

Q.No	Part of DCO	Drafting Example	Question	HE Response
5	Interpretation. Art 2 revised dDCO [AS-005]	Definition of “commence” and “commencement”	Whilst this is commendably simple and straightforward, is it appropriate throughout the DCO? For example, in Requirement 7 there is a reference to “commencement” of the Smart Motorway Project. As “commencement” is defined to refer to the authorised development, this does not work. Please will the Applicant and the district planning authorities review the DCO carefully for this? It may be that the phrase “save where the context indicates otherwise” would assist, but the ExA’s current preference is for the individual instances to be checked and rectified.	We note the applicant’s response in this regard and have nothing further to add.
9.	Art 2	Definition of “Relevant traffic authority”	Is this different from the meaning as in ss.121A and 142 of the Road Traffic Regulation Act 1984 (RTA). Why choose this formulation? What are the disadvantages of the definition in the RTA? Comments and observations from the highways authority and Applicant are invited.	We note the applicant’s response in this regard and have nothing further to add.
15	Art 7(3)(b)	“(3) Roxhill (Junction 15) Limited has the sole benefit of the powers conferred by this Order to carry out the highway works in accordance with the provisions of Parts 2 and 3 of Schedule 13 (protective provisions) unless the	Are the highway authority and Highways England content with this provision? The ExA is not encouraging them to ask for more, but wishes to know there is no need for more. Please address this in a statement of common ground (SoCG).	Highways England is content with this provision.

		<p>Secretary of State consents to the transfer of the benefit of those provisions.—</p> <p>(a) ... ; or</p> <p>(b) the provisions of paragraph 4(6) of Part 2 or paragraph 4(6) of Part 3 of Schedule 13 apply in which case the relevant highway authority shall have the benefit of the powers to carry out the relevant highway works.”</p>		
18	Art 9(2)	<p>“(2) The powers conferred by paragraph (1) must not be exercised without the consent of the local highway authority but such consent must not be unreasonably withheld”</p>	<p>Is it appropriate to constrain the highway authority exercising its statutory powers in this way? Is 28 days a reasonable period? These issues recur in several articles. The Applicant is asked to list them and answer these two questions for each of them.</p>	<p>No. Highways England has concerns over being restrained in this way. In particular, and as referred to elsewhere in our submissions, 28 days is not considered to be a reasonable period. On those occasions where we don't have a significant safety concern over deemed approval we would not object to such but would expect a period of 56 days from receipt of a complete application to make a decision. It should be noted that in some instances Highways England does not consider deemed consent to be appropriate at all.</p>
22	Art 13(3)	<p>“(3) If a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is</p>	<p>This was not in the East Midlands DCO. Why is it needed here? And if it is, is the time period reasonable?</p>	<p>Highways England strongly objects to this provision. Highways England would have significant safety concerns should deemed approval apply to this Article. Any access to the strategic road network has the potential to cause significant safety risks and Highways England must not be constrained in its ability to fully consider</p>

		deemed to have granted consent."		and approve any proposals.
23	Art 14 – Maintenance of highway works		Please supply a SoCG between the Applicant, the highways authority, and Highways England to confirm that these provisions are agreed. Is it intended that the extended definition of the words "maintain" and "maintained" should apply (taking into account the ExA's comments on the definition of those terms in Art 2)? The SoCG should cover that question and if the answer is affirmative explain why that is justified.	We note the applicant's response in this regard and agree with what is said. This agreed position is set out in the Statement of Common Ground document 7.1c.
25	Art 17 – traffic regulation		Please supply a SoCG confirming that the highways authority and Highways England agree this.	<p>This is agreed by Highways England subject to an amendment to sub-paragraph (7) regarding the provisions for deemed consent. Highways England has a general concern over provisions for deemed consent. Where these pose a significant safety risk it is Highways England's view that such provisions are not appropriate. In other circumstances they may be appropriate but subject to a longer approval timescale than the 28 days proposed by the undertaker. In this regard Highways England request the following amendments to sub-paragraph (7) shown in red:</p> <p><i>(7) If the relevant traffic authority fails to notify the undertaker of its decision within 56 days of receiving an application for consent under paragraph (3) that is accompanied by all relevant information the relevant traffic authority shall be deemed to have given consent.</i></p>

29	Art 21(8) – deemed approval		Some approvals may have to be sought from private individuals (eg, owners of drains). Should the request for approval explain that a deemed approval occurs after (x) days, the derivation of the power (ie the Article), and a recommendation to seek professional legal and engineering advice? Also, 28 days is quite a short time for individuals. Would 42 days be more	Highways England's has two main areas of concern regarding the undertaker's drainage proposals having reviewed the Sustainable Drainage Statement. The assessments for the two main outfall locations are not considered to be satisfactory, for example there is no clarity of the existing gradient, structural or service condition of the pipes. Highways England requires further information to make an informed decision as to whether or not the proposals are acceptable and in accordance with Circular 02/2013. At this time therefore we cannot agree with the inclusion of Article 21 as drafted. We have proposed further work with the undertaker to obtain clarity and resolve this matter and we shall update the Examining Authority in due course.
31	Art 22(6)	"(6) If either a highway authority or a street authority which has received an application for consent under paragraph (4) fails to notify the undertaker of its decision within 28 days of receiving the application the authority is deemed to have granted the consent."	Is the time period reasonable?	No. Whilst Highways England would have less concerns over deemed approval provisions appearing in this Article a 28 day period as proposed by the undertaker is not considered reasonable. Comparable with other Articles where Highways England does not object to the inclusion of deemed approval provisions we would expect a period of 56 days from receipt of a complete application.
53		"The undertaker must use reasonable endeavours to complete the highway works	An obligation to use reasonable endeavours to deliver the highways works seems unlikely to meet the test of precision and enforceability.	We welcome the applicant's agreement to the deletion of the words 'reasonable endeavours'. As originally drafted this was

		identified in column (1) of the table below by ...”	<p>It is certainly difficult for a planning authority to decide whether or not to commence enforcement proceedings.</p> <p>This condition relates to works to offset highways congestion and prohibits occupation of certain buildings unless the improvement works are completed. An absolute restriction would be normal and prevent the congestion arising from the development concerned from occurring. As it stands this Requirement appears unacceptable.</p> <p>Observations and comments from the district planning authorities, highways authority and Highways England as well as the Applicant would be welcome.</p>	a significant concern for Highways England.
54	R6(2)	“(2) This requirement is enforceable by the relevant body or bodies identified in column (4) of the table contained in requirement 6(1).”	<p>Why is enforcement not by the district planning authorities? Highways England will not have experience or expertise in planning enforcement and the County planning authority’s expertise will lie in minerals and waste planning. In addition, the functions of the County Council are in the course of being re-arranged and redistributed in a local government re-arrangement in Northamptonshire so it would be preferable to allocate enforcement by statutory designation (eg local planning authority, or relevant planning authority) rather than name (Northamptonshire County Council). It is a criminal offence to breach a requirement, which allows for private prosecutions, so to limit the enforcing authority may be</p>	As confirmed at ISH1 Highways England would expect the Local Planning Authority to enforce any breaches in consultation with the relevant highway authority.

			inappropriate for that reason also. The ExA invites observations from the district planning authorities, highways authority and Highways England as well as the Applicant.	
57	R8(1) – detailed design approval	“The details of each component of the authorised development on the main site referred to in requirement 3 must be in general accordance with the parameters plan and the design and access statement.”	Details “must be in general accordance with the parameters plan and design and access statement”; surely they must not exceed the limits in the parameters plan, be in general accordance with the design and access statement and be based on the principles set out in that statement? Comments and observations from the Applicant, the district planning authorities and the highway authority are invited.	We note the applicant’s response in this regard and have nothing further to add. We welcome their acceptance to the ExA’s concerns.
80	Sch 7, Pt 1 and Pt 2	Classification of Highways	Please produce a SoCG with Highways England and Northamptonshire CC to confirm these are agreed.	This has been covered by the Statement of Common Ground document 7.1A.
81	Sch 8 – all parts	Speed limits	Please produce a SoCG with Highways England and Northamptonshire CC to confirm these are agreed.	This has been covered by the Statement of Common Ground document 7.1A.
85	Sch 13, Protective Provisions, Part 2	For the protection of Highways England	The Applicant and Highways England should submit a Statement of Common Ground confirming that the protective provisions in Sch 13 Pt 2 are agreed and that no further protective provisions are contemplated. • “Cash surety” – the ExA notes the amount has yet to be inserted.	These protective provisions are not agreed. The Statement of Common Ground document 7.1c sets out what remains in dispute in this regard.
102	Sch 14, Miscellaneous controls, paragraph 3		What does the street authority say about these provisions? Please submit a SoCG confirming they are acceptable and any areas of difference by Examination Deadline 2.	Highways England is considering its position in this regard and will update the ExA by Deadline 2 as requested.
104	Sch 14,	“(10) Schedule 3A to the 1991 Act”	There is no such schedule. This point applies	We note the applicant’s response in this

	Miscellaneous controls, para 3(10), (11), (13) and (14)	to all four sub-paragraphs. Please explain the need for this. Submissions from the street authority will be welcome.	regard and agree that Schedule 3A to the 1991 Act does exist and is in force.
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