565651.138	175140.025
P13	565746.298	175087.712
P14	566725.508	175139.190
P15	566725.264	175146.895
P16	566367.073	175232.706
P17	566357.738	175364.065
P18	566111.400	175349.600
P19	566076.861	175363.690
P20	566043.816	175364.297

(4) No hydrodynamic dredging may be carried out by the licence holder within the area within the grid coordinates for the area of the River specified below and more particularly shown on the works plans—

<i>Exclusion Zone</i>	<i>Easting (m)*5</i>	<i>Northing (m)*5</i>
EZ01	566376.99	175224.03
EZ02	566403.39	175224.01
EZ03	566492.00	175202.78
EZ04	566492.00	175131.94
EZ05	566377.00	175125.07

## PART 2

### CONDITIONS APPLYING TO LICENSABLE ACTIVITIES

#### Notifications regarding licensed activities

- 4.**—(1) The licence holder must inform the MMO and HM Coastguard in writing:
- (a) at least 5 business days prior to the commencement of the first licensed activity; and
  - (b) within 5 business days following the completion of the final licensed activity,
- of the commencement or the completion (as applicable).
- 5.**—(1) The licence holder must provide the following information to the MMO—
- (a) the name and function of any agent or contractor appointed to engage in any licensed activity within seven days of appointment; and
  - (b) details of any vessel being used to carry on any licensed activity listed on behalf of the licence holder, together with details of the vessel owner or operating company not less than 24 hours before the commencement of the licensed activity in question.

(2) Any changes to details supplied under subparagraph (1) must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activity in question.

(3) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.

6. The licence holder must ensure that a copy of this Schedule has been read and understood by any agents and contractors, together with any masters or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the licence holder, as notified to the MMO under condition 10.

7. Copies of this Schedule must be available for inspection at the following locations—

- (a) the licence holder's registered office; and
- (b) during the construction of the authorised development only, at any site office which is adjacent to or near the River and which has been provided for the purposes of the construction of the authorised development.

8. The licence holder must request that the masters or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the licence holder as notified to the MMO under condition 5 make a copy of this Schedule available for inspection on board such vessels during the carrying out of any licensed activity.

### **Construction Environmental Management Plan**

9. All licensed activities must be carried out in accordance with the construction environmental management plan where applicable.

### **Construction method statement**

10.—(1) Following consultation with the Environment Agency and Natural England, the licence holder must submit a construction method statement, together with a report on the consultation carried out, for approval by the MMO, at least 6 weeks prior to the commencement of any licensed activity.

(2) The construction method statement must include the following details—

- (a) the detailed construction methodology to be employed by the licence holder in carrying out the licensed activity;
- (b) a programme of works including timings and durations, method of delivery of material to site and plant to be used during the works; and
- (c) if relevant, the results of further sediment sampling undertaken in accordance with a sampling plan approved under condition 11.

(3) The licence holder must not commence the licensed activity until the MMO has approved in writing the submitted construction method statement.

(4) The licensed activity must be carried out in accordance with the approved construction method statement, unless otherwise agreed in writing by the MMO.

### **Sediment sampling**

11.—(1) If the licence holder considers that sediment sampling is required to demonstrate the appropriateness of a construction methodology to be included in a construction method statement submitted to the MMO for approval under condition 10, prior to submitting that construction method statement to the MMO, the licence holder must submit a sediment sampling plan for approval by the MMO.

(2) The licence holder must not submit the relevant construction method statement mentioned in sub-paragraph (1) to the MMO until sediment sampling has been undertaken in accordance with the approved sediment sampling plan, unless otherwise agreed in writing by the MMO.

## **Piling**

**12.**—(1) Where a licensed activity involves percussive piling the licence holder must commence piling activities using soft-start techniques for at least 20 minutes to ensure an incremental increase in pile power until full operational power is achieved. Should piling cease for at least 20 minutes the soft-start procedures must be repeated.

(2) No piling which is a licensed activity may be carried out between the hours of 18:00 to 08:00.

## **Dredging**

**13.** Water injection dredging which is a licensed activity must not be undertaken in the period 1 June to 30 August.

## **Marine written scheme of archaeological investigation**

**14.** The authorised development must be carried out in accordance with the marine written scheme of investigation.

## **Concrete and cement**

**15.**—(1) The licence holder must not discharge waste concrete slurry or wash water from concrete, or cement into the River.

(2) Where practicable, the licence holder must site concrete and cement mixing and washing areas at least 10 metres away from the River and any surface water drain to minimise the risk of run off entering the River.

## **Coatings and treatments**

**16.** The licence holder must ensure that any coatings and any treatments are suitable for use in the River and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency.

## **Pollution and Spills**

**17.** The licence holder must—

- (a) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers;
- (b) report any spill of oil, fuel or chemicals into the marine area to the MMO Marine Pollution Response Team pursuant to paragraph 2(2) of this Schedule within 12 hours of the spill occurring; and
- (c) store all waste in designated areas that are isolated from surface water drains and open water and are bunded.

## **Post-construction**

**18.** The licence holder must remove all temporary structures, waste and debris associated with the construction activities within 6 weeks following completion of the final construction activity.

## **Disposal**

**19.** The licence holder must inform the MMO of the location and quantities of material disposed of each month under this licence. This information must be submitted to the MMO by 15 February each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

20. The licence holder shall ensure that only inert material of natural origin, produced during dredging shall be disposed of within the disposal site TH070 South Falls (or any other disposal site approved in writing by the MMO), and that any other materials are screened out before disposal at this site.

21. The material to be disposed of within the disposal site referred to in condition 20 must be placed within the boundaries of that site

22. During the course of disposal, material must be distributed evenly over the disposal site.

## PART 3

### PROCEDURE FOR THE DISCHARGE OF CONDITIONS

#### Meaning of “application”

23. In this Part, “application” means a submission by the licence holder for approval by the MMO of any construction method statement or plan under conditions 10 and 11.

#### Further information regarding application

24.—(1) The MMO may request in writing such further information from the licence holder as is necessary to enable the MMO to consider the application.

#### Determination of application

25.—(1) In determining the application the MMO may have regard to—

- (a) the application and any supporting information or documentation;
- (b) any further information provided by the licence holder in accordance with paragraph 11; and
- (c) such other matters as the MMO thinks relevant.

(2) Having considered the application the MMO must—

- (a) grant the application unconditionally;
- (b) grant the application subject to the conditions as the MMO thinks fit; or
- (c) refuse the application.

#### Notice of determination

26.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the licence holder of the determination of the application as soon as reasonably practicable after the application is received by the MMO.

(2) Where the MMO has made a request under condition 24, the MMO must give notice to the licence holder of the determination of the application as soon as reasonably practicable once the further information is received.

(3) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

#### Arbitration

27.—(1) Subject to condition 27(2) any difference under any provision of this licence must, unless otherwise agreed between the MMO and the licence holder, be referred to and settled by a single arbitrator to be agreed between the MMO and the licence holder or, failing agreement, to be appointed on the application of either the MMO or the licence holder (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.



(2) Nothing in this condition 27 is to be taken, or to operate so as to, fetter or prejudice the statutory rights, powers, discretions or responsibilities of the MMO.

## PROTECTIVE PROVISIONS

## PART 1

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

1. The provisions of this Part have effect for the protection of statutory undertakers unless otherwise agreed in writing between the Company and the statutory undertaker in question.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by the statutory undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition of that term—
  - (i) mains, pipes or other water apparatus belonging to or maintained by the statutory undertaker for the purposes of water supply; and
  - (ii) mains, pipes or other water apparatus that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991(b); 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 works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

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

“statutory undertaker” means—

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(a) 1989 c.29.  
(b) 1991 c.56.

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

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

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

**4.—(1)** Regardless of the temporary stopping up, alteration or diversion of streets under the powers conferred by article 13 (temporary stopping up and restriction of use of streets), a statutory undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary stopping up, alteration or diversion was in that street.

(2) Where any street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), any statutory undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the Company must grant to the statutory undertaker legal easements reasonably satisfactory to the statutory undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the Company or of the statutory undertaker to require the removal of that apparatus under paragraph 6 or to carry out works under paragraph 8.

**5.** Despite any provision in this Order or anything shown on the land, special category land and crown land plans, the Company must not acquire any apparatus otherwise than by agreement.

**6.—(1)** If, in the exercise of the powers conferred by this Order, the Company acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the statutory undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a statutory undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the statutory undertaker in question in accordance with sub-paragraphs (2) to (8).

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

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(a) 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).

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 Company under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the Company or in default of agreement settled by arbitration in accordance with article 60 (arbitration).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 60 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the Company to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the Company gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the Company, that work, instead of being executed by the statutory undertaker, may be executed by the Company in accordance with plans and in a position agreed between the statutory undertaker and the Company or, in default of agreement, determined by arbitration in accordance with article 60 (arbitration), without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(7) In carrying out any work under sub-paragraph (6) the Company must comply with all statutory obligations which would have been applicable had the works been carried out by the statutory undertaker.

(8) Nothing in sub-paragraph (6) authorises the Company to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

**7.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to a statutory undertaker facilities and rights for the construction and maintenance in land of the Company of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the Company and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 60 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in land of the Company, the arbitrator must—

- (a) give effect to all reasonable requirements of the Company for ensuring the safety and efficient operation of the tunnels and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Company; 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, under, over or above the tunnels for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the Company 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 statutory 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 Company to that statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**8.**—(1) Not less than 28 days before starting the execution of any works authorised by this Order that will or may affect any apparatus the removal of which has not been required by the

Company under paragraph 6(2), the Company must submit to the statutory undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

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

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

(6) The Company is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) Nothing in sub-paragraph (6) entitles the Company to carry out works to any apparatus but, upon receipt of notice from the Company, the statutory undertaker must proceed to carry out such works as may be required without unnecessary delay.

**9.—**(1) Subject to the following provisions of this paragraph, the Company must repay to the statutory undertaker in question the proper and reasonable expenses incurred by that statutory undertaker in, or in connection with the inspection, removal, relaying, replacing, alteration or protection of any apparatus under any provision of this Part of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of facilities and rights or exercise of statutory powers for such apparatus) including the cutting off of any apparatus from any other apparatus or the making safe of any redundant apparatus as a consequence of the exercise by the Company of any power under this Order and the surveying of any land or works, the inspection, superintendence and monitoring of works or the removal of any temporary works reasonably necessary in consequence of the exercise of the Company of any power under this Order.

(2) The value of any apparatus removed under this Part is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with this Part—

(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,

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 Company or, in default of agreement, is not determined by arbitration in accordance with article 60 (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 statutory undertaker in question by virtue of sub-paragraph (1) is to 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) 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 statutory undertaker in question 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.

**10.**—(1) Subject to sub-paragraphs (1) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the works referred to in paragraph 6(2), any damage is caused to any 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 statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the Company must—

- (a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify the statutory undertaker against all reasonable claims, penalties, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or reasonably and properly incurred by, the statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the Company reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Company which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**11.** If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the Company must provide such alternative means of access to that apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

## PART 2

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

**12.**—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the Company and the operator.

(2) In this Part of this Schedule—

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

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(a) 2003 c.21.

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

“the electronic communications code” has the same meaning as in Chapter 1 (electronic communications networks and services) of Part 2 of the 2003 Act<sup>(a)</sup>;

“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 Secretary of State is providing or proposing to provide;

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

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

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

**13.** The exercise of the powers of article 34 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

**14.—**(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 Company 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 Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the Company 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 Company which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the Company and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 60 (arbitration).

**15.** This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the Company and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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(a) See section 106.

## PART 3

### FOR THE PROTECTION OF THE PORT OF LONDON AUTHORITY

16. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and the PLA, for the protection of the PLA in relation to the construction and maintenance of the authorised development.

#### Definitions

17. In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and renewal and, in its application to a specified work which includes or comprises any operation, means the carrying out of that operation and “construct” and “constructed” have corresponding meanings;

“core information” means the information (including information comprised in plans) regarding specified works or specified functions that the PLA may from time to time prescribe as being required to accompany any submission of plans for approval under paragraph 18, such information being that which the PLA publishes on its website from time to time as being required to accompany an application for a works licence under section 66 (licensing of works) or, as the case may be, an application for a licence to dredge under section 73 (licensing of dredging, etc.) of the 1968 Act;

“the PLA” means the Port of London Authority;

“plans” includes navigational risk assessments, plans, sections, elevations, drawings, specifications, programmes, construction methods and descriptions including, where applicable, such relevant hydraulic information about the river Thames as may be reasonably requested by the PLA;

“specified function” means—

- (a) any function of the Company under this Order (except any function under article 23, 25 or 26); and
- (b) any function conferred by the following provisions of the 1968 Act applied to the extended port limits under article 4(1) (application of enactments relating to the Port of Tilbury)—
  - (i) section 120(1) to (5) and (7) (powers to raise and remove vessels sunk, etc.); and
  - (ii) section 121 (removal of obstructions other than vessels); and
- (c) any function under section 252 (powers of harbour and conservancy authorities in relation to wrecks) of the Merchant Shipping Act 1995,

the exercise of which may affect the river Thames or any function of the PLA; and

“specified work” means any part of the authorised development (which for this purpose includes the removal of any part of the authorised development), which—

- (a) is, may be, or takes place in, on, under or over the surface of land below mean high water level forming part of the river Thames; or
- (b) may affect the river Thames or any function of the PLA,

including any projection over the river Thames by any authorised work or any plant or machinery.

#### Approval of detailed design

18.—(1) The Company must not commence the construction of any specified work or the exercise of any specified function until plans of the work or function have been approved in writing by the PLA.

(2) The Company must submit to the PLA plans of the specified work or specified function together with all relevant core information and must thereafter provide such further particulars as



the PLA may, within 20 business days starting with the day on which plans are submitted under this sub-paragraph, reasonably require, and the particulars so supplied are to provide all information necessary to enable the PLA to determine whether approval should be given and, if so, whether conditions should be imposed.

(3) Any approval of the PLA required under this paragraph must not be unreasonably withheld but may be given subject to such reasonable modifications, terms and conditions as the PLA may make for the protection of—

- (a) traffic in, or the flow or regime of, the river Thames;
- (b) the use of its land, or the river Thames, for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(4) Requirements made under sub-paragraph (3) may include conditions as to—

- (a) the proposed location of any temporary work and its dimensions or the location where the specified function is proposed to be exercised;
- (b) the programming of temporary works or the exercise of the specified function;
- (c) the removal of any temporary work and the undertaking by the Company of any related work or operation that the PLA considers to be necessary for the purpose of removing or preventing any obstruction to navigation;
- (d) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the specified work or specified function; and
- (e) the expiry of the approval if the Company does not commence construction or carrying out of the approved specified work or exercise of the specified function within a prescribed period.

(5) Subject to sub-paragraph (6), an application for approval under this paragraph is deemed to have been refused if it is neither given nor refused—

- (a) in the case of an application for approval under article 43 (power to dredge), within 40 business days of the paragraph 18 specified day; and
- (b) in any other case, within 30 business days of that day.

(6) An approval of the PLA under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (5) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

(7) The Company must carry out all operations for the construction of any specified work or the specified function without unnecessary delay and to the reasonable satisfaction of the PLA so that traffic in, or the flow or regime of, the river Thames, and the exercise of the PLA's functions, do not suffer more interference than is reasonably practicable. The PLA is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey those operations and the Company must provide all reasonable facilities to enable that inspection and survey to take place.

(8) In this paragraph “the paragraph 18 specified day” means, in relation to any specified work or specified function—

- (a) the day on which plans and sections of that work or function are submitted to the PLA under sub-paragraph (1); or
- (b) the day on which the Company provides the PLA with all further particulars of the work or function that have been requested by the PLA under that sub-paragraph,

whichever is the later.

### **As built drawings**

**19.** As soon as reasonably practicable following the completion of the construction of the authorised development, the Company must provide to the PLA as built drawings of any specified

works in a form and scale to be agreed between the Company and the PLA to show the position of those works in relation to the river Thames.

#### **Discharges, etc.**

**20.**—(1) The Company must not without the consent of the PLA exercise the powers conferred by article 18 (discharge of water) so as to—

- (a) deposit in or allow to fall or be washed into the river Thames any gravel, soil or other material;
- (b) discharge or allow to escape either directly or indirectly into the river Thames any offensive or injurious matter in suspension or otherwise; or
- (c) directly or indirectly discharge any water into the river Thames.

(2) Any consent of the PLA under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the PLA may reasonably impose.

(3) Any consent under this paragraph is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

**21.** The Company must not, in exercise of the powers conferred by article 18 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river Thames unless such damage or interference is approved as a specified work under this Order or is otherwise approved in writing by the PLA.

#### **Navigational lights, buoys, etc.**

**22.**—(1) The Company must, at or near a specified work, a structure which remains in the river Thames by virtue of article 3(4) or 3(5) (disapplication of legislation, etc.) or a location where a specified function is being exercised, exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the PLA may from time to time reasonably require.

(2) The PLA must give the Company not less than 20 business days' written notice of a requirement under sub-paragraph (1) except in the case of emergency when the PLA must give such notice as is reasonably practicable.

#### **Directions as to lights**

**23.** The Company must comply with any reasonable directions issued from time to time by the PLA Harbour Master with regard to the lighting of—

- (a) a specified work or a structure which remains in the river Thames by virtue of article 3(4) or 3(5) (disapplication of legislation, etc.); or
- (b) the carrying out of a specified function or the use of apparatus for the purposes of such a function,

or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river Thames.

#### **Permanent lights on tidal works**

**24.** After the completion of a specified work the Company must at the outer extremity of that work exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the PLA may from time to time direct.

#### **Removal, etc. of the PLA's moorings and buoys**

**25.**—(1) Subject to sub-paragraph (2), if by reason of the construction of any specified work or the exercise of any specified function it is reasonably necessary for the PLA to incur the cost of—

- (a) temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the PLA;
- (b) laying down and removing substituted moorings or buoys; or
- (c) carrying out dredging operations for any such purpose,

not being costs which it would have incurred for any other reason, the Company must pay the costs reasonably so incurred by the PLA.

(2) The PLA must give to the Company not less than 20 business days' notice of its intention to incur such costs, and take into account any representations which the Company may make in response to the notice within 10 business days of the receipt of the notice.

### **Sedimentation, etc. remedial action**

**26.**—(1) This paragraph applies if any part of the river Thames has become or is likely to become subject to sedimentation, scouring or other changes in the flow or regime of the river Thames which—

- (a) is wholly or partly caused by a specified work or a specified function during the period beginning with the commencement of construction of the work or function and (subject to sub-paragraph (4)) ending with the expiration of six years after the date of completion of all the specified works comprised in the authorised development; and
- (b) for the safety of navigation or for the protection of any works in the river Thames, should in the reasonable opinion of the PLA be removed or made good.

(2) Subject to sub-paragraph (3) the Company must either—

- (a) pay to the PLA any additional expense to which the PLA may reasonably be put in dredging the river Thames to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to either or both the specified work and the specified function; or
- (b) carry out the necessary dredging or work to make good the scouring at its own expense and subject to the prior approval of the PLA which may be subject to reasonable conditions but which may not be unreasonably withheld or delayed;

and the expenses payable by the Company under this sub-paragraph include any additional expenses accrued or incurred by the PLA in carrying out surveys or studies which may be agreed with the Company in connection with the implementation of this paragraph.

(3) If it is established that the sedimentation, scouring or other changes in the flow or regime of the river was partly caused by a specified work or a specified function and partly by another factor, the Company's liability under sub-paragraph (2) is apportioned accordingly.

(4) At any time before the expiry of the period of six years after the date of completion of all the specified works comprised in the authorised development ("the completion date") the PLA may serve notice on the Company stating that in the opinion of the PLA the river Thames or any part of it may, after the expiry of that period, become subject to sedimentation, scouring or other changes in its flow or regime wholly or partly caused by a specified work or specified function. Any such notice must specify—

- (a) the additional period (not exceeding 10 years after the completion date) during which the provisions of sub-paragraphs (1) and (2) ought to apply; and
- (b) the PLA's reasons for reaching that opinion.

(5) On receipt of any such notice the Company may serve a counter-notice within 30 business days beginning on the day the notice was received, such notice to include details of the Company's objection to the PLA's notice or any conditions it may wish to impose on compliance by the Company with the PLA's notice.

(6) In the event that the PLA and the Company cannot agree the matters raised in the PLA's notice and the Company's counter-notice within two months from the service of the Company's counter-notice, either party may refer the matter to arbitration under paragraph 37.

(7) If the Company fails to serve a counter-notice or if it serves a counter-notice and the matter is either agreed between the PLA and the Company or determined pursuant to sub-paragraph (6), then the provisions of sub-paragraphs (1) and (2) will apply during such additional period as is specified in the PLA's notice or as may be so agreed or determined.

### **Removal of temporary works**

**27.**—(1) On completion of the construction of the whole or any part of a permanent specified work, the Company must—

- (a) as soon as reasonably practicable after such completion seek approval under paragraph 18 for the removal required by sub-paragraph (b); and
- (b) as soon as reasonably practicable after the grant of that approval under paragraph 18 remove—
  - (i) in the case of completion of part, any temporary tidal work (other than a residual structure) carried out only for the purposes of that part of the permanent specified work;
  - (ii) on completion of all the specified works, any remaining temporary tidal work (other than a residual structure); and
  - (iii) in either case, any materials, plant and equipment used for such construction,

and make good the site to the reasonable satisfaction of the PLA.

(2) For the purposes of the Company making good the site in accordance with sub-paragraph (1)(b), the PLA may require that—

- (a) any residual structure is cut off by the Company at such level below the bed of the river Thames as the PLA may reasonably direct; and
- (b) the Company takes such other steps to make the residual structure safe as the PLA may reasonably direct.

(3) As soon as reasonably practicable after the Company has complied with the PLA's requirements under sub-paragraphs (1) and (2) in relation to any residual structure, the PLA will grant the Company a works licence for that structure under section 66 (licensing of works) of the 1968 Act, and the terms of the licence are to reflect such requirements.

(4) For the avoidance of doubt, article 3 (disapplication of legislation, etc.) will not apply to a residual structure which will, accordingly, be subject to sections 66 to 75 of the 1968 Act.

(5) In this article—

“residual structure” means any part of a temporary tidal work that the PLA agrees cannot reasonably be removed by the Company on completion of the construction of the permanent specified works; and

“tidal work” means any specified work any part of which is, or may be, or, in, under or over the surface of land below mean high water level forming part of the river Thames.

### **Protective action**

**28.**—(1) If any specified work or the exercise of any specified function—

- (a) is constructed or carried out otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given under paragraph 18(4); or
- (b) during construction or carrying out gives rise to sedimentation, scouring, currents or wave action, which would be materially detrimental to traffic in, or the flow or regime of, the river Thames,

then the PLA may by notice in writing require the Company at the Company's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a specified work or specified function to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
    - (i) this Part of this Schedule; or
    - (ii) the condition that has been breached; or
  - (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river Thames.
- (3) If the Company does not comply with a notice under sub-paragraph (1), or is unable to do so then the PLA may in writing require the Company to—
- (a) remove, alter or pull down the specified work, and where the specified work is removed to restore the site of that work (to such extent as the PLA reasonably requires) to its former condition; or
  - (b) take such other action as the PLA may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.
- (4) If a specified work gives rise to environmental impacts over and above those anticipated by any environmental document, the Company must, in compliance with its duties under any enactment, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing must consult and seek to agree the necessary measures with the PLA.
- (5) If the PLA becomes aware that any specified work is causing an environmental impact over and above those anticipated by any environmental document, the PLA must notify the Company of that environmental impact, the reasons why the PLA believes that the environmental impact is being caused by the specified work and of measures that the PLA reasonably believes are necessary to counter or mitigate that environmental impact. The Company must implement either the measures that the PLA has notified to the Company or such other measures as the Company believes are necessary to counter the environmental impact identified, giving reasons to the Company as to why it has implemented such other measures.
- (6) In this paragraph “environmental document” means-
- (a) the environmental statement; and
  - (b) any other document containing environmental information provided by the Company to the PLA for the purposes of any approval under paragraph 18.

### **Abandoned or decayed works**

**29.**—(1) If a specified work or a structure which remains in the river Thames by virtue of article 3(4) or 3(5) (disapplication of legislation, etc.) is abandoned or falls into decay, the PLA may by notice in writing require the Company to take such reasonable steps as may be specified in the notice either to repair or restore the specified work or structure, or any part of it, or to remove the specified work and (to such extent and within such limits as the PLA reasonably requires) restore the site of that work to its condition prior to the construction of the specified work.

(2) If any specified work or structure which remains in the river Thames by virtue of article 3(4) or 3(5) is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river Thames, the PLA may by notice in writing require the Company to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the Company so elects, to remove the specified work and (to such extent as the PLA reasonably requires) to restore the site to its former condition.

(3) If on the expiration of such reasonable period as may be specified in a notice under this paragraph the work specified in the notice has not been completed to the satisfaction of the PLA, the PLA may undertake that work and any expenditure reasonably incurred by the PLA in so doing is recoverable from the Company.

### **Facilities for navigation**

**30.**—(1) The Company must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the consent of the PLA, and must ensure that access to such aids remains available during and following construction of any specified work or the exercise of any specified function.

(2) The Company must provide at any specified work, or must afford reasonable facilities at such work (including an electricity supply) for the PLA to provide at the Company's cost, from time to time such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the Company may deem necessary by reason of the construction and presence of the specified work and must ensure access remains available to such facilities during and following construction of the specified work.

### **Survey of riverbed**

**31.**—(1) The PLA may, at the Company's expense (such expense to be that which is reasonably incurred), carry out a survey (or externally procure the carrying out of a survey) for the purpose of establishing the condition of the river Thames—

- (a) before the commencement of construction of the first specified work below mean high water level to be constructed following approval under paragraph 18;
- (b) before the commencement of construction of any other specified work, or the carrying out of any other specified function, approved under paragraph 18;
- (c) during the construction of any specified work, or the carrying out of any specified function, as is reasonably required; and
- (d) after completion of, respectively—
  - (i) any specified work and the exercise of all related specified functions; and
  - (ii) all the specified works constructed and specified functions carried out under this Order in relation to such construction,

of such parts of the river Thames as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of the relevant specified work, or the carrying out of a specified function as would, if it were to be constructed or carried out, constitute specified works, or give rise to operations, below mean high water level.

(2) The PLA must make available to the Company the results of any survey carried out under this paragraph.

(3) The PLA must not under this paragraph carry out a survey of any part of the river Thames in respect of which the Company has provided to the PLA survey material which the PLA is satisfied establishes the condition of the river Thames, and in the case of a survey under sub-paragraph (1)(c), the effect of the specified works and the specified functions.

(4) A survey carried out under this paragraph is the property of the PLA.

### **Consideration for dredged material**

**32.**—(1) The Company must pay to the PLA for material dredged by the Company under this Order from so much of the river Thames of which the freehold is vested in the PLA, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The Company must pay consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the authorised development based on the quantity of such material that—

- (a) is not used for the construction of the authorised development; and
- (b) is sold by the Company or by any other person exercising any powers under this Order.

### **Restriction on powers of compulsory acquisition**

**33.** Nothing contained in Part 3 of this Order authorises the acquisition of any interest in, or the acquisition or extinguishment of any right in, on or over, any Order land if the interest or right is at the time of the proposed acquisition vested in the PLA.

### **Protection for the PLA's functions**

**34.—**(1) Subject to article 3 (disapplication of legislation, etc.) the exercise in, under or over the river Thames by the Company of any of its functions under this Order is subject to—

- (a) any enactment relating to the PLA;
- (b) any byelaw, direction or other requirement made by the PLA or the PLA Harbour Master under any enactment; and
- (c) any other exercise by the PLA or the PLA Harbour Master of any function conferred by or under any enactment.

(2) The Company's dockmaster must not give or enforce any special direction to any vessel under section 112(1)(b) (special directions to vessels in the Thames) of the 1968 Act, or enforce such a direction under section 118 (enforcement of directions) of that Act, if to do so would conflict with a special direction given to the same vessel by the PLA Harbour Master.

(3) The Company must not take any action in the river Thames in relation to the removal from the extended port limits of any vessel or other thing except with the consent of the PLA Harbour Master, which must not be unreasonably withheld.

### **Indemnity**

**35.—**(1) The Company is responsible for and must make good to the PLA all financial costs, charges, damages, losses or expenses which may be incurred reasonably or suffered by the PLA by reason of—

- (a) the construction or operation of a specified work or its failure;
- (b) the exercise of any specified function; or
- (c) any act or omission of the Company, its employees, contractors or agents or others whilst engaged on the construction or operation of a specified work or exercise of a specified function dealing with any failure of a specified work,

and the Company must indemnify the PLA from and against all claims and demands arising out of or in connection with the specified works or specified functions or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

- (a) by the PLA on behalf of the Company; or
- (b) by the Company, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the PLA, or in a manner approved by the PLA, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the PLA or its duly authorised representative, employee, contractor or agent) excuse the Company from liability under the provisions of this paragraph.

(3) The PLA must give the Company reasonable notice of any such claim or demand as is referred to in sub-paragraph (1) and no settlement or compromise of it is to be made without the prior consent of the Company.

### **Disposals, etc.**

**36.** The Company must within 7 days after the completion of any sale, agreement or other transaction under article 51 (consent to transfer benefit of Order) in relation to which any powers,

rights and obligations of the Company are transferred to another party, notify the PLA in writing, and the notice must include particulars of the other party to the transaction under article 51, the general nature of the transaction and details of the extent, nature and scope of the works or functions sold, transferred or otherwise dealt with.

### **Disputes**

37. Subject to any protocol agreed in writing by the parties, any dispute arising between the Company and the PLA under this Part of this Schedule is to be determined by arbitration as provided in article 60 (arbitration).

## **PART 4**

### **FOR THE PROTECTION OF THE ENVIRONMENT AGENCY**

38. The following provisions apply for the protection of the Environment Agency unless otherwise agreed in writing between the Company and the Agency, in relation to construction of the authorised development and, within any maintenance period defined in article 33 (temporary use of land for maintaining the authorised development), any maintenance of any part of the authorised development.

### **Definitions**

39. In this Schedule—

“the Agency” means the Environment Agency;

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

“damage” includes (but is not limited to) scouring, erosion, loss of structural integrity and environmental damage to any drainage work or any flora or fauna dependent on the aquatic environment, and “damaged” is to be construed accordingly;

“drainage work” means any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring or flood storage capacity;

“environmental duties” means the Agency’s duties in the Environment Act 1995(a), the Natural Environment and Rural Communities Act 2006(b) and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(c);

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

“flood defence” means any bank, wall, embankment, bridge abutments, lock gates or other structure or any appliance (including any supporting anchorage system) that fulfils a function of preventing, or reducing the risk of, flooding to land or property;

“flood storage capacity” means any land, which, taking account of the flood defences, is expected to provide flood storage capacity for any main river;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department of Environment, Food and Rural Affairs, including any structure or appliance for controlling or regulating the flow of water into, in or out of the channel;

“maintenance” has the same meaning as in article 2 (interpretation), save for the exclusion of the works of inspection;

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(a) 1995 c.25  
(b) 2006 c.16  
(c) S.I. 2017/407



“plans” includes sections, drawings, specifications, associated pre-construction ground investigation methodologies and method statements; and

“specified work” means so much of any permanent or temporary work or operation forming part of the authorised development (other than works required in an emergency) as is in, on, under or over a main river or drainage works or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage works or the volumetric rate of flow of water in or flowing to or from any drainage works; or
- (b) affect the flow, purity or quality of water in any main river or other surface waters or ground water; or
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of the main river and habitats in its immediate vicinity.

### **Dredging**

**40.**—(1) — The Company must consult the Agency as soon as reasonably practicable before applying to the PLA for consent to any dredging under Part 3 of this Schedule and in doing so the Company must allow the Agency 28 days to respond to the consultation.

(2) Subject to sub-paragraph (1), nothing in this Part of this Schedule applies to dredging carried out under the powers of this Order.

### **Specified works**

**41.**—(1) Before commencing construction of a specified work (excluding any piling works which comprise a “licensable marine activity” as defined in the 2009 Act), the Company must submit to the Agency for its written approval—

- (a) plans of the specified work together with the details of the positioning of any structure within the main river;
- (b) such further particulars as the Agency may within 20 business days of the receipt of the detailed designs reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency under sub-paragraph (1), or settled in accordance with paragraph 48 where applicable, and in accordance with any reasonable conditions or requirements specified under this paragraph.

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

- (a) must not be unreasonably withheld;
- (b) is deemed to have been given if it is neither given nor refused within 8 weeks of the submission of the plans or within 4 weeks of the receipt of further particulars if such particulars have been required by the Agency for approval;
- (c) in the case of a refusal, must be accompanied by a statement of the grounds of refusal; and
- (d) may be given subject to such reasonable requirements or conditions as the Agency may make for the protection of any drainage work, flood defence, fishery, main river or water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

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

(5) Without limitation on the scope of sub-paragraph (3)(d) the requirements or conditions which the Agency may make under that paragraph include conditions requiring the Company at its own expense to construct such protective works (including any new works as well as alterations to existing works) whether temporary or permanent before or during construction of the specified

work (including provision of flood banks, walls or embankments or other new works and the strengthening, repair or removal of banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work or flood defence against damage;
- (b) to secure that its efficiency or effectiveness for flood defence purposes is not impaired; or
- (c) to ensure the risk of flooding is not otherwise increased by reason of any specified work, maintenance work or protective work,

during the construction of or by reason of any specified work.

(6) Any dispute in respect of any approval or refusal under this paragraph is subject to the dispute resolution procedure in paragraph 48.

### **Construction and inspection**

**42.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 41 must be constructed—

- (a) without unnecessary or unreasonable delay;
- (b) in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (c) to the reasonable satisfaction of the Agency,

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

(2) The Company must give to the Agency not less than 10 business days' notice in writing of its intention to commence construction of any specified work and notice in writing of its having been brought into use not later than five business days after the date on which it has been completed.

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

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

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

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

### **Maintenance of drainage works**

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

(2) If any such drainage work which the Company is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Company,

or (if the Company so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) If, within a reasonable period being not less than 20 business days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the Company, the Company has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

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

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of this Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

### **Alternative access**

**44.** If by reason of construction of any specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Company must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 72 hours of the Company becoming aware of such obstruction.

### **Emergency powers**

**45.—**(1) Subject to sub-paragraph (2), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Company to the reasonable satisfaction of the Agency.

(2) If such impaired or damaged drainage work is not made good to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Company to restore it to its former standard of efficiency or where necessary to construct some other work in substitution for it.

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

(4) In any case where immediate action by the Agency is reasonably required in order to secure that imminent flood risk or damage to the environment is avoided or reduced, the Agency may take such steps as are reasonable for the purpose and may recover from the Company the reasonable cost of so doing.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (1), the Agency must not except in a case of immediate foreseeable need exercise the powers conferred by sub-paragraph (1) until the dispute has been finally determined in accordance with paragraph 48.

### **Free passage of fish**

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

(2) If by reason of—

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

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

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Company fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in doing so provided that the notice specifying those steps is served on the Company as soon as is reasonably practicable after the Agency has taken, or commenced to take the steps specified in the notice.

### **Indemnities and Costs**

**47.**—(1) The Company must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

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

(2) Without affecting the other provisions of this Part of this Schedule, the Company must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be reasonably made or taken against, recovered from, or reasonably incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any water in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the Company, its contractors, agents or employees whilst engaged upon the work.

(3) The Agency must give to the Company reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the Company.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that imminent flood risk or damage to the environment is avoided or reduced, the Agency may take such steps as are reasonable for the purpose and may recover from the Company the reasonable cost of so doing.

(5) The fact that any work or thing has been executed or done by the Company in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Company from any liability under the provisions of this Part of this Schedule.

## **Dispute resolution**

**48.** Any difference or dispute arising between the Company and the Agency under this Part of this Schedule is to be determined by arbitration in accordance with article 60 (arbitration) of the Order unless otherwise agreed in writing between the Company and the Agency, except that where there is no agreement between the parties the arbitrator is to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State for the Environment and the Secretary of State for Transport acting jointly.

## **PART 5**

### **FOR THE PROTECTION OF THURROCK COUNCIL (AS DRAINAGE BOARD)**

**49.** The following provisions of this Part of this Schedule apply for the protection of Thurrock Council unless otherwise agreed between the Company and Thurrock Council.

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

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

“drainage work” means an ordinary watercourse and includes any land which is expected to provide flood storage capacity for an ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse;

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

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

“specified work” means any of the following works carried out in relation to any ordinary watercourse—

- (a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;
- (b) erecting a culvert in the watercourse; or
- (c) altering a culvert in a manner that would be likely to affect the flow of the watercourse.

**51.—(1)** Before beginning to construct any specified work, the Company must submit to Thurrock Council plans of the work, and such further particulars available to the Company as Thurrock Council may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by Thurrock Council, or determined under paragraph 59.

(3) Any approval of Thurrock Council required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is to be deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval or where further particulars are submitted under sub-paragraph (1), within 2 months of the submission of those particulars; and
- (c) may be given subject to such reasonable requirements or conditions as Thurrock Council may make for the protection of any ordinary watercourse or for the prevention of flooding.

**52.** The requirements or conditions which Thurrock Council may make under paragraph 51 include conditions requiring the Company at its own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—

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

by reason of the specified work in relation to a drainage work.

**53.**—(1) Any specified work, and all protective works required by Thurrock Council under paragraph 51, must be constructed to the reasonable satisfaction of Thurrock Council and an officer of Thurrock Council is entitled on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The Company must give to Thurrock Council not less than 14 days' notice of its intention to commence construction of any specified work and the Company must give to Thurrock Council notice of completion of a specified work not later than 7 days after the date on which it is brought into use.

(3) If any part of the works comprising a structure in, over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Thurrock Council may by notice require the Company at its own expense to comply with the requirements of this Part of this Schedule or (if the Company so elects and Thurrock Council in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as Thurrock Council reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Company, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, Thurrock Council may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the Company.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, Thurrock Council must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

**54.**—(1) From the commencement of the construction of any specified work until the date falling 12 months from the date of completion of the specified work (“the maintenance period”), the Company must maintain in good repair and condition and free from obstruction the drainage work which is situated within the limits of deviation for that specified work and on land held by the Company for the purposes or in connection with the specified work, whether the drainage work is constructed under this Order or is already in existence.

(2) If any such drainage work is not maintained to the reasonable satisfaction of Thurrock Council, it may by notice require the person liable for maintenance of the drainage work to maintain the drainage work, or any part of it, to such extent as Thurrock Council reasonably requires.

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

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

**55.** If by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the Company to the reasonable satisfaction of Thurrock Council and if the Company fails to do so, Thurrock Council may make good the same and recover from the Company the expense reasonably incurred by it in doing so.

**56.**—(1) The Company must indemnify Thurrock Council in respect of all costs, charges and expenses which it may reasonably incur or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection of the construction of a specified work in respect of an ordinary watercourse or any protective works required Thurrock Council under this Part of this Schedule.

(2) The maximum amount payable to Thurrock Council under sub-paragraph (1)(a) or (1)(b) is to be the same as would have been payable to Thurrock Council in accordance with the scale of charges for pre-application advice and land drainage consent applications published on Thurrock Council’s website from time to time.

**57.**—(1) Without prejudice to the other provisions of this Part of this Schedule, the Company must indemnify Thurrock Council from all claims, demands, proceedings or damages, which may be made or taken against, or recovered from Thurrock Council by reason of—

- (a) any damage to any ordinary watercourse so as to impair its efficiency for flood defence purposes,
- (b) any raising or lowering of the water table in land adjoining the works authorised by this Order or adjoining any sewers, drains and watercourses, or
- (c) any flooding or increased flooding of any such lands,

which is caused by, or results from, the construction and maintenance of any specified work or any act or omission of the Company, its contractors, agents or employees whilst engaged upon the work.

(2) Thurrock Council must give to the Company reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the Company which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**58.** The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to have been approved by Thurrock Council, or to its satisfaction, does not (in the absence of negligence on the part of Thurrock Council, its officers, contractors or agents) relieve the Company from any liability under the provisions of this Part of this Schedule.

**59.** Any dispute arising between the Company and Thurrock Council under this Part of this Schedule is to be determined by arbitration in accordance with article 60 (arbitration) of the Order.

## PART 6

### FOR THE PROTECTION OF RAILWAY INTERESTS

**60.** The following provisions of this Schedule have effect, unless otherwise agreed in writing between the Company and Network Rail and, in the case of paragraph 74, any other person on whom rights or obligations are conferred by that paragraph.

**61.** In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of the construction and maintenance of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

**62.—**(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the Company with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

**63.—**(1) The Company must not exercise the powers conferred by article 12 (permanent stopping up and restriction of use of highways and private means of access), article 13 (temporary stopping up and restriction of use of streets), article 14 (access to works), article 17 (level crossings), article 18 (discharge of water), article 20 (authority to survey and investigate land), article 21 (felling or lopping of trees and removal of hedgerows), article 23 (compulsory acquisition of land), article 25 (compulsory acquisition of rights), article 26 (acquisition of subsoil or airspace only), article 27 (private rights over land), article 28 (power to override easements and other rights), article 32 (temporary use of land for constructing the authorised development), article 33 (temporary use of land for maintaining the authorised development) and article 34 (statutory undertakers) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Company must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The Company must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by article 34 (Statutory Undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The Company must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

**64.—**(1) The Company must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 60 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been



supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the Company may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the Company. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the Company that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Company desires such part of the specified work to be constructed, Network Rail must construct it without unreasonable delay on behalf of and to the reasonable satisfaction of the Company in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the Company.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the Company, if Network Rail so desires, and such protective works must be carried out at the expense of the Company in either case without unreasonable delay and the Company must not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed to the engineer's reasonable satisfaction.

**65.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 64(4) must, when commenced, be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 64;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the Company must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule imposes any liability on the Company with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the Company or its servants, contractors or agents.

**66.** The Company must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

**67.** Network Rail must at all times afford reasonable facilities to the Company and its agents for access to any works carried out by Network Rail under this Schedule during their construction and must supply the Company with such information as the Company may reasonably require with regard to such works or the method of constructing them.

**68.—**(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Company reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Company must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Company, Network Rail gives notice to the Company that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Company decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the Company must, notwithstanding any such approval of a specified work under paragraph 64(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 69(a) provide such details of the formula by which those sums have been calculated as the Company may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the Company to Network Rail under this paragraph.

**69.** The Company must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the Company as provided by paragraph 64(3) or in constructing any protective works under the provisions of paragraph 64(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the Company and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**70.—**(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 64(1) for the relevant part of the authorised development giving rise to EMI (unless the Company has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the Company must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Company’s compliance with sub-paragraph (3)—

- (a) the Company must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 64(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the Company all information in the possession of Network Rail reasonably requested by the Company in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the Company reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 64(1) has effect subject to the sub-paragraph.

(6) If at any time prior to the completion of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the Company must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the Company’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred –

- (a) the Company must afford reasonable facilities to Network Rail for access to the Company’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the Company for access to Network Rail’s apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the Company any additional material information in its possession reasonably requested by the Company in respect of Network Rail’s apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail’s apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the Company reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the Company in accordance with paragraph 65.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 74(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 69(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 60 (arbitration) to the Institution of Civil Engineers is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology.

**71.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the Company informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the Company must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**72.** The Company must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless the Company has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**73.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Company, be repaid by the Company to Network Rail.

**74.—(1)** The Company must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof or
- (b) by reason of any act or omission of the Company or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the Company must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the Company or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the Company from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the Company reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the Company.

(3) The sums payable by the Company under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**75.** Network Rail must, on receipt of a request from the Company, at a frequency to be agreed between the parties, provide the Company free of charge with written estimates of the costs, charges, expenses, future costs forecasts and other liabilities for which the Company is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 74) and with such information as may reasonably enable the Company to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

**76.** In the assessment of any sums payable to Network Rail under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Company under this Schedule or increasing the sums so payable.

**77.** The Company and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the Company of—

- (a) any railway property shown on the works plans or land, special category land and crown land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**78.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I (the provision of railway services) of the Railways Act 1993.

**79.** The Company must give written notice to Network Rail if any application is proposed to be made by the Company for the Secretary of State’s consent, under article 51 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**80.** The Company must no later than 28 days from the date that the documents submitted to and certified by the Secretary of State in accordance with article 58 (certification of documents) are certified by the Secretary of State, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

**PART 7**  
**FOR THE PROTECTION OF THURROCK COUNCIL (AS HIGHWAY  
AUTHORITY)**

**81.** The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and Thurrock Council.

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

“highway” means a street vested in or maintainable by Thurrock Council as highway authority under the 1980 Act;

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction); and

“specified work” means so much of any of the authorised development as forms part of or is intended to become a highway, or part of any such highway.

**83.** Without affecting the application of sections 59 (general duty of street authority to co-ordinate works) and 60 (general duty of undertakers to co-operate) of the 1991 Act before commencing the construction of any specified work, the Company must submit to Thurrock Council for its approval proper and sufficient plans and must not commence the construction of a specified work until such plans have been approved or settled by arbitration.

**84.** When signifying approval of plans submitted under paragraph 83, Thurrock Council may specify any protective works (whether temporary or permanent) which in its opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of the highway and such protective works must be carried out at the expense of the Company.

**85.** If, within 28 days after any plans have been submitted to Thurrock Council under paragraph 83, it has not intimated its disapproval and the grounds of disapproval, Thurrock Council is deemed to have approved them.

**86.** In the event of any disapproval of plans by Thurrock Council under paragraph 83, the Company may re-submit the plans with modifications and, in that event, if Thurrock Council has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it is deemed to have approved them.

**87.** The Company must repay to Thurrock Council all reasonable fees, costs, charges and expenses reasonably incurred by it in respect of the approval of plans submitted by the Company and in the inspection of the construction of a specified work.

**88.** The Company must not, except with the consent of Thurrock Council, deposit any soil, subsoil or materials or stand any vehicle or plant on any highway (except on so much of it as is for the time being temporarily stopped up or occupied under the powers conferred by this Order) so as to obstruct the use of the highway by any person or, except with the same consent, deposit any soil, subsoil or materials on any highway except within a hoarding.

**89.** Except in an emergency or where reasonably necessary to secure the safety of the public no direction or instruction may be given by Thurrock Council to the contractors, servants or agents of the Company regarding the construction of any specified work without the prior consent in writing of the Company; but Thurrock Council is not liable for any additional costs which may be incurred as a result of the giving of instructions or directions under this paragraph.

**90.** The Company must, if reasonably so required by Thurrock Council, provide and maintain during such time as the Company may occupy any part of a highway for any purpose connected to the construction of any part of the authorised development, temporary ramps for vehicular traffic or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with the standard recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs Regulations and General Directions 1994 in such

position as may be necessary to prevent undue interference with the flow of traffic in any highway.

**91.** Any specified work, and all protective works required by Thurrock Council under paragraph 84, must be constructed in accordance with approved plans and to the reasonable satisfaction of Thurrock Council and an officer of Thurrock Council is entitled on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works (such inspection and supervision being at the Company's expense).

**92.** The Company must give to Thurrock Council not less than 28 days' notice of its intention to commence construction of any specified work and the Company must give to Thurrock Council notice of completion of a specified work not later than 7 days after the date on which it is brought into operational use.

**93.** If any part of the specified works comprising a structure in, over or under any existing or intended highway is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Thurrock Council may by notice require the Company at its own expense to comply with the requirements of this Part of this Schedule or (if the Company so elects and Thurrock Council in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as Thurrock Council reasonably requires.

**94.** Subject to paragraph 95, if the Company has failed to begin taking steps to comply with the reasonable requirements of the notice under paragraph 92 and has not subsequently made reasonably expeditious progress towards their implementation within 28 days beginning with the date on which a notice in respect of any work is served under paragraph 92, Thurrock Council may construct the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the Company.

**95.** In the event of any dispute as to whether paragraph 93 is properly applicable to any work in respect of which notice has been served under that paragraph, or as to the reasonableness of any requirement of such a notice, Thurrock Council must not, except in an emergency, exercise the powers conferred by paragraph 93 until the dispute has been finally determined.

**96.** If any specified work is not maintained by the Company in accordance with article 10 (at the Company's expense) to the reasonable satisfaction of Thurrock Council, it may by notice require the Company to maintain the work or any part of it, to such extent as Thurrock Council reasonably requires for as long as the obligation to maintain under article 10(1) and (2) applies.

**97.** If the Company has failed to begin taking steps to comply with the reasonable requirements of any notice issued under paragraph 96 and has not subsequently made reasonably expeditious progress towards their implementation within 28 days beginning with the date on which a notice in respect of any work is served on the Company, Thurrock Council may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

**98.** In the event of any dispute as to the reasonableness of any requirement of a notice served under paragraph 96, Thurrock Council must not except in a case of emergency exercise the powers of paragraph 97 until the dispute has been finally determined.

**99.** Regardless of the other provisions of this Part of this Schedule, the Company must indemnify Thurrock Council from all claims, demands, proceedings or damages, which may be made or taken against, or recovered from Thurrock Council by reason of—

- (a) the construction or maintenance of a specified work or the failure of the specified work;  
or
- (b) any subsidence of, or damage to, any highway or any retained sanitary convenience, refuge, sewer, drain, lamp column, traffic sign, bollard, bin for refuse or road materials or associated apparatus or any other property or work belonging to, or under the jurisdiction or control of, or maintainable by Thurrock Council; or

(c) any act or omission of the Company whilst engaged upon a specified work.

**100.** The Company is not liable to Thurrock Council under paragraph 99 for any indirect or consequential loss or loss of profits.

**101.** Thurrock Council must give to the Company reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the Company which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**102.** The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to have been approved by Thurrock Council, or to its satisfaction, does not (in the absence of negligence on the part of Thurrock Council, its officers, contractors or agents) relieve the Company from any liability under the provisions of this Part of this Schedule.

**103.** Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Thurrock Council, that approval or consent must be in writing and may be given subject to such reasonable terms and conditions as Thurrock Council may require in the interests of safety or to ensure construction standards are met and in order to minimise inconvenience to persons using the highway, but must not be unreasonably withheld.

**104.** Unless otherwise agreed between the parties any difference arising between the Company and Thurrock Council under this Part of this Schedule (other than a difference as to its meaning or construction) must be determined by arbitration in accordance with article 60 (arbitration).

## PART 8

### FOR THE PROTECTION OF ANGLIAN WATER

**105.** The following provisions of this Part of this Schedule, unless otherwise agreed in writing between the Company and Anglian Water, have effect.

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

“1991 Act” means the Water Industry Act 1991;

“Anglian Water” means Anglian Water Services Limited, company number 02366656, whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire PE29 6YJ;

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage together with—

- (a) any drain or works vested in Anglian Water under the 1991 Act; and
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of the 1991 Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works) of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 (general interpretation) of the 1991 Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“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 sections, drawings, specifications and method statements; and



“the standard protection strips” means the strips of land falling the following distances to either side of the medial line of any relevant apparatus—

- (a) 2.25 metres where the diameter of the apparatus is less than 150 millimetres;
- (b) 3 metres where the diameter of the apparatus is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the apparatus is between 451 and 750 millimetres; and
- (d) 6 metres where the diameter of the apparatus exceeds 750 millimetres.

**107.**—(1) The Company must not interfere with, build over or near to any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around any apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed.

(2) The Company must bring the requirements in paragraph (1) to the attention of any agent or contractor responsible for carrying out any of the authorised development on behalf of the Company.

**108.** The alteration, extension, removal or relocation of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the Company has made the appropriate applications required under the 1991 Act and the Company has supplied to Anglian Water a plan and section of the works proposed and Anglian Water has given the necessary consents and approvals, such consent and approval not to be unreasonably withheld or delayed,

and such works must be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

**109.** In the situation where in exercise of the powers under this Order the Company acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension can take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

**110.** Regardless of any provision in this Order or anything shown on any plan, the Company must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus within the Order limits, the Company must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 60 (arbitration).

**111.** If in consequence of the exercise of the powers under this Order the access to any apparatus is materially obstructed the Company must provide such reasonable alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

**112.** If in consequence of the exercise of the powers under this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the Company, notification of the location of such assets will as soon as reasonably practicable be given to Anglian Water and afforded the same protection as other Anglian Water apparatus.

**113.** If for any reason or in consequence of the construction of any of the works referred to in paragraphs 108 to 110 and 112 above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided by Anglian Water, the Company must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs reasonably incurred by Anglian Water,

by reason or in consequence of any such damage or interruption.

## PART 9

### FOR THE PROTECTION OF HIGHWAYS ENGLAND

#### Application

**114.** The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Company and Highways England and apply to the HE works.

#### Interpretation

**115.—**(1) Where terms defined in article 2 are inconsistent with the terms defined in subparagraph (2) below, the latter prevail.

(2) In this Part of this Schedule—

“as-built information” means one digital copy of the following information, where applicable to the phase of the HE works in question—

- (a) as-constructed drawings in both pdf and auto CAD dwg formats for anything designed by the Company;
- (b) list of suppliers and materials, test results and CCTV surveys (CCTV to comply with DMRB standards);
- (c) product data sheets, and technical specifications for all materials used;
- (d) as-constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works or any replacement or modification of it, but subject to any exceptions to it (including a replacement or modification of it) as agreed by the Company and Highways England;
- (g) organisation and methods manuals for all products used;
- (h) as-constructed programme;
- (i) test results and records;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the Company and Highways England;
- (k) the health and safety file; and
- (l) such other information as may be required by Highways England to be used to update any relevant databases and to ensure compliance with Highways England’s Asset Data Management Manual that is in operation at the relevant time;

“commuted sum” means such sum calculated as provided for in paragraph 122 of this Part of this Schedule and approved by Highways England to be used to fund the future cost of maintaining the HE works;

“contractor” means any contractor or sub-contractor appointed by the Company to construct the HE works;

“the detailed design information” means details of the following —

- (a) site clearance details;
- (b) boundary and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting and supporting drainage calculations;
- (e) earthworks including supporting geotechnical assessments and any required strengthened earthworks appraisal form certification;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets) and supporting lighting calculations;
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures and any required structural approval in principle;
- (l) landscaping;
- (m) proposed departures from DMRB requirements;
- (n) walking, cycling and horse riding assessment and review report;
- (o) stage 1 and 2 road safety audit reports, road safety audit response reports and any road safety audit exceptions reports;
- (p) utilities diversions;
- (q) topographical survey;
- (r) site waste management plan;
- (s) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any replacement or modification of it;
- (t) asbestos survey;
- (u) regime of california bearing ratio testing;
- (v) regime of core testing and sampling of existing trunk road pavement construction;
- (w) site investigation survey;
- (x) health and safety information; and
- (y) other such information that may be required by Highways England to be used to inform the detailed design of the HE works;

“the DBFO contract” means the contract between Highways England and the highway management contractor for the maintenance and operation of parts of the strategic road network including the A282, M25, A13 (part) and the A1089;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“the estimated costs” means the estimated costs in respect of the HE works agreed pursuant to paragraph 119 of this Part of this Schedule;

“the excess” means the amount by which Highways England estimates that the costs referred to in paragraph 119 of this Schedule will exceed the estimated costs pursuant to paragraph 119(7)(b) of this Schedule;

“the HE works” means Work No. 11 and any works ancillary to Work No. 11;

“the highway management contractor” means the management contractor appointed by Highways England under the DBFO contract in respect of the highway on that part of the strategic road network within which the HE works are situated;

“the nominated persons” means the Company’s representatives or the contractor’s representatives on site during the construction of the HE works as notified to Highways England from time to time;

“the programme of works” means a document setting out the sequence and timetabling of the HE works;

“the road safety audit” means an audit carried out in accordance with the road safety audit standard and with a process to be approved by Highways England prior to it being carried out;

“the road safety audit standard” means the DMRB Standard HD 19/15 or any replacement or modification of it; and

“utilities” means any pipes, wires, cables or other equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

## **General**

**116.**—(1) The Company acknowledges that the HE works are situated on highway in respect of which Highways England has appointed the highways management contractor.

(2) Highways England acknowledges that the context for the provisions of this Part of this Schedule is that development consent has been granted for the authorised development and that therefore Highways England will work collaboratively, reasonably and expeditiously with the Company in relation to the implementation of the provisions of this Part of this Schedule in the interests of securing that the HE works are completed and available for public use as soon as practicable.

(3) Sub-paragraph (2) does not extend to prevent Highways England from discharging its statutory functions, including under this Part of this Schedule.

## **Prior approvals**

**117.** —(1) The HE works must not commence until—

- (a) the detailed design information;
- (b) the programme of works;
- (c) a programme of liaison with the occupiers of the London Distribution Park and buildings accessed from Thurrock Park Way during construction of the HE works;
- (d) details of proposed road space bookings;
- (e) a schedule confirming how relevant routine maintenance obligations imposed on the highways management contractor by the DBFO contract are to be discharged by the Company during the execution of the HE works and that such costs will be paid by the Company; and
- (f) a scheme of traffic management,

have been submitted to and approved by Highways England, such approval not to be unreasonably withheld or delayed.

(2) Highways England must notify the Company of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 56 days of the information required by sub-paragraph 117(1) (a)-(f) being received by Highways England.

(3) In the event of any disapproval, the Company may re-submit the information required by sub-paragraph 117(1)(a)-(f) with modifications and Highways England must notify the Company of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 56 days of the revised detailed design information being received by Highways England.

(4) The programme of works and scheme of traffic management approved under sub-paragraph (1) may be amended by agreement between the Company and Highways England from time to time, both parties acting reasonably.

(5) Not later than 6 months prior to the scheduled commencement of the HE works Highways England must inform the Company of the identity of the person who will act as the point of

contact on behalf of Highways England for consideration of the information required under sub-paragraph (1).

(6) The HE works must not commence until the Company has informed Highways England in writing of the identity of the contractor appointed by the Company in respect of the HE works (or the relevant part of the HE works) and the identity of the nominated persons.

(7) The HE works must not commence until a stage 2 road safety audit has been carried out and all recommendations raised by it or any exceptions have been incorporated into the detailed design information approved by Highways England under sub-paragraph (1).

(8) The HE works must not be commenced until all necessary temporary traffic regulation measures have been made by the Company under article 52(3) or until all necessary temporary traffic regulation orders have been made by Highways England.

(9) No work shall commence on the HE works until the Company demonstrates to the satisfaction of Highways England that the walking, cycling and horse riding assessment and review process has been adhered to in accordance with the DMRB Standard HD 42/17.

(10) The HE works must not commence until a dilapidation survey of the condition of the roads, bridges and retaining walls along the routes approved for construction traffic for the HE works as part of the scheme of traffic management approved under sub-paragraph (1)(f) has been carried out by the Company and has been submitted to and approved in writing by Highways England.

(11) No more than 28 days after the completion of construction of the HE works, the roads, bridges and retaining walls surveyed under sub-paragraph (10) must be re-surveyed by the Company.

(12) If the re-survey carried out under sub-paragraph (11) indicates that there has been damage to the roads, bridges and retaining walls that have been surveyed, and that such damage is attributable to the use of those roads, bridges and retaining walls by construction traffic for the HE works, the Company must submit a scheme of remedial works for those damaged routes, bridges and retaining walls to Highways England for its approval in writing, which must not be unreasonably refused.

(13) The scheme of remedial works approved under sub-paragraph (12) must be carried out by the Company at its own cost.

### **Construction of the HE works**

**118.**—(1) The Company must give Highways England 28 days' notice in writing of the date on which the HE works will commence, unless otherwise agreed by Highways England.

(2) The HE works must be constructed to the reasonable satisfaction of Highways England and in accordance with—

- (a) the information approved under paragraph 117(1) or as subsequently varied by agreement between the Company and Highways England;
- (b) the DMRB and the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) together with all other relevant standards as required by Highways England (to include all relevant interim advice notes, the Traffic Signs Manual 2008 and any amendment to or replacement of such standards for the time being in force), save to the extent that exceptions to those standards apply which have been approved by Highways England under paragraph 117(1) in respect of the HE works;
- (c) the Traffic Signs Regulations and General Directions 2016 or any amendment to or replacement of them; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any amendment to or replacement of them.

(3) The Company must permit and require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the Company and the contractor by Highways England) to gain access to the HE works for the purposes of inspection and supervision of the HE works.

(4) The Company must permit and require the contractor to act upon any reasonable request made by Highways England in relation to the construction of the HE works as soon as reasonably practicable provided such a request is not inconsistent with and does not fall outside the contractor's obligations under its contract with the Company or the Company's obligations under this Order.

(5) If any part of the HE works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Highways England may by notice in writing require the Company, at the Company's own expense, to comply with the requirements of this Part of this Schedule.

(6) If within 28 days of the date on which a notice under sub-paragraph (5) is served upon the Company, the Company has failed to take steps to comply with this Part of this Schedule, Highways England may construct—

- (i) the HE works; or
- (ii) works to reinstate the highway and other land and premises of Highways England and Highways England may in either case recover from the Company any expenditure reasonably incurred by it in so doing.

(7) If during the construction of the HE works the Company causes any damage to the strategic road network then Highways England may by notice in writing require the Company, at the Company's own expense, to remedy the damage.

(8) If within 28 days of the date on which a notice under sub-paragraph (7) is served on the Company, the Company has failed to take steps to comply with the notice, Highways England may carry out the steps required of the Company and may recover from the Company any expenditure reasonably incurred by Highways England in so doing, such sum to be payable within 30 days of request.

(9) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking such action as it reasonably believes to be necessary as a result of the construction of the HE works without prior notice to the Company in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the Company any reasonable expenditure incurred by Highways England in so doing.

(10) In constructing the HE works, the Company must at its own expense divert or protect all utilities and all agreed alterations and reinstatement to existing utilities must be constructed to the reasonable satisfaction of Highways England.

## **Payments**

**119.**—(1) The Company must fund the whole of the cost of the HE works and all costs incidental to the HE works and must also pay to Highways England in respect of the HE works a sum equal to the whole of any costs and expenses which Highways England reasonably incurs (including costs and expenses for using external staff and resources as well as costs and expenses of using in house staff and resources) in relation to—

- (a) the checking and approval of the information required by paragraph 117(1);
- (b) the supervision of the HE works;
- (c) all legal and administrative costs in relation to paragraphs (a) and (b) above;
- (d) all costs in relation to any transfer of any land required for the HE works; and
- (e) costs properly payable to the highway management contractor as a consequence of the HE works, including costs incurred in payment of compensation or damages or otherwise arising from any proceedings, actions, claims, demands or liability made against Highways England by the highway management contractor,

together comprising “the estimated costs”.

(2) The estimated costs must not include any costs payable to the highways management contractor by Highways England to undertake any of the obligations for which costs may become

due by the Company under sub-paragraph (1)(a)-(e) unless they are included within the estimated costs pursuant to sub-paragraph (1)(e).

(3) The estimated costs do not include any sums payable by the Company to the contractor, but do include any value added tax which is payable by Highways England in respect of such costs which it cannot otherwise recover from HM Revenue and Customs.

(4) The Company must pay to Highways England within 30 days of demand and prior to such costs being incurred the total costs that Highways England believes will be properly and necessarily incurred by it in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order necessary to construct or for effectively implementing the HE works provided that this sub-paragraph will not apply to the making of any orders which duplicate traffic regulation measures contained in, or which may be made by the Company under, this Order.

(5) The Company must pay to Highways England the costs referred to in sub-paragraph (1)(a) prior to those costs being incurred by Highways England.

(6) The Company and Highways England must, acting reasonably, agree a schedule of the estimated costs prior to the commencement of the HE works.

(7) The Company must make the payments of the estimated costs as follows—

- (a) the Company must pay a sum equal to the estimated costs agreed under sub-paragraph (6) prior to commencing the HE works and in any event prior to Highways England incurring any cost; and
- (b) if at any time after the payment referred to in sub-paragraph (7)(a) has become payable and Highways England reasonably estimates that the costs will exceed the estimated costs it may give notice to the Company of the excess and the Company must pay to Highways England within 30 days of the date of that notice a sum equal to the excess.

(8) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

(9) Highways England is not entitled to costs or expenses incurred under any limb of sub-paragraph (1) if those costs or expenses are included as part of the estimated costs under any other limb of that sub-paragraph.

### **Provisional certificate and defects period**

**120.**—(1) As soon as—

- (a) the HE works have been completed;
- (b) a stage 3 road safety audit for the HE works has been carried out and any resulting recommendations have been complied with and any exceptions agreed by Highways England, acting reasonably;
- (c) the Company has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by Highways England upon the issue of the provisional certificate; and
- (d) the as-built information has been provided to Highways England,

Highways England must issue a provisional certificate of completion in respect of the HE works.

(2) The Company must at its own expense remedy any defects in the HE works which Highways England has reasonably identified in a notice given in writing to the Company during a period of 12 months from the date of the provisional certificate.

(3) The Company must remedy defects identified by Highways England in the notice given by Highways England under sub-paragraph (2) in accordance with the following timescales:

- (a) in respect of matters of urgency, within 24 hours of receiving the notice;

- (b) in respect of matters which Highways England considers to be serious defects, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the Company, within 4 weeks of receiving notification of the same.

(4) Following the issue of the provisional certificate Highways England will be responsible for the HE works and must maintain them at its own expense. The Company must submit stage 4(a) and stage 4(b) road safety audits as required by and in line with the timescales stipulated in the road safety audit standard.

(5) The Company must comply with the findings of the stage 4(a) and stage 4(b) road safety audits and be responsible for all costs of and incidental to them and provide updated as-built information to Highways England.

### **Final certificate**

**121.**—(1) The Company must apply to Highways England for the issue of the final certificate at the expiration of the 12 month period referred to in paragraph 120(2), or if paragraph 120(2) applies at the expiration of the date on which any defects or damage arising from defects during that period have been made good to the reasonable satisfaction of Highways England and subject to the Company complying with the requirements on the Company in paragraphs 120(3) to (5) inclusive.

(2) If the provisions of sub-paragraph (1) are satisfied Highways England must issue a final certificate, such certificate not to be unreasonably withheld or delayed.

(3) The Company must pay to Highways England within 30 days of demand the costs reasonably incurred by Highways England in identifying defects and supervising and inspecting the Company's work to remedy such defects pursuant to paragraph 120.

### **Commuted sum**

**122.**—(1) Before commencing the HE works the Company must provide Highways England with an estimate of the commuted sum.

(2) The Company must pay to Highways England a commuted sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18<sup>th</sup> January 2010 (or any replacement or modification of it) within 28 days of the date that the HE works become maintainable by Highways England under paragraph 120.

### **Indemnity**

**123.**—(1) The Company must in relation to the construction of the HE works take such precautions for the protection of the public and private interests as would be incumbent upon it if it were the highway authority and must indemnify Highways England from and against all costs, expenses, damages, losses and liabilities arising from or in connection with or ancillary to any claim, demand, action or proceedings resulting from the design and construction of the HE works provided that—

- (a) Highways England notifies the Company immediately upon receipt of any such claim, demand, action or proceedings;
- (b) no settlement or compromise of any such claim, demand, action or proceedings is made by Highways England without the prior consent of the Company; and
- (c) following the acceptance of any such claim, demand, action or proceedings, Highways England notifies the Company of the quantum in writing.

(2) Within 14 days of receiving notice of the quantum under sub-paragraph (1), the Company must pay Highways England the amount specified as the quantum.

(3) Sub-paragraphs (1) and (2) do not apply if the costs, expenses, damages, losses and liabilities were caused by or arise out of the neglect or default of Highways England or its officers, servants, agents, contractors or any person or body for whom it is responsible.



(4) The Company must notify Highways England of the intended date of opening of the HE works to public traffic not less than 14 days in advance of the intended date and the Company must notify Highways England of the actual date that the HE works are open to public traffic within 14 days of their opening to public traffic.

### **Collateral warranties**

**124.** Before commencing the HE works, the Company must procure and provide to Highways England collateral warranties from the contractor and designer of the HE works in favour of Highways England and the highway management contractor requiring the contractor and designer to exercise all reasonable skill care and due diligence in designing and constructing the HE works including the selection of materials, goods, equipment and plant.

### **Expert determination**

**125.**—(1) Subject to sub-paragraph (5), article 60 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use their best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other parties to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other parties within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 60 (arbitration).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such a determination, equally.

## **PART 10**

### **FOR THE PROTECTION OF RWE GENERATION UK PLC**

**126.** The provisions of this Part of this Schedule have effect for the protection of RWE Generation UK plc unless otherwise agreed in writing between the Company and RWE Generation UK plc.

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

“alternative apparatus” means any apparatus, plant or equipment installed by RWE from time to time within the extended port limits—

- (a) to replace or perform substantially the same function as the existing apparatus; or
- (b) otherwise in connection with the construction of any power station by RWE on land adjacent to the Order limits,

to the extent that the apparatus referred to in either case is proposed to be within the area shaded brown on sheet 3 of the works plans;

“the existing apparatus” means the former Tilbury B power station cold water intake culverts and cold water intake structures, to the extent that they are for the time being owned by RWE, as shown on sheet 3 of the works plans and as more particularly defined as the “Transferor’s Jetty Fixtures” in the jetty asset transfer;

“functions” includes powers and duties;

“in” in a context referring to the existing apparatus or alternative apparatus being in land, includes a reference to apparatus under, over or on land;

“the jetty” means the existing river jetty;

“the jetty asset transfer” means an agreement for the transfer of the jetty from RWE to the Company dated 31 March 2017;

“the land access” means access by RWE to the existing apparatus by passing over the jetty in accordance with the jetty asset transfer, or in such other manner as may be agreed with the Company;

“plan” includes all designs, drawings, specifications and method statements necessary to describe the works to be executed;

“the river access” means access by RWE to the existing apparatus by use of the river Thames within the extended port limits; and

“RWE” means RWE Generation UK Plc, company number 03892782 of Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB or any of its entities or successor entities and includes any assignee of the jetty asset transfer.

### **Existing apparatus**

**128.** This Order does not authorise the acquisition of any of the existing apparatus by the Company, except with RWE’s agreement.

**129.** The authorised development must be carried out, operated and maintained so as not to damage, interfere with, move or destroy the existing apparatus except with RWE’s agreement.

**130.—(1)** If, for the purpose of constructing any works comprised in the authorised development the Company requires the ability temporarily to interfere with the land access or the river access, it must, except in emergencies, give to RWE 14 days’ advance written notice of that requirement, together with a plan of the works proposed and a date by when the temporary interference will end.

(2) If, for the purpose of maintaining any works comprised in the authorised development the Company requires the ability temporarily to interfere with the land access or the river access, it must, except in emergencies, give to RWE 28 days’ advance written notice of that requirement, together with a plan of the works proposed and a date by when the temporary interference will end.

(3) The Company must end the temporary interference with the land access or the river access on the date given pursuant to sub-paragraph (1) or sub-paragraph (2) unless otherwise agreed in writing between RWE and the Company.

(4) Those works must be executed in accordance with the plan submitted under sub-paragraph (1) or sub-paragraph (2) and in accordance with such reasonable requirements as may be made by RWE for the protection of RWE’s access to the existing apparatus.

(5) At all times during execution of those works RWE must be afforded by the Company sufficient emergency access to the existing apparatus.

(6) Any requirements made by RWE under sub-paragraph (4) must be made within a period of 7 days beginning with the date on which a plan under sub-paragraph (4) is submitted to it and within a period of 14 days beginning with the date on which a plan under sub-paragraph (2) is submitted to it.

(7) Nothing in this paragraph precludes the Company from submitting at any time or from time to time, but in no case less than 14 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(8) The Company is not required to comply with sub-paragraph (1) or sub-paragraph (2) in emergencies but in those circumstances it must give to RWE notice and a plan of the works concerned as soon as reasonably practicable and the Company must comply with sub-paragraph (4) in so far as is reasonably practicable in the circumstances.

(9) Any proposed temporary interference with the land access or the river access by the Company after 1 June 2021 must have reasonable regard to any need for RWE to exercise the land access or river access to undertake works to the existing apparatus as part of the development of a power station on land adjacent to the Order limits and adopt any reasonable requirements that may be made by RWE to ensure that any temporary interference does not prejudice RWE's development programme for a power station on land adjacent to the Order limits provided that those requirements must not materially interfere with the unloading and loading of vessels within the extended port limits.

**131.**—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction, operation or maintenance of the authorised development any damage is caused to the existing apparatus (other than any part of that apparatus whose repair is not reasonably necessary in view of its intended removal by RWE) the Company must bear and pay the cost reasonably incurred by RWE in making good such damage.

(2) Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage to the extent that it is attributable to the act, neglect or default of RWE or its officers, servants, contractors or agents.

**132.**—(1) The Company agrees that it will not withhold its consent under article 3(7) to any licence proposed to be granted by the PLA under section 66 (licensing of works) or 73 (licensing of dredging etc.) of the 1968 Act in so far as it relates to the existing apparatus, nor require any modifications or impose any terms or conditions under article 3(9) that are in addition to the standard terms of any such licence as are published on the PLA's website from time to time.

(2) If at the relevant time the Company has a proprietary interest in the parts of the river Thames situated within the extended port limits in respect of which RWE holds a licence granted by the PLA under section 66 (licensing of works) of the 1968 Act relating to the existing apparatus, the Company agrees that it will for no consideration give its consent under article 3(8) so that the grant of the licence to RWE will, pursuant to section 66(1)(b) of the 1968 Act, be deemed to confer on RWE such rights in, under or over the land concerned as are necessary to enable RWE to enjoy the benefit of the licence for as long as the licence subsists.

### **Alternative apparatus**

**133.**—(1) RWE and the Company must use their reasonable endeavours to co-ordinate with each other on the timing and method of construction and maintenance of the authorised development and the construction, use and maintenance of any alternative apparatus by RWE, in the interests of health and safety and the efficient and economic—

- (a) construction of the authorised development; and
- (b) construction of any alternative apparatus.

**134.**—(1) In particular, the Company must consult with RWE prior to finalising the detailed design of Work No. 2 and will accommodate any reasonable requirements of RWE in relation to the detailed design or construction of Work No. 2 so as to accommodate any alternative apparatus, provided those requirements—

- (a) are made prior to the Company finalising the detailed design of Work No. 2;
- (b) would not be detrimental to the construction, operation or maintenance of the authorised development; and

- (c) RWE pays to the Company such additional reasonable and proper costs as the Company would incur in accommodating those requirements.

**135.**—(1) If and to the extent that any alternative apparatus to be placed in the parts of the river Thames situated within the extended port limits and in respect of which at the relevant time the Company has a proprietary interest is licensed by the PLA under section 66 of the 1968 Act, the Company agrees that it will for no consideration give its consent under article 3(8) so that the grant of the licence to RWE will, pursuant to section 66(1)(b) of the 1968 Act, be deemed to confer on RWE such rights in, under or over the land concerned as are necessary to enable RWE to enjoy the benefit of the licence for as long as the licence subsists.

### **Highway access**

**136.** The Company must construct Work Nos. 4 and 10 so that they afford a clearance under Work No.10 of at least 6 metres.

### **General**

**137.** Any difference or dispute arising between the Company and RWE under this Part of this Schedule must, unless otherwise agreed in writing between the Company and RWE, be determined by arbitration in accordance with article 60 (arbitration) of this Order.

**138.** Subject to the provisions of this Part of this Schedule, RWE's and the Company's rights and interests under the jetty asset transfer continue to subsist and to have effect.

**139.** The Company and RWE must each act reasonably in connection with the implementation of this Part of this Schedule.

## **PART 11**

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

#### **Application**

**140.** For the protection of the undertaker referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the Company and the undertaker, have effect.

#### **Interpretation**

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

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

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

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

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

“commence” has the same meaning as in article 2(1) of this Order and commencement is construed to have the same meaning and for the purpose of this Part of this Schedule only

includes any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 meters of any apparatus;

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

“functions” includes powers and duties;

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

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

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

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

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

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

“undertaker” means, as appropriate Cadent Gas Limited or any successor in title or assign including a successor to their licence as a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986; and

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

- (a) is or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the Company under paragraph 7(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the Company under paragraph 146(2) or otherwise; or
- (c) includes any activity that is referred to in paragraph 8 of T/SP/SSW/22 (the undertaker’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

## **On Street Apparatus**

**142.**—(1) Except for paragraphs 143 (apparatus in stopped up streets), 146 (removal of apparatus) and 147 (facilities and rights for alternative apparatus) in so far as paragraph (2) below applies 148 (retained apparatus: protection), 149 (expenses) and 150 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the Company and the undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) Paragraphs 146 and 147 apply to diversions even where carried out under the New Roads and Street Works Act 1991, in circumstances where any apparatus is diverted from an alignment

within the existing adopted public highway but is not wholly replaced within existing adopted public highway.

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

**143.**—(1) Without prejudice to the generality of any other protection afforded to the undertaker elsewhere in the Order, where any street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), if the undertaker has any apparatus in the street or accessed via that street the undertaker is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the Company must grant to the undertaker, or must procure the granting to the statutory undertaker of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the Company or the undertaker to require the removal of that apparatus under paragraph 146.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up and restriction of use of streets), an undertaker is at liberty at all times to take all necessary access across any such stopped up highway or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

(3) The provisions of this Part of this Schedule apply and take precedence over article 35 (apparatus and rights of statutory utilities in stopped up streets).

### **Protective works to buildings**

**144.**—(1) The Company, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the undertaker.

### **Acquisition of land**

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

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

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

(4) Any agreement or consent granted by the undertaker under paragraph 148 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**146.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 145 or in any other authorised manner, the Company acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an 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 undertaker in question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of carrying out any part of the authorised development, in, on, under or over any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, it must give to the undertaker advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of its apparatus) the Company must, subject to sub-paragraph (3), afford to the undertaker to its satisfaction (taking into account paragraph 147(1) below) the necessary facilities and rights:

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the Company, or the Company 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 undertaker must, on receipt of a written notice to that effect from the Company, take such steps to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the Company's assistance if required by the undertaker, save that this obligation does not extend to the requirement for the undertaker to use its compulsory purchase powers to this end unless it elects to so do.

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

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

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

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

(2) If the facilities and rights to be afforded by the Company and agreed with the undertaker under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, the terms and conditions to which those facilities and rights are subject in the matter must be referred to arbitration in accordance with paragraph 154 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the

Company to the undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

**148.**—(1) Not less than 56 days or such time period as may be agreed by the undertaker and Company before the commencement of any specified works the Company must submit to the undertaker a plan and, if reasonably required by the undertaker, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to the undertaker under sub-paragraph (1) must include a method statement which describes—

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

(3) The Company must not commence any works to which sub-paragraphs (1) and (2) apply until the undertaker has given written approval of the plan so submitted.

(4) Any approval of the undertaker required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, the undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the Company and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker will be entitled to watch and inspect the execution of those works.

(7) Where the undertaker requires any protective works to be carried out by itself or by the Company (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If the undertaker in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the Company, reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, paragraphs 140 to 142 and 145 to 147 apply as if the removal of the apparatus had been required by the Company under paragraph 146(2).

(9) Nothing in this paragraph precludes the Company from submitting at any time or from time to time, but in no case less than 56 days or such time period as may be agreed by the undertaker and the Company before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph applies to and in respect of the new plan.



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

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) The Company must comply with the undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services" at all times when carrying out any part of the authorised development.

(12) As soon as reasonably practicable after any ground subsidence event, identified in light of monitoring required in sub-paragraph (1) or which otherwise becomes apparent, attributable to the authorised development the Company must implement an appropriate ground mitigation scheme. If following the implementation of the ground mitigation scheme the undertaker believes protective work is essential to protect its apparatus it may, on giving the Company reasonable notice save in an emergency, carry out such essential protective works and recover the costs of so doing in accordance with paragraph 149.

## **Expenses**

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

- (a) any costs reasonably incurred by or compensation properly paid by the undertaker in connection with the acquisition of rights or the exercise of statutory powers for alternative such apparatus including without limitation all costs incurred by the undertaker as a consequence of the undertaker;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 146(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting the undertaker;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with paragraph 154 (arbitration) to be necessary, then, if such placing incurs cost in work involving the installation of apparatus or alternative apparatus 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 undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs must be borne by the Company.

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) must be reduced by the amount that represents the benefit, provided that, 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 undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course save in respect of cathode protected steel mains or other apparatus with an indefinite life span.

## **Indemnity**

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

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents; and
- (b) any part of the authorised development or any other works authorised by this Part of this Schedule carried out by the undertaker as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) are subject to the full terms of this Part of this Schedule including this paragraph 150.

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

### **Enactments and agreements**

**151.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and the Company, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the Company and the undertaker in respect of any apparatus laid or erected in land belonging to the Company on the date on which this Order is made.

### **Co-operation**

**152.**—(1) Where in consequence of the proposed construction of any part of the authorised development, the Company or an undertaker requires the removal of apparatus under paragraph 146(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 148, the Company must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the undertaker’s undertaking and each undertaker must use its best endeavours to co-operate with the Company for that purpose.

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

### **Access**

**153.** If in consequence of the agreement reached in accordance with paragraph 145(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the Company must provide such alternative rights and means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**154.** Any difference or dispute arising between the Company and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the Company and the undertaker, be determined by arbitration in accordance with article 60 (arbitration).

**PART 12**  
**FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY**  
**UNDERTAKER**

**Application**

**155.** For the protection of the undertaker referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the Company and the undertaker, have effect.

**Interpretation**

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

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

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

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

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

“commence” has the same meaning as article 2(1) of the Order and commencement is construed to have the same meaning and for the purpose of this Part of this Schedule only the terms commence and commencement include below ground surveys or monitoring or the receipt and erection of construction plant and equipment within 15 metres of any apparatus;

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

“functions” includes powers and duties;

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

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

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

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

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

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

“undertaker” means an electricity undertaker being a licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;

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

- (a) is or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the Company under paragraph 161(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the Company under paragraph 161(2) or otherwise.

### **On street apparatus**

**157.** Except for paragraphs 158 (apparatus in stopped up streets), 163 (retained apparatus: protection), 164 (expenses) and 165 (indemnity) of this Schedule which applies in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the Company and the undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

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

**158.**—(1) Without prejudice to the generality of any other protection afforded to the undertaker elsewhere in the Order, where any street is stopped up under article 12 (permanent stopping up and restriction of use of highways and private means of access), if the undertaker has any apparatus in the street or accessed via that street the undertaker is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the Company must grant to the undertaker, or must procure the granting to the statutory undertaker of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the Company or undertaker to require the removal of that apparatus under paragraph 161.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up and restriction of use of streets), an undertaker is at liberty at all times to take all necessary access across any such stopped up highway or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway. The Protective Provisions in this Part of this Schedule 10 apply and take precedence over article 35 of the Order.

(3) The provisions in this Part of this Schedule apply and take precedence over article 35 (apparatus and rights of statutory utilities in stopped up streets).

### **Protective works to buildings**

**159.** The Company, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the undertaker.

### **Acquisition of land**

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

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

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

(4) Any agreement or consent granted by the undertaker under paragraph 163 or any other paragraph of this Part of this Schedule does not constitute agreement under paragraph 160(1).

### **Removal of apparatus**

**161.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 160(1) or in any other authorised manner, the Company acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an 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 undertaker in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of carrying out any part of the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the Company requires the removal of any apparatus placed in that land, it must give to the undertaker advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of its apparatus) the Company must, subject to sub-paragraph (3), afford to the undertaker to its satisfaction (taking into account paragraph 162(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

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

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

(5) The undertaker must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into

operation the alternative apparatus and subsequently to remove any apparatus required by the Company to be removed under the provisions of this Part of this Schedule.

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

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

(2) If the facilities and rights to be afforded by the Company and agreed with the undertaker under paragraph 162(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, the terms and conditions to which those facilities and rights are subject in the matter must be referred to arbitration in accordance with paragraph 169 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the Company to the undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection**

**163.**—(1) Not less than 56 days or such time period as may be agreed by the undertaker and the Company before the commencement of any specified works the Company must submit to the undertaker a plan of the works to be executed and, if reasonably required by the undertaker, a ground monitoring scheme in respect of those works and seek from the undertaker details of the underground extent of their electricity tower foundations.

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

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

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

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by the undertaker's engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

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

(5) Any approval of the undertaker required under sub-paragraphs (2) or (3)—

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

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

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the Company and the undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker will be entitled to watch and inspect the execution of those works.

(8) Where the undertaker requires any protective works to be carried out by itself or by the Company (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the undertakers' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If the undertaker in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the Company, reasonably requires the removal of any apparatus and gives written notice to the Company of that requirement, paragraphs 155 to 157 and 160 to 162 apply as if the removal of the apparatus had been required by the Company under paragraph 161(2).

(10) Nothing in this paragraph precludes the Company from submitting at any time or from time to time, but in no case less than 56 days or such time period as may be agreed by the undertaker and the Company before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph applies to and in respect of the new plan.

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

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) The Company must comply with the undertaker's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines" at all times when carrying out any works authorised under the Order.

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the Company must implement an appropriate ground mitigation scheme. If following the implementation of the ground mitigation scheme the undertaker believes



protective work is essential to protect its apparatus it may, on giving the Company reasonable notice save in an emergency, carry out such essential protective works and recover the costs of so doing in accordance with paragraph 164.

### Expenses

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

- (a) any costs reasonably incurred by or compensation properly paid by the undertaker in connection with the acquisition of rights or the exercise of statutory powers for such alternative apparatus including without limitation all costs incurred by the undertaker as a consequence of the undertaker;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 161(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting the undertaker;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration in accordance with article 169 (arbitration) to be necessary, then, if such placing incur cost in works involving the installation of apparatus or alternative apparatus 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 undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs must be borne by the Company.

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) must be reduced by the amount that represents the benefit, provided that, 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 undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### **Indemnity**

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

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents; and
- (b) any part of the authorised development works or any other works authorised by this Part of this Schedule carried out by the undertaker as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) are subject to the full terms of this Part of this Schedule including this paragraph 165.

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

### **Enactments and agreements**

**166.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and the Company, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the Company and the undertaker in respect of any apparatus laid or erected in land belonging to the Company on the date on which this Order is made.

### **Co-operation**

**167.**—(1) Where in consequence of the proposed construction of any part of the authorised development, the Company or the undertaker requires the removal of apparatus under paragraph 161(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 163, the Company must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the undertaker's undertaking and each undertaker must use its best endeavours to co-operate with the Company for that purpose.

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

### **Access**

**168.** If in consequence of the agreement reached in accordance with paragraph 160(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the Company must provide such alternative means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**169.** Any difference or dispute arising between the Company and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the Company and the undertaker, be determined by arbitration in accordance with article 60 (arbitration).

SCHEDULE 11

Article 58

DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Description</i>
birds monitoring and action plan	The birds monitoring and action plan contained in document reference v2 [PoTLL/T2/EX/187].
book of reference	The book of reference contained in document reference 4.3 v2 [PoTLL/T2/EX/128].
classification of roads plans	The classification of roads plans contained in document reference 2.6.
construction environmental management plan	The construction environmental management plan v3 contained in document reference [PoTLL/T2/EX/185].
engineering sections and plans	The engineering sections and plans contained in document reference 2.9 [PoTLL/T2/EX/6].
environmental statement	<p>The environmental statement, figures and appendices contained in document references 6.1, 6.2, 6.3 and 6.4 (subject to the substitutions set out below):</p> <ul style="list-style-type: none"> <li>(a) The environmental statement non-technical summary contained in document reference v3 [PoTLL/T2/EX/175].</li> <li>(b) The framework travel plan (appendix 13.B) contained in document reference v2 [PoTLL/T2/EX/140].</li> <li>(c) The landscape and ecological management plan (appendix 10.P) contained in document reference v3 [PoTLL/T2/EX/177].</li> <li>(d) The marine archaeological written scheme of investigation (appendix 12.E) contained in document reference v5 [PoTLL/T2/EX/197].</li> <li>(e) The monitoring and background noise and modelling of construction noise at Tilbury Docks (appendix 17.A) contained in document reference [PoTLL/T2/EX/94 Appendix 1].</li> <li>(f) The sustainable distribution plan v2 (appendix 13.C) contained in document reference [PoTLL/T2/EX/142].</li> <li>(g) The terrestrial written scheme of investigation (appendix 12.D) contained in document reference v3 [PoTLL/T2/EX/104].</li> </ul>
extended port limits plan	The extended port limits plan contained in document reference v3 [PoTLL/T2/EX/153].
level 3 flood risk assessment addendum	The level 3 flood risk assessment addendum

	contained in document reference [PoTLL/T2/EX/46].
land, special category land and crown land plans	The land, special category land and crown land plans contained in document reference 2.3 v3 [PoTLL/T2/EX/127]
limits of dredging plan	The limits of dredging plan v3 contained in document reference [PoTLL/T2/EX/123].
operational community engagement plan	The operational community engagement plan contained in document reference 5.4 v2 [PoTLL/T2/EX/125].
operational management plan	The operational management plan contained in document reference 6.10 v3 [PoTLL/T2/EX/181].
the requirement 3 colour palette	The requirement 3 colour palette contained in document reference [PoTLL/T2/EX/160].
rights of way and access plans	The rights of way and access plans contained in document reference 2.5 v2 [POTLL/T2/EX/132].
traffic regulation measures plan	The traffic regulation measures plan contained in document reference 2.7 v2 [POTLL/T2/EX/133].
works plans	The works plans contained in document reference 2.4 v3 [POTLL/T2/EX/195].

## **EXPLANATORY NOTE**

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

This Order authorises Port of Tilbury London Limited to construct, operate and maintain a new port terminal and associated facilities near to the existing Port of Tilbury on the river Thames.

The Order would permit Port of Tilbury London Limited to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of all documents mentioned in this Order and certified in accordance with article 58 (certification of documents) of this Order may be inspected free of charge during working hours at Port of Tilbury London Limited, Leslie Ford House, Tilbury, Essex RM18 7EH.

**201[9] No.**

**INFRASTRUCTURE PLANNING**

The Port of Tilbury (Expansion) Order 201[9]

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