



NORTHAMPTON
GATEWAY
STRATEGIC RAIL FREIGHT INTERCHANGE

DRAFT DEVELOPMENT CONSENT ORDER (CLEAN)

DOCUMENT 3.1B

The Northampton Gateway Rail Freight Interchange Order 201X

Regulation No: 5 (2) (b)

DRAFT DEVELOPMENT CONSENT ORDER (CLEAN) | 20 NOVEMBER 2018

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ROXHILL

201[X] No. 0000

INFRASTRUCTURE PLANNING

**The Northampton Gateway Rail Freight Interchange Order
201X**

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 application was examined in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c) by a Panel of two members (the Panel) appointed by the Secretary of State in accordance with Chapter 2 of Part 6 of the 2008 Act.

The Panel, having considered the representations made and not withdrawn and the application with the accompanying documents, in accordance with section 74 of the 2008 Act has reported to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn and the report of the Panel has decided to make an Order granting development consent for the development described in the application [with modifications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

The Secretary of State in exercise of the powers conferred by section 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 24, 33, 34, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1 PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Northampton Gateway Rail Freight Interchange Order 201[X] and comes into force on [] 201[].

Interpretation

2.—(1) In this Order—

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

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

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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). Section 37 was amended by sections 128(2) and 137 of, and paragraphs 1 and 5 of Part 1 of Schedule 13 to, 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 and S.I. 2013/522, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682 and S.I. 2017/572. There are other amendments to the Regulations which are not relevant to this Order.
 - (c) S.I. 2010/103, amended by S.I. 2012/635.
 - (d) 1961 c.33.
 - (e) 1965 c.56.

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

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

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

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

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

“the 2010 Regulations” means the Community Infrastructure Levy Regulations 2010(f);

“the 2017 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(g);

“access and rights of way plans” means the plans of that description referred to in Schedule 15 (certification of plans and documents) and certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

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

“apparatus” for the purposes of article 8 (street works) and article 37 (apparatus and rights of statutory undertakers in stopped up streets) has the same meaning as in Part 3 of the 1991 Act;

“arboricultural assessment” means the arboricultural assessment contained in appendix 4.3 of the environmental statement;

“authorised activity” means for the purpose of article 28 (power to override easements and other rights)—

- (a) the erection, construction, carrying out or maintenance of any building or works on land;
- (b) the erection, construction or maintenance or anything in, on, over or under land; or
- (c) the use of any land;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act and any works carried out under the requirements;

“book of reference” means the document of that description referred to in Schedule 15 (certification of plans and documents) and certified as the book of reference by the Secretary of State for the purposes of this Order;

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

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

“bus” has the same meaning as in Schedule 1 of the Traffic Signs Regulations and General Directions 2016(h);

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

“chief officer of police” means the chief constable of Northamptonshire Police Force or any successor in function.

“commence” or “commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), as part of the authorised development unless the context indicates otherwise;

“construction and environmental management plan” means the document of that description contained in appendix 2.1 of the environmental statement;

(a) 1980 c.66.
(b) 1984 c.27.
(c) 1990 c.8.
(d) 1991 c.22.
(e) 2008 c. 29.
(f) S.I. 2010/948 as amended by S.I. 2011/987, S.I. 2012/635, S.I. 2012/2975, S.I. 2013/982, S.I. 2014/385, S.I. 2015/377, S.I. 2015/644, S.I. 2015/836 and S.I. 2018/172.
(g) S.I. 2017/572, amended by S.I. 2017/1012.
(h) S.I. 2016/362. There are amendments to the Regulations which are not relevant to this Order.

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

“development consent obligation” means the development consent obligation entered into by agreement under section 106 (planning obligations) of the 1990 Act(b) dated [] in respect of the authorised development and any subsequent amendment to the obligation;

“electronic communications code” has the same meaning as in section 106 of the Communications Act 2003(c);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the Communications Act 2003; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide.

“the environmental statement” means the document of that description referred to in Schedule 15 (certification of plans and documents) and certified as the environmental statement by the Secretary of State for the purposes of this Order;

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

“hedgerow” has the same meaning as in the Hedgerow Regulations 1997(d);

“HGV” means any vehicle with an operational weight capable of exceeding 7.5 tonnes;

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

“highway classification plans” means the plans of that description referred to in Schedule 15 (certification of plans and documents) and certified as the highway classification plans by the Secretary of State for the purposes of this Order;

“Highways England” means Highways England Company Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 of the Appointment of a Strategic Highways Company Order 2015(e) or any successor in function;

“highway plans” means the plans of that description referred to in Schedule 15 (certification of plans and documents) and certified as the highway plans by the Secretary of State for the purposes of this Order;

“highway works” means the works comprised in Works Nos. 7, 8, 9, 11, 12, 13, 14, 15, 16 and 17;

“illustrative rail terminal plan” means the document of that description referred to in Schedule 15 (certification of plans and documents) and certified as the illustrative rail terminal plan by the Secretary of State for the purposes of this Order;

“land plans” means the plans of that description referred to in Schedule 15 (certification of plans and documents) and certified as the land plans by the Secretary of State for the purposes of this Order;

“lead local flood authority” means Northamptonshire County Council or any successor in function as lead local flood authority or equivalent body;

“local highway authority” means Northamptonshire County Council or any successor in function as local highway authority;

(a) 1980 c. 66. The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(b) 1990 c. 8. Section 106 was substituted by section 12(1) of the Planning and Compensation Act 1991 (c. 34) and was subsequently amended by section 33 of the Greater London Authority Act 2007 (c. 24), section 174 of the Planning Act 2008 (c. 29) and paragraphs 1 and 3 of Schedule 2 to the Growth and Infrastructure Act 2013 (c. 27).

(c) 2003 c. 21. Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

(d) S.I. 1997/1160.

(e) S.I. 2015/376.

“maintain” includes inspect, repair, adjust, alter, clear, refurbish or improve and any derivative of “maintain” is to be construed accordingly;

“main site” means that part of the land within the Order limits comprising the areas of land described on the works plans as Works Nos. 1, 2, 3, 4, 5 and 6;

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

“Order limits” means the limits shown on the works plans represented by a red line within which the authorised development may be carried out;

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

“parameters plan” means the plan of that description referred to in Schedule 15 (certification of plans and documents) and certified as the parameters plan by the Secretary of State for the purposes of this Order;

“public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board or a lead local flood authority or a sewerage undertaker;

“rail served warehousing” means warehousing to which goods can be delivered by rail either directly or by means of another form of transport;

“railway” has the same meaning as in the 2008 Act;

“railway plans” means the plans of that description referred to in Schedule 15 (certification of plans and documents) and certified as railway plans by the Secretary of State for the purposes of this Order:

“relevant highway authority” means in any provision of this Order the highway authority for any area of land to which that provision relates;

“relevant planning authority” means as regards the operation and enforcement of any part of this Order the district planning authority within whose administrative boundary that part of the authorised development relevant to the operation or enforcement of the provision in question is situated;

“relevant street authority” means in any provision of this Order the street authority for any area of land to which that provision relates;

“relevant traffic authority” means in any provision of this Order the traffic authority for any area of land to which that provision relates;

“relocation works” means works executed, or apparatus provided, under paragraph (2) of article 37 (apparatus and rights of statutory undertakers in stopped up streets);

“requirements” means the requirements set out in Part 1 of Schedule 2 (requirements);

“speed limit plans” means the plans of that description referred to in Schedule 15 (certification of plans and documents) and certified as the speed limit plans by the Secretary of State for the purposes of this Order;

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

“statutory utility” means a statutory undertaker for the purposes of the 1990 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(b);

“strategic road network” means that part of the highway network comprising trunk roads and motorways;

(a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) 2003 c. 21. There are amendments to section 151 of the Communications Act 2003 which are not relevant to this Order.

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act(a), 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 meaning as in section 121A (traffic authorities) of the 1984 Act(b);

“traffic officer” means a person designated under section 2 (designation of Traffic Officers) of the Traffic Management Act 2004(c);

“traffic regulation plans” means the plans of that description referred to in Schedule 15 (certification of plans and documents) and certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

“tribunal” means the Lands Chamber Upper Tribunal;

“tree preservation order” has the meaning given in section 198 of the 1990 Act(d);

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

- (a) section 10 or 19(1) of the 1980 Act(e); or
- (b) an order or direction under section 10 of that Act; or
- (c) this Order; or
- (d) any other enactment;

“the undertaker” means—

- (a) Roxhill (Junction 15) Limited (company number 08763104) whose registered office is at Lumonics House, Valley Drive, Swift Valley, Rugby, Warwickshire CV21 1TQ; and
- (b) in respect of the main site only, any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person;

“verge” means any part of the road which is not a carriageway;

“water authority” means AWG Group Limited (company number 02366618) registered at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire PE29 6XU and any successor in function; and

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

“the works plans” means the plans of that description referred to in Schedule 15 (certification of plans and documents) and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

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

(a) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26).

(b) 1984 c. 27. Section 121A was inserted by section 168(1) of, and paragraph 70 of Part II of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22), and was amended by section 1(b) of, and paragraphs 70 and 95(1) and (3) of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). There are other amendments to schedule 121A of the Act which are not relevant to this Order.

(c) 2004 c. 18.

(d) 1990 c. 8. Section 198 was amended by sections 192(1), (2)(a), (b) and (c), and section 238 of, and paragraphs 7 and 8 of Schedule 8, and Schedule 13 to, the Planning Act 2008 (c. 29), and sections 31, 32, 84 of, and paragraph 20 of Schedule 6, paragraph 34 of Schedule 7 and Schedule 19, and Parts I and II of, the Planning and Compensation Act 1991 (c. 34) and section 42(3) of the Planning and Compulsory Purchase Act 2004 (c. 5).

(e) 1980 c. 66. Section 10 was amended by section 22(2)(a), (b) and (cc) of the New Roads and Street Works Act 1991 (c. 22), section 1(6) of, and paragraphs 1, 10(1)-(4) of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7), section 36 of, and paragraphs 21 and 22 of Schedule 2 to, the Planning Act 2008 (c. 29). Section 19(1) was amended by section 1(6) of, and paragraphs 1 and 15 of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(4) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development) and references to numbered requirements are to the requirements as numbered in Part 1 of Schedule 2 (requirements).

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

(6) Where the term approximate precedes a figure of measurement or quantum then the flexibility accorded by that word is limited by the parameters and the limits of deviation as described in article 4 and does not authorise any works which would result in significant environmental effects which have not been assessed in the environmental statement.

(7) Where in this Order a document or a plan is referred to by reference to a document number, the reference is to the document or plan of that number referred to in Schedule 15 (certification of plans and documents).

PART 2

PRINCIPAL POWERS

Development consent granted by the Order

3. Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Parameters of authorised development

4. The authorised development is to be carried out within the parameters shown and described on the parameters plan and in carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in respect of the highway works deviate vertically from the levels shown on the highway plans to a maximum of 1.5 metres upwards or downwards; and
- (c) in respect of the railway works comprised in Works Nos. 1 and 2 deviate vertically from the levels shown on the railway plans to a maximum of 1.5 metres upwards or downwards,

except that these maximum limits described in (a) to (c) do not apply to constrain the authorised development when it is demonstrated by the undertaker to the relevant planning authority's satisfaction and the relevant planning authority certifies accordingly that a deviation in excess of these limits would not give rise to any significant adverse effects on the environment not identified at the time this Order was made, or in any updated environmental information supplied under the 2017 EIA Regulations.

Authorisation of use

5. Subject to the provisions of this Order and to the requirements, the undertaker and any persons authorised by the undertaker may operate and use that part of the authorised development comprised in Works Nos. 1 to 7 inclusive for the purposes of a rail freight terminal and warehousing, any purposes for which such parts of the authorised development is designed and for any purposes ancillary to those purposes.

Maintenance of authorised development

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

(2) Paragraph (1) does not apply to the highway works the maintenance of which is governed by article 14 (maintenance of highway works) and Parts 2 and 3 of Schedule 13 (protective provisions).

(3) Paragraph (1) does not extend to any maintenance works which would give rise to any significant adverse effects on the environment not identified at the time this Order was made or in any updated environmental information supplied under the 2017 EIA Regulations.

Benefit of Order

7.—(1) Subject to paragraphs (2), (3) and (4) the undertaker shall have the benefit of the Order.

(2) Roxhill (Junction 15) Limited, has the sole benefit of the provisions of Part 5 (powers of acquisition) unless the Secretary of State consents to the transfer of the benefit of those provisions.

(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—

- (a) the Secretary of State consents to the transfer of the benefit of those provisions; or
- (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.

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

PART 3

STREETS

Street works

8.—(1) The undertaker may for the purposes of the carrying out of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) construct bridges and tunnels;
- (f) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (g) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (h) reduce the width of the carriageway of the street;
- (i) make and maintain crossovers and passing places; and
- (j) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (i).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act and is subject to the provisions of Parts 2 and 3 of Schedule 13.

Power to alter layout, etc., of streets

9.—(1) Subject to paragraph (2), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the main site and the layout of any street at its junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

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

(2) The 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 and if the local highway authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

Permanent stopping up of streets

10.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently the street specified in column (2) of Schedule 4 (streets to be permanently stopped up for which a substitute is to be provided) to the extent specified, by reference to the letters shown on the access and rights of way plans, in column (3) of that Schedule.

(2) No street specified in column (2) of Schedule 4 is to be wholly or partly stopped up under this article unless—

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

(3) Where a street has been stopped up under this article—

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

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

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

Temporary stopping up of streets

11.—(1) The undertaker may during and for the purposes of carrying out 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 (2), prevent all persons from passing along the street.

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

(3) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the relevant street authority which may attach reasonable conditions to any consent (including specifying the time period during which the street may be stopped up, altered or diverted) but such consent must not be unreasonably withheld.

(4) 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 of the 1961 Act.

(5) If a street authority has received an application for consent under paragraph (3) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was submitted with all relevant information, it is deemed to have granted consent.

Public rights of way – creation, substitution and stopping up

12.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

- (a) stop up each of the public rights of way specified in columns (1) and (2) of Part 1 of Schedule 5 (public rights of way to be permanently stopped up for which a substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule;
- (b) provide the substitute public rights of way described in column (4) of Part 1 of Schedule 5 between the specified terminus points and where specified, on a detailed alignment to be agreed with the local highway authority at the stage of the authorised development identified in column (5) of that Part of that Schedule;
- (c) temporarily stop up public rights of way to the extent agreed with the relevant highway authority and provide substitute temporary public rights of way on an alignment to be agreed with the local highway authority prior to the temporary stopping up of the public right of way concerned; and
- (d) stop up each of the public rights of way specified in columns (1) and (2) of Part 2 of Schedule 5 (public rights of way to be permanently stopped up for which no substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule at the stage of the authorised development identified in column (4) of that Part of that Schedule.

(2) No public right of way specified in columns (1) and (2) of Part 1 of Schedule 5 may be wholly or partly stopped up under this article unless the permanent substitute public rights of way referred to in column (4) of Part 1 of Schedule 5 or an alternative temporary substitute public right of way agreed by the local highway authority has first been provided by the undertaker, to the reasonable satisfaction of the local highway authority.

(3) Any temporary substitute right of way must be maintained by the undertaker with appropriate signage until the completion and opening of the permanent substitute public right of way specified in column (4) of Part 1 of Schedule 5.

(4) The undertaker must in connection with carrying out of the authorised development provide the new public rights of way specified in columns (1) and (2) of Part 3 of Schedule 5 (new public rights of way to be created) to the extent specified in column (3) of that Part of that Schedule at the stage of the authorised development in column (4) of that Part of that Schedule.

Accesses

13.—(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or the relevant street authority as appropriate (such consent not to be unreasonably withheld), form and lay out such means of access (permanent or temporary) or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The agreement of the relevant highway authority or the relevant street authority as appropriate is not required for the formulation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 13 (protective provisions).

(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 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

(4) The private means of access as set out in column (2) of Part 1 of Schedule 6 (private means of access to be replaced) may be removed by the undertaker and if removed must be replaced by the means of access as set out in column (3) of Part 1 of Schedule 6 at the stage of the authorised development identified in column (4) of that Part of that Schedule.

(5) The private means of access as set out in column (2) of Part 2 of Schedule 6 (private means of access to be closed for which no substitute is to be provided) may be closed by the undertaker at the stage of the authorised development identified in column (3) of that Part of that Schedule without a substitute being provided.

(6) The undertaker must provide the private means of access as set out in column (2) of Part 3 of Schedule 6 (new private means of access created) at the stage of the authorised development identified in column (3) of that Part of that Schedule.

Maintenance of highway works

14.—(1) The highway works must be completed in accordance with the provisions of Parts 2 and 3 of Schedule 13 (protective provisions).

(2) With effect from the date of the handover certificate referred to in paragraph 7 of Part 2 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of Highways England.

(3) With effect from the date of the final certificate referred to in paragraph 6 of Part 3 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of the local highway authority.

(4) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 6 of Part 2 of Schedule 13 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(5) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 6 of Part 3 of Schedule 13 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(6) For the purposes of this article, the definition of “maintain” in article 2 shall not apply and the word “maintain” shall be given its ordinary meaning when applied to highways.

Classification of highways

15.—(1) The new highways described in Part 1 of Schedule 7 (new highways) are to be—

- (a) classified as set out in column (3) of Part 1 of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such; and
- (b) provided for the use of the classes of traffic defined in Schedule 4 (classes of traffic for purposes of special roads) to the 1980 Act as set out in column (4) of Part 1 of Schedule 7.

(2) From the date on which the undertaker notifies the Secretary of State that the new highways described in Part 1 of Schedule 7 have been completed as evidenced by issue of the provisional certificate in accordance with paragraph 6 of Part 2 and paragraph 6 of Part 3 of Schedule 13 or are open for through traffic, whichever is the earliest—

- (a) the body set out in column (5) of Part 1 of Schedule 7 is the highway authority for those highways; and
- (b) the new highways identified as special roads in column (3) of Part 1 of Schedule 7 are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

(3) The existing highways described in Part 2 of Schedule 7 (existing highways) are to cease to have the classification and be the responsibility of the relevant highway authority set out in column (3) of Part 2 of Schedule 7 and from the occurrence of the event set out in column (4) are to be—

- (a) classified as set out in column (5) of Part 2 of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such;

- (b) provided for the use of the classes of traffic defined in Schedule 4 to the 1980 Act as set out in column (6) of Part 2 of Schedule 7; and
- (c) the responsibility of the relevant highway authority set out in column (7) of Part 2 of Schedule 7 subject only to any maintenance obligation imposed on the undertaker in Parts 2 and 3 of Schedule 13,

as if such classification had been made under sections 10(2)(a) and 12(3) of the 1980 Act.

Speed limits

16.—(1) The orders referred to in columns (1) and (2) of Part 1 of Schedule 8 (existing orders) are revoked or varied as set out in column (3) of Part 1 of Schedule 8 upon the event listed in column (4) occurring.

(2) Upon the event listed in column (3) of Part 2 of Schedule 8 (highways subject to 50mph speed limit) no person is to drive any motor vehicle at a speed exceeding 50 miles per hour in the lengths of highway identified in column (2) of Part 2 of Schedule 8.

(3) Upon the event listed in column (3) of Part 3 of Schedule 8 (derestricted highways) the lengths of highway specified in column (2) of Part 3 of Schedule 8 shall cease to be restricted highways for the purpose of section 81 of the 1984 Act.

(4) During the period specified in column (4) of Part 4 of Schedule 8 (temporary speed limits) no person is to drive any motor vehicle at a speed exceeding the limit specified in column (2) of Part 4 of Schedule 8 along the lengths of highway specified in column (3) of Part 4 of Schedule 8.

(5) Without limiting the scope of the specific powers conferred by paragraph (4) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation, or maintenance of the authorised development, impose a temporary speed limit either at all times or at times, on days or during such periods, and on such highways as may be specified by the undertaker.

(6) The undertaker must not exercise the powers in paragraph (5) unless it has given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority.

(7) The speed limits imposed by this Order are deemed to have been imposed by an order under the 1984 Act and—

- (a) have the same effect; and
- (b) may be varied by the relevant traffic authority in the same manner,

as any other speed limit imposed by an order under that Act.

(8) No speed limit imposed by 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(b) when used in accordance with regulation 3(5) of those Regulations.

Traffic regulation

17.—(1) The order referred to in column (1) of Part 1 of Schedule 9 (amendments to existing orders) is revoked as set out in column (2) of Schedule 9 upon the event listed in column (3) of Part 1 of Schedule 9 occurring.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker

(a) 1980 c. 66. Section 10(2) was amended by section 22(2)(a) of the New Roads and Street Works Act 1991 (c. 22).
 (b) S.I. 2011/935.

may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation, or maintenance of the authorised development—

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

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

(3) The undertaker shall not exercise the powers in paragraph (3) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and
- (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority's receipt of notice of the undertaker's intention under sub-paragraph (a).

(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (3) shall—

- (a) have effect as if duly made by, as the case may be—
 - (i) the relevant traffic authority as a traffic regulation order under the 1984 Act; or
 - (ii) the local highway authority as an order under section 32 of the 1984 Act^(a); and
- (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (3) at any time.

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

(7) If the relevant traffic authority fails to notify the undertaker of its decision within 42 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.

Clearways

18.—(1) Subject to paragraphs (3) and (4), following the event specified in column (3) of Part 2 of Schedule 9 (clearways), no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait on any part of a carriageway specified in columns (1) and (2) of Part 2 of Schedule 9, other than a lay-by.

(2) Nothing in paragraph (1) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of the carriageway or verge, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the carriageway or verge;

(a) 1984 c. 27. Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51). There are other amendments to section 32 which are not relevant to this Order.

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

(3) Nothing in paragraph (1) applies to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispersed.

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

Motor vehicle restrictions

19.—(1) No person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle the maximum gross weight of which exceeds 7.5 tonnes to enter or proceed within the zone specified in column (2) of Part 3 of Schedule 9 (environmental weight limit) between the points specified in column (3) of Part 3 of that Schedule following the event specified in column (4) of Part 3 of that Schedule.

- (2) The restriction referred to in paragraph (1) will not apply in respect of—
 - (a) anything done in accordance with any restriction or requirement indicated by traffic signs placed on or on behalf of the police;
 - (b) vehicles being used—
 - (i) in the service of a local authority or water authority in pursuance of statutory powers or duties; or
 - (ii) for ambulance, fire brigade or police purposes in an emergency; or
 - (iii) for the purpose of agriculture on any land adjacent to the restricted roads; or
 - (iv) for the purpose of gaining access to or leaving any land and/or premises situated in or adjacent to the restricted roads or any roads or lengths of roads accessible only therefrom; or
 - (v) in connection with the carrying out on land or any premises situated on or adjacent to the restricted roads of any building, industrial or demolition operation or the removal of any obstruction to traffic for, the maintenance, improvement, reconstruction, cleansing or lighting of the road or any roads accessible only therefrom, or the laying, erection, alteration or repair of any sewer under the restricted roads or of any main

(a) 2003 c. 21.
 (b) 1991 c. 56.
 (c) 2000 c. 26.

pipe or apparatus for the supply of gas, water, or electricity or of any electronic communications apparatus thereunder or thereon, or for the placing, maintenance or removal of any traffic sign thereon; or

(vi) for public transport.

(3) No person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to proceed in the manner specified in column (2) of Part 4 of Schedule 9 (prohibited movements) at the point specified in column (1) of Part 4 of Schedule 9.

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

Agreements with highway authorities

20.—(1) A relevant highway authority and the undertaker may enter into agreements with respect to—

- (a) the construction, and/or maintenance of any new highway, including any structure carrying the highway over the existing railway and any railway authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any highway under the powers conferred by this Order;
- (c) the maintenance of landscaping within a highway constructed as part of the highway works;
- (d) the maintenance of highway related assets which fall outside of the extent of highway maintained by a relevant highway authority;
- (e) any stopping up, alteration or diversion of a highway as part of or to facilitate the authorised development; or
- (f) the carrying out in the highway of any of the works referred to in article 8 (street works).

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

21.—(1) Subject to paragraphs (3), (4), (5) and (6) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

(a) 1991 c.56. Section 106 was amended by section 35(1) and (8) and section 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43) and, sections 36(2) and 99 of the Water Act 2003 (c. 37) (subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

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

(4) No water may be discharged into a watercourse that flows into the highway drainage system without the consent of the relevant highway authority and such consent may be given subject to such terms and conditions as the relevant highway authority consider appropriate such consent not to be unreasonably withheld or delayed.

(5) The undertaker must not discharge any water into any watercourse except with the approval of the lead local flood authority; and such approval may be given subject to such terms and conditions as the lead local flood authority may reasonably impose, but must not be unreasonably withheld.

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

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

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

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

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

(9) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and

(b) other expressions excluding watercourse, which are used both in this article and in the Water Resources Act 1991^(b) have the same meaning as in that Act.

(10) If a person who has received an application for consent under paragraph (3) or approval under paragraphs (4), (5) or (6)(a) fails to notify the undertaker of its decision within 42 days of receiving the application submitted with all relevant information, that person is deemed to have granted consent or given approval as the case may be.

Authority to survey and investigate the land

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

(a) survey or investigate the land;

(b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 28 days’ notice has been served on every owner, who is not the undertaker, and occupier of the land.

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

(a) must, if so required, produce written evidence of their authority to do so; and

(a) S.I. 2016/1154. There are amendments to regulation 12 which are not relevant to this Order.

(b) 1991 c. 57.

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

(a) in land located within the highway boundary without the consent of the relevant highway authority; or

(b) in a private street without the consent of the relevant street authority;

but such consent must not be unreasonably withheld.

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

(6) If either a highway authority or a street authority which has received an application for consent under paragraph (4) that includes all relevant information fails to notify the undertaker of its decision within 42 days of receiving the application the authority is deemed to have granted the consent.

PART 5

POWERS OF ACQUISITION

Guarantees in respect of payment of compensation

23.—(1) The undertaker must not exercise a power conferred by articles 24 to 28 or 33 to 36 unless a guarantee or alternative form of security in respect of the liabilities of the undertaker to pay compensation under the power being exercised is first in place.

(2) The form of guarantee or security referred to in paragraph (1), and the amount guaranteed or secured, must be approved by the relevant planning authority; but such approval must not be unreasonably withheld or delayed.

(3) The undertaker must provide the relevant planning authority with such information as the relevant planning authority may reasonably require relating to the interests in the land affected by the exercise of the powers conferred by articles 24 to 28 or 33 to 36 for the relevant planning authority to be able to determine the adequacy of the proposed guarantee or security including—

(a) the interests affected; and

(b) the undertaker's assessment, and the basis of the assessment, of the level of compensation.

(4) A guarantee or other security given in accordance with this article that guarantees or secures the undertaker's payment of compensation under this Part shall be enforceable against the guarantor or provider of security by any person to whom such compensation is properly payable.

(5) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years from the date on which the relevant power is exercised.

Compulsory acquisition of land

24.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental to, it as described in the book of reference and shown on the land plans.

(2) From the day on which a compulsory acquisition notice under section 134 of the 2008 Act^(a) is served or the day on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, all rights, trusts and incidents to which that land or that part of it which is vested (as the

(a) 2008 c. 29. Section 134 was amended by sections 142(1)-(4) and section 237 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and regulation 2 of and paragraph 6 of the Schedule to the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017 (S.I. 2017/16).

case may be) was previously subject shall be discharged or suspended, so far as their continuance would be inconsistent with the exercise of the powers under this Order.

(3) This article is subject to—

- (a) article 25 (compulsory acquisition of rights);
- (b) article 27 (private rights);
- (c) article 30 (time limit for exercise of authority to acquire land and rights compulsorily); and
- (d) article 35(9) (temporary use of land for carrying out the authorised development).

Compulsory acquisition of rights

25.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights listed in Schedule 11 (land in which new rights may be created) and described in the book of reference and shown on the land plans.

(2) From the date on which a compulsory acquisition notice is served pursuant to section 134 of the 2008 Act or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new right is, or rights are, acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act^(a), as substituted by paragraph (5) of Schedule 12 (modifications of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 12 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article.

Acquisition of part of certain properties

26.—(1) This article applies instead of section 8(1) (other provisions as to divided land) of the 1965 Act (as applied by section 125 of the 2008 Act^(b)) where—

- (a) a notice to treat is served on a person (the “owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (the “land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (the “land subject to the counter-notice”).

(3) If no counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the Tribunal.

(5) If on a reference the Tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or

(a) 1965 c. 56. Section 8 was amended by section 199(1) of, and paragraphs 1 and 2 of Part 1 of Schedule 17 to, the Housing and Planning Act 2016 (c. 22) and articles 5(1) and (2) of, and paragraphs 59 and 62(b) and (c) of Schedule 1 to, the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

(b) 2008 c. 29. Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is required to sell the land subject to the notice to treat.

(6) If on a reference the Tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on a reference the Tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If—

- (a) the undertaker agrees to take the land subject to the counter-notice; or
- (b) the Tribunal determines that—
 - (i) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
 - (ii) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the Tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the Tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Private rights

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

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

(a) 1965 c. 56. Section 11(1) was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of the Housing and Planning Act 2016 (c. 22) and section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No 1).

whichever is the earlier.

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

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights and restrictions over land within the limits of land which may be subject to compulsory acquisition powers shown on the land plans are extinguished on the appropriation of the land or right by the undertaker.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restrictions under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act^(a) to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act^(b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 33 (statutory undertakers and operators of the electronic communications code network) applies.

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

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the creation or acquisition of rights over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

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

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(9) References in this article to private rights over land include references to any trusts or incidents to which the land is subject.

Power to override easements and other rights

28.—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether it involves—

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

(a) 2008 c. 29. Section 152 was amended by article 5(1) and (2) of, and paragraphs 291 and 293 of Schedule 1 to, S.I. 2009/1307.
(b) 2008 c. 29. Section 138 was amended by section 23(4) of the Growth and Infrastructure Act 2013 (c. 27) and regulation 2 of and paragraph 12 of Part 1 of Schedule 1 to, S.I. 2017/1285.

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

(2) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(3) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking.

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

(a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provisions as to compensation for injurious affection) of the 1965 Act^(a); 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 in respect of injurious affection 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.

(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.

(7) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

(8) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

(a) is liable to pay compensation; and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(9) For the purposes of this article, “statutory undertakers” does not include operators of the electronic communications code network.

Compulsory acquisition of land – incorporation of the mineral code

29. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981^(b) are incorporated in this Order subject to the following modifications—

(a) for “the acquiring authority” substitute “the undertaker”;

(b) for the “undertaking” substitute “authorised development”;

(c) paragraph 8(3) is not incorporated.

Time limit for exercise of authority to acquire land and rights compulsorily

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

(a) no notice to treat is to be served under Part 1 of the 1965 Act; and

(a) 1965 c. 56. Section 10 was amended by article 5(1) and (2) of, and paragraphs 59 and 63 of Schedule 1 to, S.I. 2009/1307.

(b) 1981 c. 67.

- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981(a) as applied by article 32 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 35 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession taken before the end of that period, subject always to the limitation in article 35.

Application of Part 1 of Compulsory Purchase Act 1965

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

- (a) In section 4A(1) (extension of time limit during challenge)(b)—
 - (i) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
 - (ii) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 30 (time limit for exercise of authority to acquire land and rights compulsorily) of the Northampton Gateway Rail Freight Interchange Order 201X”.

(2) 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 30 (time limit for exercise of authority to acquire land and rights compulsory) of the Northampton Gateway Rail Freight Interchange Order 201X”.

(3) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 35 (temporary use of land for carrying out the authorised development) or 36 (temporary use of land for maintaining the authorised development) of Northampton Gateway Rail Freight Interchange Order 201X.”

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

32.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(c) applies as if this Order was a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, 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 body or person authorised to acquire land by means of a compulsory purchase order.”

(a) 1981 c. 66. Section 4 was amended by sections 184, 185 and 199(2) of, and paragraphs 1 and 2 of Part 1 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).
(b) 1965 c. 56. Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
(c) 1981 c. 66.

- (4) Omit section 5 (earliest date for execution of declaration)(a).
- (5) Omit section 5A (time limit for general vesting declaration)(b).
- (6) In section 5B(1) (extension of time limit during challenge)(c)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consents)”; and
 - (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 30 (time limit for exercise of authority to acquire land compulsorily) of the Northampton Gateway Rail Freight Interchange Order 201X”.
- (7) In section 6 (notices after execution of declaration)(d), for subsection (1)(b)(a) there is substituted—
- “(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008.”
- (8) In section 7 (constructive notice to treat)(e), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(f), omit paragraph 1(2).
- (10) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 (application of compulsory acquisition provision) of the 2008 Act (as modified by article 31 (application of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land and rights under this Order.

Statutory undertakers and operators of the electronic communications code network

- 33.** The undertaker may, subject to Schedule 13 (protective provisions)—
- (a) extinguish the rights of statutory undertakers and operators of the electronic communications code network within the Order limits; and
 - (b) replace, reposition, renew, alter and supplement the apparatus belonging to statutory undertakers and operators of the electronic communications code network within the Order limits.

Rights under or over streets

34.—(1) Subject to paragraph (6) the undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

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

- (3) Paragraph (2) does not apply in relation to—
- (a) any subway or underground building; or
 - (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(a) Section 5 was amended by section 183 of, and Schedule 15 to, the Housing and Planning Act 2016 (c. 22).

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

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

(d) Section 6 was amended by section 183 of, and paragraphs 4 and 7 of Schedule 15 to, the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(e) Section 7 was amended by section 199(2) of, and paragraphs 1 and 3 of Part 1 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

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

- (4) Subject to paragraph (5), any person who—
- (a) is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land; and
 - (b) suffers loss as a result,

is entitled to compensation to be determined, in case of dispute, under Part 1 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.

(6) Paragraph (1) does not apply to any street which is part of the strategic road network.

Temporary use of land for carrying out the authorised development

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

- (a) enter into and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act^(a) or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
- (c) construct and use temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct or carry out any works on that land as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker 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 land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of that land was taken unless the undertaker has, before 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 Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that and or has otherwise acquired the land subject to temporary possession.

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

- (a) replace a building removed under this article; or

(a) 1965 c. 56. Section 11 was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of, and paragraphs 1 and 2 of Schedule 16 to, and paragraph 6 of Schedule 14 to, the Housing and Planning Act 2016 (c. 22), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous provisions) Measure 2006 (2006 No 1), and article 5(1) and (2) of, and paragraphs 59 and 64 of Schedule 1 to, S.I. 2009/1307.

(b) restore the land on which any permanent works have been constructed or carried out under paragraph (1)(d).

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

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

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

(8) For the avoidance of doubt unless provided for in the book of reference and article 24 (compulsory acquisition of land) the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1).

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

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

Temporary use of land for maintaining authorised development

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

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for those purposes provided that any temporary access to the public highway shall be subject to the approval of the relevant highway authority.

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

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

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

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

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

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

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

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

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

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

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

Apparatus and rights of statutory undertakers in stopped up streets

37.—(1) Where a street is stopped up under article 10 (permanent stopping up of streets) 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 10 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

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

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

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

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

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

and the placing of that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or laid at the same depth as the existing apparatus, then the amount payable to the statutory utility is to be reduced by a sum equivalent to those additional costs.

(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

(a) 1965 c. 56. Section 13 was amended by section 139(4)-(9) and section 62(3) of, paragraphs 27 and 28(1)-(3) of Schedule 13 to, and Part 13 of Schedule 23 to, the Tribunal, Courts and Enforcement Act 2007 (c. 15).

- (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)), 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 utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

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

- (a) the allowable costs of the relocation works must 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 must be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

No double recovery

38. Compensation is not payable both under this Order and under any other enactment, any contract or any rule of law to the extent the compensation relates to the same detriment.

PART 6

MISCELLANEOUS AND GENERAL

Operation and use of railways

39. The undertaker may operate and use the railway comprised in the authorised development and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of goods.

Operational land for the purposes of the 1990 Act

40. Development consent granted by this Order within that part of the Order limits upon which the highway works are to be carried out is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Charges

41. The undertaker may demand, take or recover or waive such charges for carrying goods on the railway comprised in the authorised development, and for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

Defence to proceedings in respect of statutory nuisance

42.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisance)(a) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be

(a) 1990 c. 43. There are amendments to this section which are not relevant to this Order.

prejudicial to health or a nuisance)(a) no order may be made, and no fine may be imposed, under section 82(2)(b) of that Act if—

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

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

Felling or lopping of trees and removal of hedgerows

43.—(1) Subject to paragraphs (4), (5) and (6) the undertaker may fell or lop any tree, shrub or hedgerow within 15 metres of any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, shrub or hedgerow—

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person who suffers loss 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, must be determined under Part 1 of the 1961 Act.

(4) The provisions of paragraph (1) do not apply without the agreement of the relevant planning authority to any tree or hedgerow identified to be retained in the landscaping scheme approved under requirement 10.

(5) The provisions of paragraph (1) do not apply without the agreement of the relevant highway authority to any tree or hedgerow within a highway.

(6) The undertaker may fell or lop or cut back any tree or shrub which is subject to a tree preservation order (as identified in appendix C of the arboricultural assessment) with the prior approval of the relevant planning authority, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(7) In carrying out any activity authorised by paragraph (6)—

- (a) the undertaker shall 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; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(a) 1990 c. 43. Section 79(1) was amended by sections 101 and 102 of the Clean Neighbourhood and Environment Act 2005 (c. 16). There are other amendments to the Act which are not relevant to this Order.

(b) 1990 c. 43..

(c) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55). Section 61(9) was amended by Schedule 24 to the Environment Act 1995 (c. 25), and section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1974 Act which are not relevant to this Order.

(8) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

Protective provisions

44. Schedule 13 to this Order has effect.

Governance of requirements and governance of protective provisions relating to highway works

45.—(1) When in any requirement or in Parts 2 and 3 of Schedule 13 (protective provisions) approval or agreement is required of, or with, anybody in relation to the content, carrying out or use of the authorised development (including for the avoidance of doubt the approval of details or plans under the requirements) such approval or agreement must not be given if it would permit development which would give rise to any significant adverse effects on the environment not identified at the time this Order was made or in any updated environmental information supplied under the 2017 EIA Regulations(a).

(2) When any details, plans or other matters have been agreed or approved by the relevant planning authority under a requirement or the relevant highway authority under a requirement or Parts 2 and 3 of Schedule 13 then they may subsequently be amended by agreement with the relevant planning authority or relevant highway authority as the case may be provided that no amendments to those details, plans or other matters may be approved where such amendments would permit development which would give rise to any significant adverse effects on the environment not identified at the time this Order was made or in any updated environmental information supplied under the 2017 EIA Regulations.

(3) Where a consent, agreement or approval is required or requested by the undertaker under a requirement then the procedure set out in Part 2 of Schedule 2 (procedure for approvals etc. under requirements) for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, shall apply.

Disapplication, application and modification of legislative provisions

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

- (a) Regulation 12(1)(a) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b) in relation to the carrying on of a relevant flood risk activity for the purpose of the works;
- (b) 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(c);
- (c) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(d) in relation to watercourses for which Northamptonshire County Council is the drainage board concerned;
- (d) section 32 (variation of awards) of the Land Drainage Act 1991(e);

(a) S.I. 2017/578 as amended by S.I. 2017/1012.

(b) S.I. 2016/1154. There are amendments to regulation 12 which is not relevant to this Order.

(c) 1991 c. 57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006, section 31 of, and paragraphs 40 and 49 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29), and section 84 and 146(1) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6 was amended by section 105 of, and paragraph 6 of Schedule 15 to, the Environment Act 1995 (c. 25), sections 233(1), 224 and 321 of, and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6A was inserted by section 103(3) of the Environment Act 1995 (c. 25).

(d) 1991 c. 59. Section 23 was amended by section 31 of, and paragraphs 25 and 32 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29).

(e) 1991 c. 59.

- (e) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(a); and
- (f) section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981(b).

(2) In paragraph (1)(a) “relevant flood risk activity” means an activity within paragraph 3(1)(a), (b) or (c) of Schedule 25 (flood risk activities and excluded flood risk activities) to the Environmental Permitting (England and Wales) Regulations 2016.

(3) The provisions of the Neighbourhood Planning Act 2017(c) do not apply in so far as they relate to the temporary possession of land under articles 35 and 36 of this Order.

(4) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order shall be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 and 161 of the 2008 Act(d).

(5) Regulation 4 (requirement for consent) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007(e) does not apply to any advertisement erected in the location and in accordance with the parameters shown on the parameters plan as S1 and S2.

(6) This Order shall not constitute a planning permission for the purpose of Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within article 5 of the 2010 Regulations (meaning of planning permission).

(7) Schedule 14 (miscellaneous controls) to this Order which makes provision applying/modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order has effect.

(8) Paragraphs (1) to (7) only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

Certification of plans and documents

47.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents identified in Schedule 15 (certification of plans and documents) for certification that they are true copies of the documents referred to in this Order.

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

Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(a) 1991 c.59. Section 66 was amended by section 31 of, and paragraphs 25 and 38 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21).

(b) 1981 c. 69. Section 28E was amended by section 105(1) of, and paragraphs 79 and 80 of Part 1 of Schedule 11 to, Natural Environment and Rural Communities Act 2006 (c. 16).

(c) 2017 c. 20.

(d) 2008 c. 29. Sections 160 and 161 were amended by regulation 4(1) of, and paragraph 41 of Part 1 of Schedule 4 to, S.I. 2015/664. Section 161 was also amended by section 112(2) of, and paragraph 4 of Part 1 of Schedule 8 to, the Marine and Coastal Access Act 2009 (c. 23).

(e) S.I. 2007/783.

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

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

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

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of that 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;
- (c) the notice or document is legible in all material respects; and
- (d) 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 may not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article—

“electronic transmission” means a communication transmitted—

- (a) by means of electronic communications network; or
- (b) by other means but while in electronic form; and

“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.

(a) 1978 c. 30.

Arbitration

49. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order, other than a difference which fails 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—

- (a) in the case of matters pertaining to land and the surveying of such land, the president of the Royal Institute of Chartered Surveyors;
- (b) in the case of matters of legal interpretation, the president of the Law Society; and
- (c) in the case of all other matters the president of the Institute of Civil Engineers.

Signed by the authority of the Secretary of State

Address
Date

Name
Position
Department

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

PART 1

NSIP: THE CONSTRUCTION OF A RAIL FREIGHT INTERCHANGE

In the County of Northamptonshire and the District of South Northamptonshire and in the Borough of Northampton—

Works No. 1

Within the area of land described on the works plans as Works No. 1—

(2) The construction of a new railway line the general arrangement of which is shown on the railway plans from the rail freight terminal (Works No. 2) to connect with the existing Northampton Loop railway line and including—

- (a) construction of railway track and associated rail infrastructure;
- (b) a tunnel under the screening bund to be provided as part of Works No. 6;
- (c) formation of railway cuttings, embankments and all necessary earthworks, drainage and overhead electrified line equipment;
- (d) arrival and departure rail tracks adjacent to the rail freight terminal constructed as part of Works No. 2; and
- (e) a headshunt.

(3) Alterations to tracks, signalling, overhead electrified line equipment and associated plant on the Northampton Loop railway line to facilitate the new railway line.

Works No. 2

Within the area of land described on the works plans as Works No. 2—

(1) The construction of a rail freight terminal, the general arrangement of which is shown indicatively on the illustrative rail terminal plan, to connect with the rail infrastructure described in Works No. 1 including—

- (a) earthworks to achieve a terminal plateau;
- (b) access and circulation roads;
- (c) the construction of an intermodal rail freight loading and unloading terminal and terminal for the loading of aggregates including but not exclusively:
 - (i) rail sidings to load and unload freight;
 - (ii) raised platforms;
 - (iii) freight storage areas; and
 - (iv) gantry cranes and reach stackers
- (d) rail tracks and associated rail infrastructure;
- (e) drainage;
- (f) security fencing;
- (g) cripple sidings, rail freight terminal refuelling and maintenance areas;
- (h) terminal entry and exit gates, loading lanes, internal roads, gatehouses and parking areas;

- (i) rail freight terminal administrative building including staff and visitor welfare facilities; and
- (j) storage and workshop buildings.

Works No. 3

Within the area of land described on the works plans as Works No. 3 the construction of a new railway line to serve the warehousing to be constructed within Works No. 4 on land identified as Zones A2a, A2b, A3 and A4 on the parameters plan, the general arrangement of which is shown indicatively on the railway plans.

Works No. 4

Within the area of land described on the works plans as Works No. 4—

(1) The construction of rail served warehousing (including ancillary offices and other buildings) within the areas annotated as Zones A1, A2, A3 and A4 on the parameters plan including—

- (a) railway sidings and associated railway infrastructure connecting to Works No. 3;
- (b) construction of development plateaus;
- (c) warehouses and ancillary buildings such as gatehouses;
- (d) service yards and vehicle parking;
- (e) vehicle and pedestrian access routes;
- (f) solar energy provision;
- (g) vehicle maintenance units;
- (h) container storage;
- (i) ancillary buildings;
- (j) drainage basins and ponds for surface water attenuation and other attenuation features;
- (k) landscaping and bunding;
- (l) relocation of existing communications masts; and
- (m) signage.

(2) HGV park to accommodate approximately 120 HGVs and welfare facilities.

(3) Estate office.

(4) The demolition of existing farmhouses and associated outbuildings.

(5) Advertisements located within the area indicated and in accordance with the parameters and location shown as S1 on the parameters plan.

Works No. 5

Within the area of land described on the works plans as Works No. 5—

(1) The construction of infrastructure on the main site including—

- (a) private estate roads;
- (b) roundabouts and other junctions;
- (c) accesses to the main site from the A508 connecting to Works No. 7;
- (d) footways and cycleways;
- (e) vehicle lay-bys; and
- (f) bus stops and shelters.

Works No. 6

Within the area of land described on the works plans as Works No. 6—

(1) The provision of structural landscaping including—

- (a) earthworks (including retaining structures) for the creation of screening bunds;

- (b) soft landscaping surrounding the development comprising Works Nos. 1, 2, 3, 4 and 5 and including screening bund over the tunnel comprised in Works No. 1;
- (c) basins and ponds for surface water attenuation;
- (d) boundary treatments (including fencing);
- (e) ecological mitigation and habitat creation;
- (f) flood plain compensation;
- (g) retention of existing woodland and agricultural land; and
- (h) relocation of existing communications masts.

(2) The provision of a footbridge for a public footpath to cross over the railway constructed as part of Works No. 1.

(3) Advertisements located within the areas indicated and in accordance with the parameters and locations shown as S1 and S2 on the parameters plan

Works No. 7

Within the area of land described on the works plans as Works No. 7—

(1) Works to the A508 the general arrangement of which is shown on the highway plans (Documents 2.4B and 2.4C) including—

- (a) works to create a roundabout providing access to the main site;
- (b) works to create a temporary access to the main site from the A508 as shown on drawing number NGW-BWB-GEN-XX-SK-C-SK07 Rev P4 contained in the construction and environmental management plan;
- (c) widening of the A508 to a dual carriageway between the roundabout access to the main site and junction 15 of the M1 motorway;
- (d) the removal of existing carriageway and construction of a new carriageway;
- (e) removal of and alterations and extensions to drainage culverts;
- (f) construction of a shared use footway and cycleway alongside the A508; and
- (g) relocation of existing communications mast and its associated access.

PART 2

ASSOCIATED DEVELOPMENT

Associated development within the meaning of s115(2) (development for which consent may be granted) of the 2008 Act comprising—

In the County of Northamptonshire and the District of South Northamptonshire and the Borough of Northampton—

Works No. 8

Within the area of land described on the works plans as Works No. 8—

(1) Works to junction 15 of the M1 motorway the general arrangement of which is shown on the highway plans (Document 2.4B) comprising enlargement, widening and alteration of the gyratory that forms junction 15;

(2) (a) Works to the M1 motorway the general arrangement of which is shown on the highway plans (Documents 2.4A and 2.4B) including—

- (i) realignment, improvement and widening of the M1 slip roads between the mainline M1 motorway and the gyratory that forms junction 15; and
- (ii) realignment and improvement of merges and diverges between the mainline M1 motorway and the M1 slip roads;

- (iii) removal of and alterations and extensions to drainage culverts; and
 - (iv) installation of gantries,
- or, as an alternative,
- (b) Works to the M1 motorway the general arrangement of which is shown on the highway plans (Documents 2.4T and 2.4U) including—
 - (i) realignment, improvement and widening of the M1 slip roads between the mainline M1 motorway and the gyratory that forms junction 15; and
 - (ii) realignment and improvement of merges and diverges between the mainline M1 motorway and the M1 slip roads;
 - (iii) removal of and alterations and extensions to drainage culverts; and
 - (iv) installation of gantries.
- (3) Works to the A45 trunk road the general arrangement of which is shown on the highway plans (Document 2.4B) including—
- (a) realignment, widening and improvement of the A45;
 - (b) improvement and signalisation of the junction between the C67 Watering Lane and the A45 Northbound;
 - (c) removal of a parking lay-by;
 - (d) removal of bus lay-bys;
 - (e) removal of and alterations and extensions to drainage culverts; and
 - (f) installation of gantries.

Works No. 9

Within the area of land described on the works plans as Works No. 9—

- (1) Works to Saxon Avenue the general arrangement of which is shown on the highway plans (Document 2.4B) comprising widening, improvement and alterations connecting to Works No. 8;
- (2) Works to the C67 Watering Lane the general arrangement of which is shown on the highway (Document 2.4B) plans including—
 - (a) realignment and improvement connecting to Works No. 8 and
 - (b) provision of a bus stop and an uncontrolled crossing.
- (3) Improvement of the Collingtree footpath bridge over the M1 motorway (and its northern approach) to provide a cycle track as shown on the access and rights of way plans (Document 2.3A).

Works No. 10

Within the area of land described on the works plans as Works No. 10 the construction of new sewers and improvements and alterations to existing sewers as shown on drawing number NGW-BWB-GEN-XX-SK-C-SK13 Rev P1 contained in Appendix 7.3 of the environmental statement.

Works No. 11

Within the area of land described on the works plans as Works No. 11—

- (1) Works to junction 15A of the M1 motorway the general arrangement of which is shown on the highway plans (Document 2.4F) including—
 - (a) realignment, improvement and widening of the A43; and
 - (b) improvement, widening and partial signalisation of the roundabouts north and south of the M1.
- (2) Realignment, improvement and widening of the A5123 the general arrangement of which is shown on the highway plans (Document 2.4F).

Works No. 12

Within the area of land described on the works plans as Works No. 12—

(1) The alteration of the junction between the A508 and Blisworth Road (Parish of Courteenhall) the general arrangement of which is shown on the highway plans (Document 2.4C) including—

- (a) alterations to remove the ability for right turn manoeuvres including the construction of a central island;
- (b) realignment of the A508;
- (c) relocation of the bus stop lay-by; and
- (d) alterations to the access into the Courteenhall Estate.

(2) Construction of a shared use footway and cycleway on the western side of the A508 the general arrangement of which is shown on the highway plans (Document 2.4C) connecting with that provided within Works Nos. 7 and 13.

(3) Construction of an uncontrolled pedestrian crossing of the A508 the general arrangement of which is shown on the highway plans (Document 2.4C) at the junction between the A508 and the unnamed road to Quinton.

Works No. 13

Within the area of land described on the works plans as Works No. 13—

(1) The construction of a new highway linking the A508 Northampton Road to the A508 Stratford Road, bypassing the village of Roade (to be known as the Roade Bypass), the general arrangement of which is shown on the highway plans (Documents 2.4C, 2.4D and 2.4E) including—

- (a) roundabout junctions between the Roade Bypass and the A508 Northampton Road, A508 Stratford Road and Blisworth Road (Parish of Roade);
- (b) drainage swales and attenuation features;
- (c) a bridge over the West Coast Main Line railway;
- (d) an underpass for bridleway RZ1/KZ10;
- (e) the stopping up and substitution of parts of existing public rights of way KZ2a, KZ19, and RZ3;
- (f) the construction of a shared use footway and cycleway;
- (g) environmental mitigation bunds and acoustic fencing;
- (h) ecological mitigation areas;
- (i) temporary construction compounds; and
- (j) the alteration of private accesses as shown on the access and rights of way plans.

Works No. 14

Within the area of land shown on the works plans as Works No. 14—

(1) The improvement of the junction between the A508 and the C26 the general arrangement of which is shown on the highway plans (Document 2.4E) including—

- (a) realignment of the A508;
- (b) improvement and enlargement of the priority junction between the A508 and C26 Rookery Lane and between the A508 and C26 Ashton Road;
- (c) construction of a footway and a shared use footway and cycleway;
- (d) uncontrolled crossings of the A508 and C26; and
- (e) the alteration of a private access as shown on the access and rights of way plans.

Works No. 15

Within the area of land shown on the works plans as Works No. 15—

(1) The improvement of the junction between the A508 and the C85 Pury Road the general arrangement of which is shown on the highway plans (Document 2.4F) including—

- (a) widening and realignment of the A508; and
- (b) extension of the ghost island right turn lane at the junction between the A508 and C85 Pury Road.

Works No. 16

Within the area of land shown on the works plans as Works No. 16—

(1) The improvement of the junction between the C27 Stoke Road and Knock Lane the general arrangement of which is shown on the highway plans (Document 2.4F) including—

- (a) widening of Knock Lane on the approach to the C27 Stoke Road; and
- (b) drainage improvements.

(2) The widening of Knock Lane and Blisworth Road (Parish of Roade) the general arrangement of which is shown on the highway plans (Document 2.4F).

Works No. 17

Within the area of land described on the works plans as Works No. 17—

(1) The improvement of the A508 in Grafton Regis the general arrangement of which is shown on the highway plans (Document 2.4F) including—

- (a) a refuge island on the A508;
- (b) removal of a parking lay-by;
- (c) alterations to a bus stop lay-by and footway; and
- (d) a ghost island right turn junction at Church Lane.

Further works

The following further works provided that such works do not give rise to any significant adverse effects on the environment not identified at the time this Order was made or in any updated environmental information supplied under the 2017 EIA Regulations—

(1) Within the area of land described on the works plans as Works Nos. 1 to 5 the provision of—

- (a) weighbridges;
- (b) internal estate roads, maintenance accesses and footways;
- (c) cycle parking facilities;
- (d) bus turning-head;
- (e) substations;
- (f) demolition of buildings and structures; and
- (g) such other works as may be necessary or expedient for the purpose of or in connection with the construction of the Works Nos 1 to 17.

(2) Within the area of land described on the works plans as Works Nos. 1 to 6—

- (a) swales, landscaping and boundary treatments, earthworks and earthwork retaining structures;
- (b) the provision of footways, cycle tracks, permissive cycle tracks, bridleways and footpath linkages;
- (c) water supply works, foul drainage provision, foul pumping stations, surface water management systems, balancing ponds (surface and underground), attenuation and culverting;
- (d) connections to mains services and provision of utilities infrastructure including primary and secondary substations and pressure reducing stations;
- (e) diversion and provision of utilities including foul water sewers;
- (f) relocation of existing communications masts;
- (g) demolition of surface structures;

- (h) temporary concrete batching plants during the period of construction of the authorised development;
- (i) temporary construction compounds and materials and aggregate store during the period of construction of the authorised development;
- (j) lighting;
- (k) signage;
- (l) CCTV equipment; and
- (m) such other works as may be necessary or expedient for the purpose of or in connection with the construction of Works Nos. 1 to 17.

(3) Within the area of land described on the works plans as Works Nos. 7 to 9 and 11 to 17 the provision of—

- (a) site clearance and excavation;
- (b) removal of existing and creation of new private means of accesses in the locations shown on the access and rights of way plans;
- (c) fencing for boundary treatment and noise attenuation;
- (d) safety barriers;
- (e) surface water drainage works including swales, attenuation, outfalls, headwalls and culverting;
- (f) ducting;
- (g) bunds, embankments, cuttings, landscaping, earthworks and earthwork retaining structures;
- (h) pavements, surface treatments, refuge islands, kerbs and channels;
- (i) the provision of footways, cycle tracks, bridleways and footpath linkages;
- (j) traffic signs, traffic signals and road markings;
- (k) street lighting and electrical equipment;
- (l) retaining walls;
- (m) diversion and provision of utilities including foul water sewers;
- (n) temporary earthworks material stockpiles;
- (o) demolition of buildings and structures; and
- (p) such other works as may be necessary or expedient for the purpose of or in connection with the construction of Works Nos 1 to 17.

SCHEDULE 2

Article 3

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule unless the context requires otherwise—

“authorised buildings” means any buildings erected as part of the authorised development;

“component of the authorised development on the main site” means the components listed in requirement 3(1)(a) to (j);

“construction and environmental management plan” means the document of that description contained in appendix 2.1 of the environmental statement;

“the design and access statement” means the document of that description referred to in Schedule 15 (certification of plans and documents) and certified by the Secretary of State as the design and access statement for the purposes of this Order;

“flood risk assessment” means the document of that description contained in appendix 7.1 of the environmental statement;

“framework site waste management strategy” means the document of that description in appendix 14.2 of the environmental statement;

“framework travel plan” means the document of that description referred to in requirement 4 and attached at appendix 1 to the transport assessment (contained in appendix 12.1 of the environmental statement);

“ecological mitigation works” means the relocation/translocation of hedgerows, grassland translocation and creation of an artificial badger sett;

“illustrative landscape plan (main site)” means the document of that description contained in chapter 4 of the environmental statement;

“landscape and ecological management plan” means the document of that description contained in appendix 5.12 of the environmental statement;

“lighting strategy” means the document of that description contained in appendix 11.3 of the environmental statement;

“main site built development and landscape surrounds proposed components and sequence plan” means the document of that description contained in chapter 2 of the environmental statement;

“main site phasing plan” means the document of that description contained in chapter 2 of the environmental statement;

“occupation” means occupation of the authorised buildings other than for the purpose of constructing, fitting out, commissioning or site security;

“relevant body” means in respect of each of the highway works the body referred to in respect of each of those works in column (4) of the table in requirement 6 (design and phasing of highway works);

“sustainable drainage statement” means the document of that description contained in appendix 7.3 of the environmental statement;

“sustainable drainage strategy” means the strategy for surface water drainage set out in the sustainable drainage statement;

“sustainability statement” means the document titled sustainability statement for planning contained in appendix 2.2 of the environmental statement; and

“water framework directive assessment” means the document of that description contained in appendix 7.2 of the environmental statement.

Time limit

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

Components of development and phasing

3.—(1) No component of the authorised development on the main site is to commence until details of the phasing of that component have been submitted to and approved in writing by the relevant planning authority. The components for the purposes of this schedule are—

- (a) earthworks;
- (b) rail terminal and related infrastructure;
- (c) roads within the main site;
- (d) surface water and foul drainage;

- (e) development plots;
- (f) landscaping and ecological mitigation;
- (g) permanent advertisements in the locations identified as S1 and S2 on the parameters plan;
- (h) any temporary means of enclosure;
- (i) any temporary site notices or advertisements; and
- (j) services.

(2) The authorised development must be carried out in accordance with the approach to phasing set out on the main site phasing plan and the main site built development and landscape surrounds proposed components and sequence plan unless otherwise agreed in writing with the relevant planning authority.

(3) A rail terminal capable of handling at least four goods trains per day, including 775 metre length trains, must be constructed and available for use prior to the occupation of any of the rail-served warehousing unless the timing of the provision of the rail terminal is otherwise agreed in writing with the relevant planning authority.

Sustainable transport

4.—(1) The provisions of the framework travel plan or any variation of such plan agreed by the transport working group must be complied with at all times following the commencement of the authorised development unless otherwise agreed in writing by the relevant planning authority.

(2) Prior to the occupation of each individual warehouse unit an occupier specific travel plan shall be submitted to and approved in writing by the relevant planning authority. Each specific travel plan must be in accordance with the framework travel plan or any approved variation thereto pursuant to requirement 4(1) and must be complied with at all times following the occupation of the relevant warehouse unit to which it relates.

Design and phasing of highway works

5. The highway works must be carried out in accordance with details first submitted to and approved by the relevant body in accordance with the provisions of Parts 2 and 3 of Schedule 13 (protective provisions).

6. The undertaker must complete the highway works identified in column (1) of the table below by no later than the stage of the authorised development set out in column (3) of the table below or such alternative later triggers as are agreed by the relevant body identified in column (4).

<i>(1) Item as described in Schedule 1</i>	<i>(2) Description</i>	<i>(3) Stage of Development</i>	<i>(4) Relevant Body</i>
7(1)	A508 dualling and main site access roundabout	To be completed prior to the occupation of first warehouse to be occupied	Local highway authority
8(1), (2) and (3)	M1 Junction 15 improvements including A45	To be completed prior to the occupation of first warehouse to be occupied	Highways England
9(1), (2) and (3)	Saxon Avenue, C67 Watering Lane and Collingtree Footpath Bridge (highway works)	To be completed prior to the occupation of first warehouse to be occupied	Local highway authority
11(1)	M1 Junction 15A improvements	To be completed prior to the opening to	Highways England

		traffic of the A508 Roade Bypass (Works No. 13)	
11(2)	M1 Junction 15A improvements (A5123)	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Local highway authority
12(1)	A508 Blisworth Road junction improvement including footway improvements	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Local highway authority
13	A508 Roade Bypass	To be completed within the earliest of: (i) 2 years of occupation of first warehouse to be occupied; or (ii) 4 years from the commencement of Works No. 8	Local highway authority
14	A508/C26 Rookery Lane/ Ashton Road junction improvement	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Local highway authority
15	A508/C85 Pury Road junction improvement	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Local highway authority
16(1) and (2)	Knock Lane/Blisworth Road (Parish of Roade) improvements	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Local highway authority
17	A508 Grafton Regis improvements	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Local highway authority

Highway alternatives

7. The works described in Works No. 8(2)(b) and shown on Documents 2.4T and 2.4U shall only be constructed as an alternative to those described in Works No. 8(2)(a) and shown on Documents 2.4A and 2.4B in the event that—

- (a) the construction of that part of the M1 J13-16 Smart Motorway Project to be carried out within 1.5 kilometres of J15 (in a northerly and southerly direction) has not commenced and is not programmed to be commenced by Highways England within six months of the date upon which the undertaker wishes to commence Works No. 8; and
- (b) the undertaker so elects and serves notice of such election on Highways England, the local highway authority and the relevant planning authority.

Detailed design approval

8.—(1) The details of each component of the authorised development on the main site referred to in requirement 3 must be in accordance with the parameters plan and the principles set out in the design and access statement. The design and access statement can be reviewed and updated by the undertaker in agreement with the relevant planning authority.

(2) No component of the authorised development on the main site (excluding archaeological investigation, ecological mitigation works and geotechnical or ground contamination investigation) is to commence until the details of that component have been submitted to and approved in writing by the relevant planning authority. The details of each component must include details of the following where they are located within that component—

- (a) rail infrastructure and rail terminal;
- (b) embankments and bunds;
- (c) hard landscaping, cycle tracks, footpaths and bridleways;
- (d) surface and foul drainage;
- (e) bicycle, motorcycle and vehicle parking (including the location and quantum of electrical charging points);
- (f) built development design and layout (including external materials, sustainable energy measures and sprinkler systems in accordance with BSEN;12845:2004 unless otherwise agreed in writing with the relevant planning authority);
- (g) location and quantum of bin stores;
- (h) site levels and finished floor levels;
- (i) estate roads;
- (j) weighbridges;
- (k) gatehouses;
- (l) height barrier at the entrance to the main site restricting HGV right turn movement (including maintenance protocol);
- (m) permanent advertisements in the locations identified as S1 and S2 on the parameters plan;
- (n) any temporary means of enclosure;
- (o) any temporary site notices or advertisements;
- (p) fencing walls and other means of enclosure (including acoustic fencing) which must be a maximum height of 3 metres;
- (q) substation; and
- (r) telecommunication masts.

9. The details in 8(2)(a) to (r) can be subject to alteration by approval in writing from the relevant planning authority. The authorised development must be carried out in accordance with the details as approved in writing by the relevant planning authority from time to time.

Provision of landscaping

10.—(1) No component of the authorised development on the main site which includes landscaping (excluding archaeological investigation, ecological mitigation works and geotechnical or ground contamination investigation) is to commence until a written landscaping scheme for that component has been submitted to and approved in writing by the relevant planning authority. The landscaping scheme must be carried out in accordance with the parameters plan and the landscape and ecological management plan and in accordance with the principles established in the illustrative landscape plan (main site) and must include details of all proposed soft landscaping works, including—

- (a) location, number, species, size, layout, method of trees support, plant protection measures and planting density of any proposed planting;

- (b) cultivation, importation of materials and other operations to ensure plant establishment;
- (c) details of existing trees to be retained, with measures for their protection during the construction period in accordance with British Standard 5837:2012 “Trees in relation to Design, Demolition and Construction Recommendations”, and to include a schedule of remedial tree works to be carried out in accordance with British Standard 3998:2010; “Tree Works Recommendations” prior to construction commencing;
- (d) details of ecological mitigation; and
- (e) implementation timetable.

Landscape and Ecological Management Plan

11.—(1) The authorised development must be carried out in accordance with the landscape and ecological management plan. The management plan may be subject to alteration by agreement in writing by the relevant planning authority.

(2) Any ecological works carried out under the landscape and ecological management plan must be supervised by a suitably qualified person or body.

Construction Environmental Management Plan

12.—(1) No part of the authorised development is to commence, including any preparatory earthworks or site levelling but excluding archaeological investigation, ecological mitigation works and geotechnical or ground contamination investigation, until a phase specific construction environmental management plan (“P-CEMP”) for that part of the authorised development, drafted in accordance with the principles set out in the construction environmental management plan, has been submitted to and approved in writing by the relevant planning authority or the relevant highway authority where the P-CEMP relates to the highway works.

(2) Each P-CEMP is to be reviewed and updated if necessary to address unacceptable impacts arising from construction works. Each P-CEMP must be submitted by the undertaker for approval in writing by the relevant planning authority or the relevant highway authority where the P-CEMP relates to the highway works. All construction works must be carried out in accordance with the relevant P-CEMP as approved.

Earthworks

13. No component of the authorised development on the main site (excluding archaeological investigation, ecological mitigation works and geotechnical or ground contamination investigation) is to commence until details of—

- (a) an earthworks strategy including the management and protection of soils;
- (b) an earthworks specification;
- (c) cutting slopes and embankment design that would accord with the approved earthworks specification;
- (d) the extent of any material to be temporarily stored within the main site; and
- (e) any surplus material to be removed from the main site for disposal or material to be imported to the main site,

have been approved in advance and in writing by the relevant planning authority. The details can be subject to alteration with the approval in writing of the relevant planning authority. All earthworks must be carried out in accordance with the details as approved.

Archaeology

14.—(1) No part of the authorised development is to commence until the undertaker has commissioned a programme of further exploratory archaeological investigation which has been submitted to and approved in writing by the relevant planning authority. The exploratory investigation must be carried out in accordance with the approved programme and must be timed so

that the results can inform the scope of the further archaeological mitigation measures, referred to in sub-paragraph (2).

(2) No part of the authorised development is to commence until a programme of archaeological mitigation measures informed by the exploratory investigations referred to in sub-paragraph (1) and by earlier phases of investigation has been implemented in accordance with a written scheme of mitigation measures which has been approved in writing by the relevant planning authority. The written scheme of mitigation measures must include and make provision for the following elements—

- (a) mitigation fieldwork;
- (b) post-mitigation fieldwork and analysis;
- (c) reporting and dissemination of findings; and
- (d) preparation of site archive, arrangements for deposition and sustainable management at a store approved in writing by the relevant planning authority.

(3) The approved mitigation measures must be carried out in accordance with the written scheme of mitigation measures.

Lighting details

15.—(1) Prior to the commencement of each component of the authorised development on the main site which includes permanent lighting, details of the proposed permanent external lighting in that phase must be submitted to and approved in writing by the relevant planning authority. The lighting details must accord with the principles established in the lighting strategy.

(2) The approved lighting scheme must be implemented and maintained as approved in writing by the relevant planning authority during operation of the authorised development and no external lighting other than that approved under this requirement may be installed. The details can be subject to alteration with the approval in writing of the relevant planning authority.

(3) The details submitted under this requirement must include details of any lighting on any gantry cranes included in the component concerned.

Building sustainability

16.—(1) No construction of a rail-served warehouse must start until a BREEAM Pre-Assessment Report based upon the BREEAM 2018 method (or equivalent) has been submitted to and approved in writing by the relevant planning authority demonstrating that the rail-served warehouse concerned is expected to achieve at least a BREEAM 2018 “Very Good” rating (BREEAM Industrial 2008 “Excellent”).

(2) The construction of each of the rail-served warehouses must be carried out in accordance with the details in the BREEAM Pre-Assessment Report (or equivalent) for that warehouse and a certificate must be provided to the relevant planning authority within three months of completion or occupation (whichever is the sooner) of each warehouse confirming that the measures in respect of that warehouse committed to within the Pre-Assessment Report have been implemented.

(3) The authorised development must comply with the principles set out in the sustainability statement.

Flood risk and surface water drainage

17. The authorised development must be carried out in accordance with the mitigation measures detailed within the flood risk assessment and the water framework directive assessment or be carried out in accordance with any variation to these measures agreed in writing with the Environment Agency, the lead local flood authority or the approving body under Schedule 3 (sustainable drainage) to the Flood and Water Management Act 2010, whichever of these is the body having jurisdiction over the watercourse in question.

18.—(1) No component of the authorised development on the main site (excluding archaeological investigation, ecological mitigation works and geotechnical or ground contamination investigation) must commence until a surface water drainage scheme for that component based on sustainable drainage principles has been submitted to and approved in writing by the lead local flood authority. The scheme must be in accordance with the sustainable drainage statement and must be informed by additional infiltration testing in accordance with BRE standard 365 “Soakaway design” the extent of which is to be approved in advance by the lead local flood authority, the aim of which is to identify the maximum extent of reliance upon infiltration in accordance with the drainage hierarchy set out in the sustainable drainage strategy.

(2) The surface water drainage scheme must be implemented in accordance with the details approved by the lead local flood authority or in accordance with any variations to the details agreed in writing by the lead local flood authority.

Flood Risk

19. Any element of the authorised development which directly affects any floodplain must not be commenced until such time as a floodplain compensation scheme has been submitted to and approved in writing by the relevant planning authority. The scheme must accord with the principles established in the flood compensation measures set out in the flood risk assessment. Except for the floodplain compensation scheme itself, no above ground part of the authorised development in any floodplain may be commenced until the relevant compensation scheme has been implemented in full. The scheme must be fully implemented and subsequently maintained in accordance with the timing and phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed in writing by the relevant planning authority.

Foul water drainage

20.—(1) Prior to the commencement of the authorised development on the main site, excluding earthworks, archaeological investigation or ecological mitigation works, a foul water drainage strategy must be submitted to and approved in writing by the relevant planning authority. Except where it is constructed in accordance with the approved foul water drainage strategy, no component of the authorised development is to commence until written details of the foul water drainage system for that component have been submitted to and approved in writing by the relevant planning authority. Such details must be implemented as approved by the relevant planning authority.

(2) Works No. 10 must be completed prior to first occupation.

Construction hours

21.—(1) Subject to sub-paragraph (2) construction and demolition works on the main site (which for the purposes of this requirement excludes archaeological investigations and any non-intrusive internal fit-out works but must include start up and shut down and deliveries) must not take place other than between 07:00 and 19:00 hours on weekdays and 07:00 and 16:00 hours on Saturdays, excluding public holidays, unless otherwise agreed in writing by the relevant planning authority. Outside the above periods the following working is permitted—

- (a) pre-planned construction works to highway or rail infrastructure requiring possessions where first notified to the relevant planning authority and local residents;
- (b) emergency works; and
- (c) works which do not cause noise that is audible at the boundary of the main site nor cause vibrations which are detectable at the boundary of the main site.

(2) Regardless of sub-paragraph (1) no piling operations are to take place before 08:00 and after 18:00 hours on weekdays and before 08:00 and after 13:00 on Saturdays unless otherwise agreed in writing by the relevant planning authority.

(3) Any emergency works carried out under sub-paragraph (1)(b) must be notified to the relevant planning authority within 72 hours of their commencement.

Construction noise

22. The management of construction noise shall be carried out in accordance with the relevant phase specific construction environmental management plan. If required by the local planning authority, consents under Section 61 of the Control of Pollution Act 1974 shall be sought for the works or specific phases of the works.

Noise during the operational phase

23. Prior to installation, details of all mechanical and ventilation plant that is intended to be used on any of the warehouse units or other buildings within the main site must be submitted to and approved by the local planning authority. This will include an assessment of the expected noise impact at relevant receptors from the proposed plant installations to demonstrate compliance with Government and Local policy on noise. Any fixed plant or ventilation equipment must be installed and operated in accordance with manufacturers' instructions at all times.

Monitoring of complaints

24. In the event that complaints regarding alleged noise nuisance are received by the relevant planning authority during the construction and operational phase, the undertaker must, unless otherwise agreed in writing with the local planning authority, at its own expense, employ a consultant approved by the relevant planning authority to carry out an assessment of the noise which is the subject of the complaint. The assessment must be carried out according to an appropriate methodology agreed with the relevant planning authority and the results of the assessment must be submitted to the local planning authority within 28 days of the assessment being completed. If it is found that the effect of noise from the authorised development is greater than was anticipated, recommendations for appropriate remedial measures shall be made.

Contamination risk

25.—(1) None of the authorised development is to commence on any specifically identified localised areas of land within the Order limits potentially affected by contamination as identified within the desk study contained within chapter 6 of the environmental statement until further investigations and a Risk Based Land Contamination Assessment (Geo-environmental Interpretative Report) has been undertaken in line with the recommendations made within the desk study for that localised area of the Order limits and this has been submitted to and approved in writing by the local planning authority. The Risk Based Land Contamination Assessment must be carried out in accordance with the Environment Agency CLR 11 2004a 'Model Procedures for the Management of Land Contamination' (Contaminated Land Risk Assessment).

(2) Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remediation Strategy Scheme also detailing a proposed Verification Works Plan must be prepared and submitted to and agreed in writing by the local planning authority. The Remedial Scheme must be prepared in accordance with the requirements of CLR 11. The Verification Plan must be prepared in accordance with the requirements of—

- (a) Evidence Report on the Verification of Remediation of Land Contamination Report SC030114/R1, published by the Environment Agency 2010; and
- (b) CLR 11.

(3) If, during the course of construction, previously unidentified contamination is discovered, construction must cease on that localised area of land within the Order limits and the contamination must be reported in writing to the local planning authority within 10 working days. Prior to the recommencement of construction on that localised area of land within the Order limits, suitable investigation and Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the local planning authority. The authorised development must then be implemented in accordance with the details approved by the local planning authority and, unless otherwise agreed in writing by the local planning authority, retained as such in perpetuity.

- 26.**—(1) Prior to the use of any part of the completed authorised development either—
- (a) if no remediation scheme or verification was required under requirement 25 (contamination risk) a statement from the undertaker, or their approved agent, must be provided to the local planning authority, stating that no previously unidentified contamination was discovered during the course of construction of that part of the completed authorised development; or
 - (b) if a remediation scheme and verification plan were agreed under requirement 25 for the relevant part of the completed authorised development, a Verification Investigation must be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to that part of the authorised development must be submitted to and approved in writing by the local planning authority.
- (2) The Verification Investigation Report must—
- (a) contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
 - (b) contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
 - (c) contain Movement Permits for all materials taken to and from the land within the Order limits and a copy of the completed site waste management plan if one was required;
 - (d) contain Test Certificates of imported material to show that it is suitable for its proposed use;
 - (e) demonstrate the effectiveness of the approved Remedial Scheme; and
 - (f) include a statement signed by the undertaker, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.

Waste management during the operational phase

27. No component of the authorised development on the main site may be brought into use until a scheme for waste management for that component has been submitted to and approved in writing by the relevant planning authority. The scheme, which must be in accordance with the framework site waste management strategy, may be amended by agreement with the relevant planning authority. The approved scheme must be implemented and maintained for the duration of the operation of the authorised development.

PART 2

Article 45

PROCEDURE FOR APPROVALS ETC. UNDER REQUIREMENTS

Applications made for certain approvals

1.—(1) Where an application has been made to a discharging authority for any consent, agreement or approval required or contemplated under the requirements the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

- (2) For the purposes of sub-paragraph (1), the decision period is—
- (a) where no further information is requested under paragraph 2, 42 days from the day immediately following that on which the application is received by the discharging authority;
 - (b) where further information is requested under paragraph 2, 42 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 2; or
 - (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in paragraph (a) or (b).

Further information

2.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary it must, within 10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the discharging authority does not give such notification as specified in sub-paragraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

Appeals

3.—(1) The undertaker may appeal in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required or contemplated under the requirements or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 1;
- (c) on receipt of a request for further information under paragraph 2 the undertaker 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
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the decision period as determined under paragraph 1;
- (b) the undertaker must submit the appeal documentation to the Secretary of State [directed to []] and must within 7 working days provide copies of the appeal documentation to the discharging authority and the requirement consultees;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”)(a) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the discharging authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 working days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties shall make any counter-submissions to the appointed person within 20 working days of receipt of written representations under paragraph (d).

(3) The appointed person must make a decision and notify it to the appeal parties, with reasons, within 20 working days of expiry of the 20 working day period referred to in 3(1)(e) or, if applicable, within 20 working days of the expiry of the 10 working day period referred to in sub-paragraph (6).

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

(5) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, as soon as practicable, notify the appeal parties in writing

(a) Appointed by the Planning Inspectorate on behalf of the Secretary of State.

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.

(6) Any further information required under sub-paragraph (5) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 working days of that date.

(7) On an appeal under this paragraph, the appointed person must—

- (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.

(8) The appointed person must proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person under this paragraph.

(9) The appointed person must proceed to a decision even though no written representations have been made within the prescribed time limits.

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

(11) If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the requirement 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.

(12) Except where a direction is given under sub-paragraph (13) 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 undertaker.**(a)**

(13) On application by the discharging authority or the undertaker, 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 the Planning Practice Guidance published by the Department for Communities and Local Government on 6th March 2014 or any circular or guidance which may from time to time replace it.

Interpretation of Part 2 of Schedule 2

4. In this Schedule—

“appeal documentation” means the application submitted to the discharging authority, any further information submitted under paragraph 2 and any notice of a decision to refuse;

“the appeal parties” means the discharging authority, the undertaker and any requirement consultees;

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

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement; and

(a) The costs of the appointed person are calculated based on the applicable day rate for a Single Inspector as if he or she were appointed under s78/ s79 of the PA2008. See the National Infrastructure Planning website for more information: <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

“working day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971.

SCHEDULE 3

Article 8

STREETS SUBJECT TO STREET WORKS

(1) <i>Area</i>	(2) <i>Street within the Order limits subject to street works</i>
District of South Northamptonshire	M1 motorway
	A43
	A45
	A508
	C26 Ashton Road
	C26 Rookery Lane
	C27 Stoke Road
	C85 Pury Road
	Blisworth Road (Parish of Courteenhall)
	Blisworth Road (Parish of Roade)
	Knock Lane
	Saxon Avenue
	Unnamed road to Quinton off the A508
Borough of Northampton	M1 motorway
	A43
	A45
	A5123
	C67 Watering Lane

SCHEDULE 4

Article 10

STREETS TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New street to be substituted</i>
District of South Northamptonshire and Borough of Northampton	M1 motorway slip road	The existing highway within the area marked i on the access and rights of way plans (Document 2.3B) shown edged blue with red and white hatching.	Proposed highway M1 within the area marked ii on the access and rights of way plans (Inset 2A of Document 2.3B) shown edged blue with blue hatching.
District of South Northamptonshire	Blisworth Road (Parish of Roade)	The existing highway within the area marked iii on the	(i) Proposed highway within the area marked iv on the access and

		access and rights of way plans (Document 2.3D) shown edged blue with red and white hatching.	rights of way plans (Inset 4B of Document 2.3D) shown edged blue with orange hatching; (ii) Proposed highway A508 within the area marked v on the access and rights of way plans (Inset 4B of Document 2.3D) shown edged blue with orange hatching; and (iii) Proposed highway within the area marked vi on the access and rights of way plans (Inset 4B of Document 2.3D) shown edged blue with orange hatching.
	A508 highway	The existing highway within the area marked vii on the access and rights of way plans (Document 2.3E) shown edged blue with red and white hatching.	(i) Proposed highway within the area marked viii on the access and rights of way plans (Inset 5A of Document 2.3E) shown edged blue with orange hatching; and (ii) Proposed highway A508 within the area marked ix on the access and rights of way plans (Inset 5A of Document 2.3E) shown edged blue with orange hatching.
	A508 highway	The existing highway within the area marked x on the access and rights of way plans (Document 2.3E) shown edged blue with red and white hatching.	Proposed highway A508 within the area marked xi on the access and rights of way plans (Inset 5C of Document 2.3E) shown edged blue with orange hatching.
	C26 Rookery Lane	The existing highway within the area marked xii on the access and rights of way plans (Document 2.3E) shown edged blue with red and white hatching.	Proposed highway C26 within the area marked xiii on the access and rights of way plans (Inset 5C of Document 2.3E) shown edged blue with orange hatching.
	C26 Ashton Road	The existing highway within the area marked xiv on the access and rights of	Proposed highway C26 within the area marked xv on the access and rights of way plans

		way plans (Document 2.3E) shown edged blue with red and white hatching.	(Inset 5C of Document 2.3E) shown edged blue with orange hatching.
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SCHEDULE 5

Article 12

PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1) Area</i>	<i>(2) Public right of way to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) Substitute to be provided</i>	<i>(5) Stage of the authorised development by which time the stopping up must be completed</i>
Parish of Milton Malsor	Public footpath KX13 (part)	The existing footpath between the points marked 1-2-3 on the access and rights of way plans (Document 2.3A) shown with a dashed red line.	Proposed public footpath between the points marked 1-6-7-3 on the access and rights of way plans (Document 2.3A) shown indicatively with a dashed and dotted brown line on a detailed alignment to be agreed with the local highway authority.	Completion of Works No. 6
	Public footpath KX13 (part)	The existing footpath between the points marked 3-4 on the access and rights of way plans (Document 2.3A) shown with a dashed red line.	Proposed cycle track between the points marked 33-34 on the access and rights of way plans (Inset 1A of Document 2.3A) shown with a dashed pink line.	Completion of Works No. 9
Parish of Collingtree	Public footpath KG5	The existing footpath between the points marked 4-5 on the access and rights of way plans (Document	Proposed cycle track between the points marked 34-35 on the access and rights of way plans (Inset 1A of Document 2.3A)	Completion of Works No. 9

<i>(1) Area</i>	<i>(2) Public right of way to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) Substitute to be provided</i>	<i>(5) Stage of the authorised development by which time the stopping up must be completed</i>
		2.3A) shown with a dashed red line.	shown with a dashed pink line.	
Parish of Milton Malsor	Public footpath KX17	The existing footpath between the points marked 2-31 on the access and rights of way plans (Document 2.3A and 2.3C) shown with a dashed red line.	Proposed cycle track between the points marked 33-32-8-28-29 on the access and rights of way plans (Documents 2.3A, (including Inset 1A) 2.3B and 2.3C) shown indicatively with a dashed pink line on a detailed alignment to be agreed with the local highway authority.	Completion of Works No. 6
Parish of Roade	Public footpath KZ2a (part)	The existing footpath between the points marked 14-15 on the access and rights of way plans (Document 2.3D) shown with a dashed red line.	(i) Proposed public footpath between the points marked 14-16 on the access and rights of way plans (Document 2.3D) shown indicatively with a dashed and dotted brown line on a detailed alignment to be agreed with the local highway authority; and (ii) Proposed public footpath between the points marked 17-15 on the access and rights of way plans (Document 2.3D) shown indicatively with a dashed and dotted brown line on a detailed alignment to be agreed with the local highway authority.	Completion of Works No. 13

<i>(1) Area</i>	<i>(2) Public right of way to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) Substitute to be provided</i>	<i>(5) Stage of the authorised development by which time the stopping up must be completed</i>
	Public bridleway KZ10 (part)	The existing bridleway between the points marked 18-19 on the access and rights of way plans (Document 2.3D) shown with a dashed red line.	Proposed public bridleway between the points marked 18-21 on the access and rights of way plans (Document 2.3D) shown indicatively with an unbroken yellow line on a detailed alignment to be agreed with the local highway authority.	Completion of Works No. 13
Parish of Stoke Bruerne	Public bridleway RZ1 (part)	The existing bridleway between the points marked 19-20 on the access and rights of way plans (Document 2.3D) shown with a dashed red line.	Proposed public bridleway between the points marked 21-20 on the access and rights of way plans (Document 2.3D) shown indicatively with an unbroken yellow line on a detailed alignment to be agreed with the local highway authority.	Completion of Works No. 13

PART 2

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1) Area</i>	<i>(2) Public right of way to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) Stage of the authorised development</i>
Parish of Roade	Public footpath KZ19 (part)	The existing footpath between the points marked 12-13 on the access and rights of way plans (Document 2.3D) shown with a dashed red line.	Commencement of Works No. 13

Parish of Stoke Bruerne	Public footpath RZ3 (part)	The existing footpath between the points marked 23-24 on the access and rights of way plans (Document 2.3D) shown with a dashed red line.	Commencement of Works No. 13
	Public bridleway RZ6 (part)	The existing bridleway between the points marked 25-26 on the access and rights of way plans (Inset 5A of Document 2.3E) shown with a dashed red line.	Commencement of Works No. 13

PART 3

NEW PUBLIC RIGHTS OF WAY TO BE CREATED

<i>(1) Area</i>	<i>(2) Public right of way to be created</i>	<i>(3) Extent of new public right of way to be created</i>	<i>(4) Stage of the authorised development</i>
Parish of Roade	Cycle track	Proposed cycle track between the points marked 18-22 on the access and rights of way plans (Document 2.3D) shown indicatively with a dashed pink line on a detailed alignment to be agreed with the local highway authority.	Completion of Works No. 13
Parish of Milton Malsor	Public footpath	Proposed public footpath between the points marked 6-27 of the access and rights of way plans (Document 2.3A) shown indicatively with a dashed and dotted brown line detailed alignment to be agreed with the local highway authority.	Completion of Works No. 6
	Cycle track	Proposed cycle track between the points marked 28-30 on the access and rights of way plans (Document 2.3B) shown indicatively with a dashed pink line on a detailed alignment to be agreed with the local highway authority.	Completion of Works No. 7

	Cycle track	Proposed cycle track between the points marked 9-10 on the access and rights of way plans (Document 2.3C) shown indicatively with a dashed pink line on a detailed alignment to be agreed with the local highway authority.	Completion of Works No. 6
	Public footpath	Proposed public footpath between the points marked 10-11-1 on the access and rights of way plans (Documents 2.3A and 2.3C) shown indicatively with a dashed and dotted brown line on a detailed alignment to be agreed with the local highway authority.	Completion of Works No. 6

SCHEDULE 6

Article 13

PRIVATE MEANS OF ACCESS

PART 1

PRIVATE MEANS OF ACCESS TO BE REPLACED

<i>(1) Area</i>	<i>(2) Extent</i>	<i>(3) Replacement</i>	<i>(4) Stage of the authorised development</i>
District of South Northamptonshire	The private means of access shaded purple and marked F on the access and rights of way plans (Document 2.3B).	The private means of access hatched turquoise and marked G on the access and rights of way plans (Document 2.3B).	Completion of Works No. 7
	The private means of access shaded purple and marked K on the access and rights of way plans (Document 2.3C).	The private means of access hatched turquoise and marked L on the access and rights of way plans (Document 2.3C).	Completion of Works No. 7
	The private means of access shaded purple and marked N on the access and rights of way plans (Document 2.3C).	The private means of access hatched turquoise and marked P on the access and rights of way plans (Document 2.3C).	Completion of Works No. 7

	The private means of access shaded purple and marked Q on the access and rights of way plans (Document 2.3C).	The private means of access hatched turquoise and marked R on the access and rights of way plans (Document 2.3C).	Completion of Works No. 7
	The private means of access shaded purple and marked S on the access and rights of way plans (Document 2.3D).	The private means of access hatched turquoise and marked T on the access and rights of way plans (Document 2.3D).	Completion of Works No. 13
	The private means of access shaded purple and marked U on the access and rights of way plans (Document 2.3D).	The private means of access hatched turquoise and marked V on the access and rights of way plans (Document 2.3D).	Completion of Works No. 13
	The private means of access shaded purple and marked W on the access and rights of way plans (Inset 4C of Document 2.3D).	The private means of access hatched turquoise and marked X on the access and rights of way plans (Inset 4D of Document 2.3D).	Completion of Works No. 13
	The private means of access shaded purple and marked Y on the access and rights of way plans (Inset 4C of Document 2.3D).	The private means of access hatched turquoise and marked Z on the access and rights of way plans (Inset 4D of Document 2.3D).	Completion of Works No. 13
	The private means of access shaded purple and marked AA on the access and rights of way plans (Inset 4C of Document 2.3D).	The private means of access hatched turquoise and marked AB on the access and rights of way plans (Inset 4D of Document 2.3D).	Completion of Works No. 13
	The private means of access shaded purple and marked AD on the access and rights of way plans (Inset 4C of Document 2.3D).	The private means of access hatched turquoise and marked AF on the access and rights of way plans (Inset 4D of Document 2.3D).	Completion of Works No. 13
	The private means of access shaded purple and marked AE on the access and rights of way plans (Inset 4C of Document 2.3D).	The private means of access hatched turquoise and marked AX on the access and rights of way plans (Inset 4B of Document 2.3D).	Completion of Works No. 13
	The private means of access shaded purple and marked AJ on the access and rights of way plans	The private means of access hatched turquoise and marked AK on the access and rights of way plans	Completion of Works No. 13

	(Inset 5B of Document 2.3E).	(Inset 5B of Document 2.3E).	
	The private means of access shaded purple and marked AL on the access and rights of way plans (Inset 5A of Document 2.3E).	The private means of access hatched turquoise and marked AM on the access and rights of way plans (Inset of 5B of Document 2.3E).	Completion of Works No. 13
	The private means of access shaded purple and marked AN on the access and rights of way plans (Inset 5B of Document 2.3E).	The private means of access hatched turquoise and marked AP on the access and rights of way plans (Inset 5B of Document 2.3E).	Completion of Works No. 13
	The private means of access shaded purple and marked AS on the access and rights of way plans (Inset 5C of Document 2.3E).	The private means of access hatched turquoise and marked AT on the access and rights of way plans (Inset 5D of Document 2.3E).	Completion of Works No. 14
	The private means of access shaded purple and marked AU on the access and rights of way plans (Inset 5C of Document 2.3E).	The private means of access hatched turquoise and marked AV on the access and rights of way plans (Inset 5D of Document 2.3E).	Completion of Works No. 14

PART 2

PRIVATE MEANS OF ACCESS TO BE CLOSED FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1) Area</i>	<i>(2) Private Means of Access</i>	<i>(3) Stage of the authorised development</i>
District of South Northamptonshire	The private means of access shaded purple and marked A on the access and rights of way plans (Document 2.3A).	Commencement of Works No. 6
	The private means of access shaded purple and marked B on the access and rights of way plans (Document 2.3A).	Commencement of Works No. 6
	The private means of access shaded purple and marked E on the access and rights of way plans (Document 2.3B).	Commencement of Works No. 6
	The private means of access shaded purple and marked H on the access and rights of way plans (Document 2.3B).	Commencement of Works No. 6

	The private means of access shaded purple and marked J on the access and rights of way plan (Document 2.3C).	Commencement of Works No. 7
	The private means of access shaded purple and marked AQ on the access and rights of way plans (Inset 5B of Document 2.3E).	Commencement of Works No. 13
	The private means of access shaded purple and marked AW on the access and rights of way plans (Document 2.3A).	Commencement of Works No. 6
Borough of Northampton	The private means of access shaded purple and marked D on the access and rights of way plans (Document 2.3B).	Commencement of Works No. 8

PART 3

NEW PRIVATE MEANS OF ACCESS CREATED

<i>(1) Area</i>	<i>(2) Private Means of Access</i>	<i>(3) Stage of the authorised development</i>
District of South Northamptonshire	The private means of access hatched turquoise and marked M on the access and rights of way plans (Document 2.3C).	Completion of Works No. 7
	The private means of access hatched turquoise and marked AG on the access and rights of way plans (Document 2.3D).	Completion of Works No. 13
	The private means of access hatched turquoise and marked AH on the access and rights of way plans (Document 2.3D).	Completion of Works No. 13
	The private means of access hatched turquoise and marked AR on the access and rights of way plans (Inset 4A of Document 2.3D).	Completion of Works No. 13

SCHEDULE 7

Article 15

CLASSIFICATION OF HIGHWAYS

PART 1

NEW HIGHWAYS

<i>(1) Area</i>	<i>(2) Extent of Highway</i>	<i>(3) Classification</i>	<i>(4)</i>	<i>(5)</i>
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			<i>Classes of Traffic</i>	<i>Relevant Highway Authority</i>
District of South Northamptonshire and Borough of Northampton	The length of highway the centreline of which is shown coloured light blue and between the points 3 and 4 on the highway classification plans (Document 2.5A).	Special Road	Class I and II	Highways England
In the District of South Northamptonshire	The length of highway the centreline of which is shown coloured dark green and following a circular route around points 11, 12 and returning to 11 on the highway classification plans (Document 2.5B).	Principal	All purpose	The local highway authority
	The length of highway the centreline of which is shown coloured dark green and between the points 12 and 13 on the highway classification plans (Documents 2.5B and 2.5C).	Principal	All purpose	The local highway authority
	The length of highway the centreline of which is shown coloured dark green and following a circular route around points 13, 14, 15, 16 and returning to 13 on the highway classification plans (Document 2.5C).	Principal	All purpose	The local highway authority
	The length of highway the centreline of which is shown coloured brown and between the points 14 and 18 on the highway classification plans (Document 2.5C).	Unclassified	All purpose	The local highway authority
	The length of highway the centreline of which is shown coloured brown and between the points 16 and 17 on the highway classification plans (Document 2.5C).	Unclassified	All purpose	The local highway authority
	The length of highway the centreline of which is shown coloured dark green and between the points 15 and 19 on the highway classification plans (Document 2.5C).	Principal	All purpose	The local highway authority

	The length of highway the centreline of which is shown coloured dark green and following a circular route around points 19, 20, 21 and returning to 19 on the highway classification plans (Document 2.5C).	Principal	All purpose	The local highway authority
	The length of highway the centreline of which is shown coloured pink and between the points 20 and 22 on the highway classification plans (Document 2.5C).	Classified	All purpose	The local highway authority
	The length of highway the centreline of which is shown coloured dark green and between the points 21 and 23 on the highway classification plans (Document 2.5C).	Principal	All purpose	The local highway authority
	The length of highway the centreline of which is shown coloured dark green and between the points 24 to 27 on the highway classification plans (Document 2.5D).	Principal	All purpose	The local highway authority
	The length of highway the centreline of which is shown coloured pink and between the points 25 and 28 on the highway classification plans (Document 2.5D).	Classified	All purpose	The local highway authority
	The length of highway the centreline of which is shown coloured pink and between the points 26 and 29 on the highway classification plans (Document 2.5D).	Classified	All purpose	The local highway authority

PART 2
EXISTING HIGHWAYS

<i>(1) Area</i>	<i>(2) Extent of Highway</i>	<i>(3) (i) Current Classification (ii) Highway Authority</i>	<i>(4) Event determining change of classifi- cation</i>	<i>(5) Proposed Classif- ication</i>	<i>(6) Classes of Traffic</i>	<i>(7) Highway Authority</i>
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In the District of South Northampton shire	The length of highway the centreline of which is shown coloured dark blue and between the points 1 and 2 on the highway classification plans (Document 2.5A).	(i) All Purpose Trunk Road (ii) Highways England	Opening to traffic of the length of highway stated in column (2).	Special Road	Class I and Class II	Highways England
	The length of highway the centreline of which is shown coloured orange and between the points 5 and 6 on the highway classification plans (Document 2.5A).	(i) Unclassified Road (ii) The local highway authority	Commencement of Works No. 8 shown on the works plans (Documents 2.2A and 2.2B).	Trunk Road	All purpose	Highways England
	The length of highway the centreline of which is shown coloured dark blue and between the points 7 and 8 on the highway classification plans (Document 2.5A).	(i) All Purpose Trunk Road (ii) Highways England	Opening to traffic of the length of highway stated in column (2).	Special Road	Class I and Class II	Highways England
	The length of highway the centreline of which is shown coloured orange and between the points 9 and 10 on the highway classification	(i) Principal Road (ii) The local highway authority	Commencement of Works No. 8 shown on the works plans (Documents 2.2A and 2.2B).	Trunk Road	All purpose	Highways England

	plans (Document 2.5A).					
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**SCHEDULE 8
SPEED LIMITS**

Article 16

**PART 1
EXISTING ORDERS**

<i>(1) Statutory Instrument / Order Title</i>	<i>(2) S.I. Number</i>	<i>(3) Changes</i>	<i>(4) Event</i>
Northamptonshire County Council (A508 Northampton to Old Stratford Road, Northampton) (40 mph Speed Limit) Order 2000		To be revoked in its entirety.	Opening to traffic of the highway works within Works No. 8
The A45 Trunk Road (Thrapston to Northampton, Northamptonshire) (Derestriction) Order 2011	2011 No. 592	(i) In the Schedule omit paragraph 16 and substitute – “16. the southbound carriageway of the A45 from a point 133 metres southwest of its junction with the exit slip road leading to its roundabout junction with the A508 and B526, known as Queen Eleanor Roundabout, Northampton, to a point 390 metres north of the junction between the A45 and Watering Lane;”; (ii) In the Schedule omit paragraph 17 and substitute – “17. the northbound carriageway of the A45 from a point 390 metres north its junction with Watering Lane, to a point 138 metres south of its junction with the entry	Opening to traffic of the highway works within Works No. 8

		slip road leading from Queen Eleanor Roundabout;” and (iii) In the Schedule omit paragraph 22 in its entirety.	
The Northamptonshire County Council (Various Roads, South Northamptonshire District and Northampton Borough) (30mph, 40mph and 50mph speed limit) Order 2013		In Schedule 3 omit “Northampton Road, Roade / Courteenhall – from a point 50 metres north of its junction with London Road to a point 30 metres north of its junction with Blisworth Road” and substitute – “Northampton Road, Roade / Courteenhall – from its roundabout junction with the Roade Bypass to a point 30 metres north of its junction with the unnamed road to Quinton”.	Opening to traffic of the Roade Bypass constructed as part of Works No. 13
		In Schedule 3 omit “Stratford Road, Roade / Northampton Road, Stoke Bruerne – a point 512 metres south of its junction with High Street, Roade for a distance of 2.5 kilometres in a southerly direction.” and substitute – “Northampton Road, Stoke Bruerne – a point 250 metres south of the roundabout junction between the A508 Roade Bypass and Stratford Road for a distance of 1.75 kilometres in a southerly direction.”	Opening to traffic of the Roade Bypass constructed as part of Works No. 13

PART 2

HIGHWAYS SUBJECT TO 50MPH SPEED LIMIT

(1) <i>Location</i>	(2) <i>Description</i>	(3) <i>Event</i>
A45 Northbound	From a point 80 metres north of the M1 overbridge to a point 390 metres north of the junction between the A45 and Watering Lane; the centreline of which is shown coloured green	Completion of Works No. 8

	between points A and B as shown on the speed limit plans (Document 2.7A).	
A45 Southbound	From a point 390 metres north of the junction between the A45 and Watering Lane to a point 115 metres north of the M1 overbridge; the centreline of which is shown coloured green between points C and E as shown on the speed limit plans (Document 2.7A)	Completion of Works No. 8
A45 Southbound merge slip road from the Bridge Meadow Way roundabout	From a point 165 metres north of the merge with the A45 southbound to the merge itself; the centreline of which is shown coloured green between points F and D as shown on the speed limit plans (Document 2.7A).	Completion of Works No. 8
A45 signalised roundabout at M1 Junction 15	The circulatory carriageway at the signalised roundabout between the A45, A508 and M1 slip roads at M1 Junction 15; the centreline of which is shown coloured green between points E, G, H, J, K, L, A and returning to E as shown on the speed limit plans (Document 2.7A).	Completion of Works No. 8
Link road within A45 signalised roundabout at M1 Junction 15	The link road within the circulatory carriageway at the junction between the A45, A508 and M1 slip roads at M1 Junction 15; the centreline of which is shown coloured green between points H and L as shown on the speed limit plans (Document 2.7A).	Completion of Works No. 8
Saxon Avenue	From the junction between Saxon Avenue and the circulatory carriageway at the signalised roundabout between the A45, A508 and M1 slip roads at M1 Junction 15 to a point 30 metres west of that junction; the centreline of which is shown coloured green between points G and M as shown on the speed limit plans (Document 2.7A).	Completion of Works No. 8
A508 Northbound	From the roundabout junction between the A508 and the main site access road to the junction with the circulatory carriageway at the signalised roundabout between the A45, A508 and M1 slip roads at M1 Junction 15; the centreline of which is shown coloured orange between points N and P as shown on the speed limit plans (Document 2.7A).	Completion of Works No. 7
A508 Southbound	From the junction with the circulatory carriageway at the signalised roundabout between the A45, A508 and M1 slip roads at M1 Junction 15 to the roundabout junction between the A508 and the main site access road; the centreline of which is shown coloured orange between points Q and R as shown on the speed limit plans (Document 2.7A).	Completion of Works No. 7
A508 Northampton Road and rail terminal access road roundabout	The circulatory carriageway of the roundabout junction between the main site access road and Northampton Road; the centreline of which is shown coloured orange between points N, R, S and returning to N as shown on the speed limit plans (Document 2.7A).	Completion of Works No. 7

A508 Northampton Road	From the roundabout junction between the A508 and the main site access road to a point 30 metres north of the junction between the A508 and the unnamed road to Quinton; the centreline of which is shown coloured orange between points S and T as shown on the speed limit plans (Documents 2.7A and 2.7B).	Completion of Works No. 7
A508 Roade Bypass and Northampton Road roundabout	The circulatory carriageway of the roundabout junction between the A508 Roade Bypass and Northampton Road; the centreline of which is shown coloured orange between points U, AL, V and returning to U as shown on the speed limit plans (Document 2.7B).	Completion of Works No. 13
Stratford Road	From a point 512 metres south of the junction between Stratford Road and High Street to the roundabout junction between the A508 Roade Bypass and Stratford Road; the centreline of which is shown coloured orange between points AG and AJ as shown on the speed limit plans (Document 2.7C).	Completion of Works No. 13
A508 Roade Bypass and Stratford Road roundabout	The circulatory carriageway of the roundabout junction between the A508 Roade Bypass and Stratford Road; the centreline of which is shown coloured orange between points AF, AG, AH and returning to AF as shown on the speed limit plans (Document 2.7C).	Completion of Works No. 13
A508	From a point 250 metres south of the roundabout junction between the A508 Roade Bypass and Stratford Road to that junction; the centreline of which is shown coloured orange between points AH and AK as shown on the speed limit plans (Document 2.7C).	Completion of Works No. 13
Northampton Road	From the roundabout junction between the A508 Roade Bypass and Northampton Road to a point 162 metres south of that roundabout; the centreline of which is shown coloured orange between points AL and AM as shown on the speed limit plans (Document 2.7B).	Completion of Works No. 13

PART 3

DERESTRICTED HIGHWAYS

(1) <i>Location</i>	(2) <i>Description</i>	(3) <i>Event</i>
A508 Roade Bypass	From the roundabout junction between the A508 Roade Bypass and Northampton Road to a point 140 metres west of that junction; the centreline of which is shown coloured light blue between points V and W as shown on the speed limit plans (Document 2.7B).	Completion of Works No. 13
A508 Roade Bypass	From a point 140 metres north of the roundabout junction between the A508 Roade Bypass and Blisworth Road (Parish of Roade) to that	Completion of Works No. 13

	junction; the centreline of which is shown coloured light blue between points X and Y as shown on the speed limit plans (Document 2.7C).	
A508 Roade Bypass and Blisworth Road roundabout	The circulatory carriageway of the roundabout junction between the Roade Bypass and Blisworth Road (Parish of Roade); the centreline of which is shown coloured light blue between points Y, Z, AA, AB and returning to Y as shown on the speed limit plans (Document 2.7C).	Completion of Works No. 13
A508 Roade Bypass	From a point 140 metres south of the roundabout junction between the A508 Roade Bypass and Blisworth Road (Parish of Roade) to that junction; the centreline of which is shown coloured light blue between points AA and AD as shown on the speed limit plans (Document 2.7C).	Completion of Works No. 13
Blisworth Road (Parish of Roade)	From a point 140 metres west of the roundabout junction between the Roade Bypass and Blisworth Road (Parish of Roade) to that junction; the centreline of which is shown coloured light blue between points AB and AC as shown on the speed limit plans (Document 2.7C).	Completion of Works No. 13
A508 Roade Bypass	From a point 140 metres north of the roundabout junction between the A508 Roade Bypass and Northampton Road to that junction; the centreline of which is shown coloured light blue between points AE and AF as shown on the speed limit plans (Document 2.7C).	Completion of Works No. 13

PART 4

TEMPORARY SPEED LIMITS

<i>(1) Location</i>	<i>(2) Temporary limit to be imposed</i>	<i>(3) Description</i>	<i>(4) Duration</i>
A45 Northbound	50mph	From a point 20 metres north of the roundabout junction with the M1 to a point 300 metres before the start of the diverge to the Wootton Interchange	From commencement of Works No. 8 until completion of Works No. 8
A45 Southbound	50mph	From the diverge at the Wootton Interchange to a point 110 metres north of the roundabout junction with the M1	From commencement of Works No. 8 until completion of Works No. 8
A508	40mph	From a point 30 metres north of the junction between the A508 and the unnamed road to Quinton to the circulatory carriageway at M1 Junction 15.	From commencement of any of Works Nos. 1 to 6 until completion of Works No. 7

A508	30mph	From a point 68 metres south of the junction between the A508 and Field View to a point [500] metres south of the junction between the A508 and the C26 Ashton Road	From commencement of Works No. 14 until completion of Works No. 14
A508	30mph	From a point [400] metres north of the junction between the A508 and the C85 Pury Road to a point [250] metres south of that junction	From commencement of Works No. 14 until completion of Works No. 14
M1 Northbound	50mph	From a point 1 kilometre before the start of the diverge to junction 15 to a point 50 metres south of overbridge at junction 15	From commencement of Works No. 8 until completion of Works No. 8
M1 Southbound	50mph	From a point 1 kilometre before the start of the diverge to junction 15 to a point 170 metres north of the end of the merge at junction 15	From commencement of Works No. 8 until completion of Works No. 8

SCHEDULE 9

Articles 17, 18 and 19

TRAFFIC REGULATION

PART 1

AMENDMENTS TO EXISTING ORDERS

<i>(1)</i> <i>Statutory Instrument/ Order Title</i>	<i>(2)</i> <i>Changes</i>	<i>(3)</i> <i>Event</i>
The County of Northampton (Church Lane, Blisworth) (Weight Restriction) Order 1971	To be revoked in its entirety	Opening to traffic of the Road Bypass constructed as part of Works No. 13 as shown on the works plans (Documents 2.2D and 2.2E).

PART 2

CLEARWAYS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Event</i>
A508 Southbound	From the junction with the circulatory carriageway at the signalised roundabout between the A45, A508 and M1 slip	Completion of Works No. 7

	roads at M1 junction 15 to the roundabout junction between the A508 and the main site access road, the centreline of which is shown coloured purple between points 1 and 2 on the traffic regulation plan (Document 2.6A).	
A508 Northbound	From the roundabout junction between the A508 and the rail terminal access road to the junction with the circulatory carriageway at the signalised roundabout between the A45, A508 and M1 slip roads at the M1 junction 15; the centreline of which is shown coloured purple between points 3 and 4 as shown on the traffic regulation plan (Document 2.6A).	Completion of Works No. 7

PART 3

ENVIRONMENTAL WEIGHT LIMIT

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Zone</i>	<i>(3)</i> <i>Terminal points</i>	<i>(4)</i> <i>Event</i>
Parish of Courteenhall and Parish of Quinton	A	(i) Unnamed Road to Quinton, at its junction with the A508 Northampton Road as shown at point 7 on the traffic regulation plans (Document 2.6A); and (ii) Courteenhall Road (Parish of Quinton), at its junction with the C23 Hartwell Road as shown at point 8 on the traffic regulation plans (Inset A of Document 2.6B)	Commencement of any of Works Nos. 1 to 6
Parish of Blisworth, Parish of Courteenhall, Parish of Easton Neston, Parish of Paulerspury, Parish of Roade, Parish of Shutlanger, and Parish of Stoke Bruerne	B	(i) Blisworth Road (Parish of Courteenhall), at its junction with the A508 Northampton Road as shown at point 9 on the traffic regulation plans (Document 2.6A); (ii) Courteenhall Road (Parish of Blisworth), at its junction with the C188 Northampton Road / High Street as shown at point 10 on the traffic regulation plans (Inset B of Document 2.6B); (iii) C27 Stoke Road, at its junction with the C188 High Street as shown at point 11 on the traffic regulation plans (Inset B of Document 2.6B); (iv) Church Lane, at its junction with the C188 High Street as shown at	Completion of Works No. 13

		<p>point 12 on the traffic regulation plans (Inset B of Document 2.6B);</p> <p>(v) Blisworth Road (Parish of Roade), at its junction with the A508 Roade Bypass as shown at point 13 on the traffic regulation plans (Inset C of Document 2.6B);</p> <p>(vi) Showsley Road, at its junction with the A43 Oxford Road as shown at point 14 on the traffic regulation plans (Inset D of Document 2.6B);</p> <p>(vii) C26 Shutlanger Road, at its junction with the A5 Watling Street as shown at point 15 on the traffic regulation plans (Inset E of Document 2.6B);</p> <p>(viii) C26 Rookery Lane, at its junction with the A508 as shown at point 16 on the traffic regulation plans (Inset F of Document 2.6B);</p> <p>and</p> <p>(ix) Grafton Road, at its junction with the A508 and as shown at point 17 on the traffic regulation plans (Inset G of Document 2.6B).</p>	
Parish of Ashton, Parish of Roade and Parish of Stoke Bruerne	C	<p>(i) Northampton Road, at its junction with the A508 Roade Bypass as shown at point 18 on the traffic regulation plans (Inset H of Document 2.6B);</p> <p>(ii) C48 Hartwell Road, at its junction with the C26 Ashton Road as shown at point 19 on the traffic regulation plans (Inset J of Document 2.6B);</p> <p>(iii) Roade Hill, at its junction with the C26 Stoke Road as shown at point 20 on the traffic regulation plans (Inset K of Document 2.6B);</p> <p>(iv) Stratford Road, at its junction with the A508 Roade Bypass as shown at point 21 on the traffic regulation plans (Inset L of Document 2.6B); and</p> <p>(v) Blisworth Road (Parish of Roade) at its junction with the A508 Roade Bypass as shown at point 22 on the traffic regulation plans (Inset C of Document 2.6B).</p>	Completion of Works No. 13
Parish of Collingtree and Parish of East Hunsbury	D	<p>(i) C23 Rowtree Road, at its junction with the A45 London Road as shown at point 23 on the traffic regulation plans (Inset M of Document 2.6B);</p> <p>(ii) Penvale Road, at its junction with the A5076 Mere Way as shown at</p>	Commencem ent of any of Works Nos. 1 to 6

		point 24 on the traffic regulation plans (Inset N of Document 2.6B); (iii) Clannell Road, at its junction with the C188 Towcester Road as shown at point 25 on the traffic regulation plans (Inset P of Document 2.6B); and (iv) C23 Rowtree Road, at its junction with the C188 Towcester Road as shown at point 26 on the traffic regulation plans (Inset Q of Document 2.6B).	
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PART 4

PROHIBITED MOVEMENTS

(1) <i>Location</i>	(2) <i>Prohibited Movement</i>
At the junction between the A508 Northampton Road and Blisworth Road in the Parish of Courteenhall	Right turn from the A508 Northampton Road onto Blisworth Road (Parish of Courteenhall); shown at point 5 on the traffic regulation plans (Document 2.6A)
	Right turn from Blisworth Road (Parish of Courteenhall) onto the A508 Northampton Road; shown at point 6 on the traffic regulation plans (Document 2.6A)

SCHEDULE 10

Article 35

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Area</i>	(2) <i>Number of land shown on land plan</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Relevant part of the authorised development</i>
District of South Northamptonshire	3/3	Landscaping, drainage and ecological works	Works No. 6
	4/1	Alteration to private access as part of construction of Roade bypass	Works No. 13
	4/2	Alteration to private access as part of construction of Roade bypass	Works No. 13
	4/2a	Construction of Roade bypass (temporary construction compound)	Works No. 13
	4/14	Alteration to private access as part of	Works No. 13

		construction of Road bypass	
	4/15	Alteration to private access as part of construction of Road bypass	Works No. 13
	4/16	Construction of Road bypass	Works No. 13
	4/20a	Construction of Road bypass	Works No. 14
	5/2	Construction of Road bypass (temporary construction compound)	Works No. 13
	5/3	Alteration to private access as part of construction of Road bypass	Works No. 13
	5/10	Alteration to private access as part of new highway works at the junction of the A508 and C85	Works No. 14

SCHEDULE 11

Article 25

LAND IN WHICH NEW RIGHTS MAY BE CREATED

<i>(1) Area</i>	<i>(2) Plot of land shown on Land Plan</i>	<i>(3) Relevant part of Authorised Development</i>
District of South Northamptonshire	1/14 (in respect of bridge only)	Works No. 9
	4/3	Works No. 13
	4/4	Works No. 13
	4/5	Works No. 13
	4/5a (in respect of bridge only)	Works No. 13
	4/7	Works No. 13
	4/8	Works No. 13
Borough of Northampton	1/40	Works No. 9
	1/44	Works No. 9
	1/45	Works No. 9
	2/1	Works No. 10
	2/2	Works No. 10
	2/3	Works No. 10
	2/4	Works No. 10
	2/5	Works No. 10

MODIFICATIONS OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications set out in this Schedule as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right 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 of the 1965 Act as substituted by paragraph 4—

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

3.—(1) Without limiting paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

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

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 12 to the Northampton Gateway Rail Freight Interchange Order 201X to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession 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 purposes of exercising that right.”

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act as applied by section 125 of the 2008 Act and as modified by article 31 (application of Part 1 of the 1965 Act) to the compulsory acquisition of land under article 24 (compulsory acquisition of land) applies to the compulsory acquisition of a right by the creation of a new right under article 25 (compulsory acquisition of rights)—

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

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

(2) References in that Act to land are 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
- (b) the land over which the right is or is to be exercisable.

(3) For section 7 of the 1965 Act (measure of compensation) 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 is depreciated by the acquisition of the right but also to the damage

(a) 1973 c. 26.

(if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) Section 8(1) of the 1965 Act has effect as if references to acquiring land were to acquiring a right in the land.

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

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

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

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

8. Section 20 of the 1965 Act(d) (protection for interests of tenants at will, etc.) 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 in question.

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

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

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

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 of the 1981 Act as applied

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

by article 32 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Northampton Gateway Rail Freight Interchange Order 201X in respect of the land to which the notice to treat relates.

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

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the 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 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,
- (b) the use to be made of the right proposed to be acquired, and
- (c) if the right is proposed to be acquired 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 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 13

Article 44

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. 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 his or her powers under section 8 of the Railways Act 1993;

“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(a)) 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;

“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 any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

(a) 2006 c. 46.

3.—(1) Where under 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 undertaker 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 their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

4.—(1) [The undertaker must not exercise the powers conferred by—

- (a) article 5 (Authorisation of use)
- (b) article 6 (Maintenance of the authorised development)
- (c) article 12 (Public rights of way – creation, substitution and stopping up)
- (d) article 13 (Accesses)
- (e) article 22 (Authority to survey and investigate the land)
- (f) article 24 (Compulsory Acquisition of land)
- (g) article 25 (Compulsory Acquisition of rights)
- (h) article 26 (Acquisition of part of certain properties)
- (i) article 27 (Private rights)
- (j) article 28 (Power to override easements and other rights)
- (k) article 33 (Statutory undertakers and operators of the electronic communications code network)
- (l) article 35 (Temporary use of land for carrying out the authorised development)
- (m) article 36 (Temporary use of land for maintaining the authorised development)
- (n) article 43 (Felling or lopping of trees and removal of hedgerows)]

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 undertaker 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 undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act or, article 33 (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) 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.

5.—(1) The undertaker 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.

(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 his or her disapproval of those plans and the grounds of such disapproval the undertaker 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 undertaker. If by the expiry of the further 28

days the engineer has not intimated approval or disapproval, the engineer shall be 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 undertaker 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 undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker 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 undertaker.

(4) When signifying his or her 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 undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his or her reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (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 shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker 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 undertaker 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 undertaker or its servants, contractors or agents.

7. The undertaker 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 he or she may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(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 undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker 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 undertaker, Network Rail gives notice to the undertaker 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 undertaker 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 undertaker must, notwithstanding any such approval of a specified work under paragraph 5(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 10(a) provide such details of the formula by which those sums have been calculated as the undertaker 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 undertaker to Network Rail under this paragraph.

10. The undertaker 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 undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(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 undertaker 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,
- (d) watch-persons and other persons whom it shall be 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;
- (e) 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
- (f) 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.

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works 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 works) 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 5(1) for the relevant part of the authorised works giving rise to EMI (unless the undertaker 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 undertaker must in the design and construction of the authorised works 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 undertaker's compliance with sub-paragraph (3)—

- (a) the undertaker 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 5(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 undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker 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 in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker 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 undertaker'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 undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker 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 undertaker 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 undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(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 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

12. 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 undertaker 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 undertaker 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.

13. The undertaker 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 it 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.

14. 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 undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker 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 undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker 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 undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall 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 undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall 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 shall, in the event of default, be 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.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker 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).

17. 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 undertaker under this Schedule or increasing the sums so payable.

18. The undertaker 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 undertaker of—

- (a) any railway property shown on the works and 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.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 7 (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.

21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 49 (Certification of plans and documents) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

Expert Determination

22.—(1) Article 49 (arbitration) does not apply to this part of Schedule 13 except in respect of sub-paragraph (5) below.

(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 Law Society.

(3) All parties involved in settling any difference must use 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 submission to the expert in writing and copied to the other party 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 party 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 49.

(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 determination, equally.

PART 2

FOR THE PROTECTION OF HIGHWAYS ENGLAND

Application

1. The provisions of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Highways England and shall apply to the HE Works .

Interpretation

2.—(1) The terms used in this Schedule are as defined in article 2 of this Order save where inconsistent with sub-paragraph (2) below which shall prevail; and

(2) In this Schedule—

“As Built Information” means one digital copy of the following information where applicable to the Phase in question—

- (a) As constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the Undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) List of suppliers and materials used;
- (c) Product data sheets, technical specifications for all materials used;
- (d) As constructed information for any Utilities discovered or moved during the works;
- (e) Method Statements for works carried out;
- (f) In relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works;
- (g) Organisation and methods manuals for all products used in the construction of the authorised development;
- (h) As constructed programme;
- (i) Test results and records as required by the Detailed Design Information and during construction phase of the project;
- (j) RSA 3 and exceptions agreed;
- (k) Health and Safety File; and
- (l) Other such information as is necessary to enable Highways England to update all relevant databases and to ensure compliance with the Highways England Asset Data Management Manual as shall be in operation at the relevant time including, for the avoidance of doubt, CCTV surveys.

“the Bond Sum” means the sum equal to 120% of the cost of the carrying out of the Phase of the HE Works concerned (to include all costs plus any Commuted Sum) or such other sum agreed between the undertaker and Highways England;

“the Cash Surety” means the sum of £150,000 or such other sum agreed between the undertaker and Highways England;

“County Highway Works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 7,9,12,13,14,15, 16 and 17 on the works plans, the general arrangement of which is shown on the highway plans and any ancillary works thereto;

“Commuted Sum” means such sum as shall be calculated for each phase as provided for in paragraph 9 of this Schedule and to be used to fund the future cost of maintaining the HE Works;

“Contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the HE Works or any Phase of the HE Works and approved by Highways England pursuant to paragraph 3(3) below;

“Detailed Design Information” means drawings specifications and calculations as appropriate for the following which shall all be in accordance with the general arrangements of the HE Works shown on the highway plans unless otherwise agreed between Highways England and the undertaker—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting Road Restraint Risk Appraisal Process assessment (RRRAP);
- (d) drainage and ducting as required by Series 500 of the Specification for Highways Works, HD 43/04, IAN 147/12 and SD 15 Parts 1 – 6 inclusive;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, 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);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) motorway communications as required by the Designs Manual for Roads and Bridges;
- (l) highway structures and any required structural Approval in Principle (AIP);
- (m) landscaping;
- (n) agreed departures from DMRB standard;
- (o) a report of walking, cycling and horse riding carried out in accordance with the Design Manual for Roads and Bridges Standard HD42/17 or any successor document;
- (p) Stage 2 Road Safety Audit and exceptions agreed and in the event that any works are not commenced within five years of the date of the Stage 1 Road Safety Audit a further Stage 1 Road Safety Audit and exceptions agreed
- (q) Utilities diversions;
- (r) topographical survey;
- (s) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any successor document; and
- (t) health and safety information including any asbestos survey required by GD05/16 or any successor document.

where relevant to the Phase concerned.

“Dilapidation Survey” means a survey of the condition of the roads, bridges and retaining walls which will be the subject of the physical works comprised in the Phase concerned

“Estimated Costs” means the estimated costs in respect of each Phase agreed pursuant to paragraphs 5(1)(b) to (d) and (5) of this Schedule;

“the Excess” means the amount by which Highways England estimates that the costs referred to in paragraph 5(1)(b) to (d) will exceed the Estimated Costs pursuant to paragraph 5(5)(b);

“HE Works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 8 and 11 on the works plans, the general arrangement of which is shown on the highway plans and any ancillary works thereto;

“Nominated Persons” means the undertakers representatives or the Contractors representatives on site during the carrying out of the HE Works as notified to Highways England from time to time;

“Phase” means that part of the HE Works which is to be carried out in separate phases in the areas identified as Works Nos 8 and 11 on the works plans or such other phasing arrangements as shall be agreed with Highways England;

“Programme of Works” means a document setting out the sequence and timetabling of the phase of the HE Works in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard – a member of Highways England East Midlands Asset Delivery Road Safety Team will be part of the approved audit team;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard HD 19/15 or any successor document;

“Utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991;and

“Winter Maintenance” means maintenance of the road surface to deal with snow and ice.

Prior Approvals and Security

3.—(1) No work must commence on any Phase of the HE Works until the Detailed Design Information and a Programme of Works in respect of that Phase has been submitted to and approved by Highways England.

(2) Highways England must nominate a person who will be a single point of contact on behalf of Highways England for consideration of the Detailed Design Information and who shall co-ordinate the Highways England response to the details submitted.

(3) No works must commence on any Phase of the HE Works other than by a Contractor employed by the undertaker for that Phase but first approved by Highways England.

(4) No work must commence on any Phase of the HE Works until Highways England has agreed the Bond Sum for that Phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph 9 below or some other form of security acceptable to Highways England.

(5) No work must commence on any Phase of the HE Works until Stage 1 and Stage 2 Road Safety Audits have been carried out in respect of that Phase and all recommendations raised incorporated into an amended design approved by Highways England or any relevant exceptions approved by Highways England.

(6) No work must commence on any Phase of the HE Works until the undertaker demonstrates to the satisfaction of Highways England that the Walking, Cycling and Horse Riding Assessment and Review process for that Phase has been adhered to in accordance with the Design Manual for Roads and Bridges Standard HD 42/17 or any successor document.

(7) No work must commence on any Phase of the HE Works until a scheme of traffic management has been submitted by the undertaker and approved by Highways England for that Phase such

scheme to be capable of amendment by agreement between the undertaker and Highways England from time to time.

(8) No work must commence on any Phase of the HE Works until stakeholder liaison has taken place for that Phase in accordance with a scheme for such liaison agreed between the undertaker and Highways England.

(9) No work must commence on any Phase of the HE Works until Highways England has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for that Phase in accordance with the Road Safety Audit Standard.

(10) No work must commence on any Phase of the HE Works until the undertaker has agreed the Commuted Sum for that Phase with Highways England to be calculated in accordance with paragraph 9 of this Schedule.

(11) No work must commence on any Phase of the HE Works until a Dilapidation Survey for that Phase has been carried out by the undertaker and has been submitted to and approved in writing by Highways England.

(12) No work must commence on any Phase of the HE Works until the scope of all routine maintenance to be carried out by the undertaker during the construction of the Phase concerned has been agreed in writing by Highways England such maintenance shall only include Winter Maintenance of the Phase concerned where;

- (a) access to carry out such maintenance by Highways England is not available by virtue of the works being carried out on that Phase; and
- (b) any Winter Maintenance is needed immediately prior to the opening of any carriageway to traffic where that carriageway had been closed for the purposes of the carrying out of the Phase concerned .

Carrying out of works

4.—(1) The undertaker must prior to commencement of each Phase of the HE Works give Highways England 28 days' notice in writing of the date on which that Phase will start unless otherwise agreed by Highways England.

(2) The undertaker must comply with Highways England's usual road space booking procedures prior to and during the carrying out of each Phase of the HE Works and no HE Works for which a road space booking is required shall commence without a road space booking having first been secured. It will be necessary for an assessment of the highway network and impact of any road closures on diversion routes to be carried out including any impact related to the County Highway Works. It is acknowledged by Highways England that in the event that the aforementioned assessment indicates no safety or operational concerns then the HE Works can proceed at the same time as Highways England's M1 J13-16 Smart Motorway scheme with road space booking being shared where practicable. In the event that the aforementioned assessment indicates that both schemes cannot be accommodated at the same time then Highways England, in its absolute discretion shall decide when a road space booking can be issued to the undertaker.

(3) Each Phase of the HE Works must be carried out to the satisfaction of Highways England in accordance with—

- (a) the relevant Detailed Design Information and a Programme of Works approved pursuant to paragraph 3(1) above or as subsequently varied by agreement between the undertaker and Highways England;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the general arrangement of the HE Works as shown on the highway plans or a departure from such standards has been approved by Highways England;

- (c) such approvals or requirements of Highways England that are required by the provisions of paragraph 3 to be in place prior to the relevant Phase of the HE Works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, shall ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of Highways England.

(4) The undertaker must permit and require the Contractor to permit at all reasonable times persons authorised by Highways England (whose identity shall have been previously notified to the undertaker by Highways England) to gain access to the HE Works and the County Highway Works for the purposes of inspection and supervision and the undertaker must provide to Highways England contact details of the Nominated Persons with whom Highways England should liaise during the carrying out of the HE Works.

(5) At any time during the carrying out of the HE Works the Nominated Persons must act upon any reasonable request made by Highways England in relation to the carrying out of the HE Works as soon as practicable following such request being made to the Nominated Persons save to the extent that the contents of such request are inconsistent with or fall outside the Contractors obligations under its contract with the undertaker or the undertakers obligations in this Order.

(6) If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any Phase of the HE Works having been given notice of an alleged breach and an adequate opportunity to remedy it by Highways England then Highways England shall on giving to the undertaker 14 days' notice in writing to that effect be entitled to either (i) carry out and complete that Phase of the HE Works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or (ii) carry out such necessary works of reinstatement of the highway and other land and premises of Highways England and in either case the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(7) If at any time the undertaker in carrying out the authorised development causes any damage or disruption to the strategic road network not hereby authorised then Highways England shall give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of Highways England then Highways England shall on giving to the undertaker 7 days' notice in writing to that effect be entitled to carry out such necessary works as Highways England acting reasonably deem appropriate to remedy the damage or disruption and the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(8) Nothing in this Schedule shall prevent Highways England from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public the cost to Highways England of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the authorised development. For the avoidance of doubt this provision applies to all areas of the authorised development including any area of traffic management deployed under the traffic management plan approved pursuant to paragraph 3 (7) to facilitate delivery of the authorised development.

(9) For the avoidance of doubt it is confirmed that the undertaker in carrying out each Phase of the HE Works must at its own expense divert or protect all Utilities as may be necessary to enable the HE Works to be properly carried out and all agreed alterations to existing services must be carried out to the reasonable satisfaction of Highways England.

(10) During the construction of each Phase of the HE Works the undertaker shall be responsible for all routine maintenance at its cost within that Phase (including Winter Maintenance where required to be undertaken by the undertaker in accordance with sub-paragraph 3(12)). All routine maintenance must be carried out in accordance with the scope of routine maintenance operations agreed by Highways England pursuant to paragraph 3(12).

Payments

5.—(1) The undertaker 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 each Phase of the HE Works a sum equal to the whole of any costs and expenses which Highways England incur 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 the HE Works and arising out of them and their implementation including without prejudice to the generality thereof—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that Phase;
- (b) costs in relation to agreeing the Programme of Works for that Phase;
- (c) the carrying out of supervision of that Phase; and
- (d) all administrative costs in relation to (a) and (b) above,

together comprising “the Estimated Costs”.

(2) The sums referred to in sub-paragraph (1) above do not include any sums payable from the undertaker to the Contractor but do include any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

(3) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the HE Works provided that this paragraph shall not apply to the making of any orders which duplicate orders contained in this Order.

(4) The undertaker must make the payments of the Estimated Costs as follows—

- (a) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraphs 5(1)(a)(b) and (d) to Highways England prior to Highways England undertaking those tasks;
- (b) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraph 5(1)(c) prior to commencing that Phase;
- (c) if at any time or times after the payment in respect of a Phase referred to in sub-paragraphs (4)(a) and (b) above has become payable and Highways England reasonably estimates that the costs in respect of that Phase referred to in sub-paragraph (1) above will exceed the Estimated Costs for that Phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the Estimated Costs (“the Excess”) and the undertaker must pay to Highways England within 28 days of the date of that notice a sum equal to the Excess.

(5) Within 91 days of the issue of the handover certificate for each Phase of the HE Works pursuant to paragraph 7 Highways England must give the undertaker a final account of the costs referred to in sub-paragraph (1) above and within 28 days from the expiry of the 91 day period—

- (a) if the account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs Highways England must refund the difference to the undertaker.

(6) If any payment due under any of the provisions 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 of the Land Compensation Act 1961 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.

Provisional Certificate

6. As soon as—

- (a) each Phase of the HE Works has been completed; and
- (b) a Stage 3 Road Safety Audit for that Phase has been carried out and any resulting recommendations complied with and any exceptions agreed,

Highways England must forthwith issue a provisional certificate of completion in respect of that Phase such certificate not to be unreasonably withheld or delayed.

Handover Certificate and Defects Period

7.—(1) As soon as, in respect of a Phase—

- (a) The undertaker has carried out a Dilapidation Survey of the area previously surveyed pursuant to sub-paragraph 3(11) and completed any remedial works necessary to bring that area into as good a condition as when it was originally surveyed, such works to be first area with Highways England;
- (b) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense together with any ancillary equipment that will become the responsibility of the highway authority; and
- (c) the As Built Information has been provided to Highways England,

Highways England must forthwith issue a handover certificate in respect of that Phase such certificate not to be unreasonably withheld or delayed.

(2) The undertaker must at its own expense remedy any defects in any Phase of the HE Works as are reasonably required to be remedied by Highways England during a period of 12 months from the date of the handover certificate in respect of that Phase. All identified defects shall be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of Highways England);
- (b) in respect of matters which Highways England consider to be serious defects or faults, within 14 days of receiving notification of the same or if a road space booking is required at the time when the road space is available whichever is the later ; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same or if a road space booking is required at the time when the road space is available whichever is the later.

(3) Following the issue of the handover certificate in respect of a Phase Highways England shall be responsible for the HE Works within that Phase which shall thereafter be maintained by and at the expense of Highways England save for any soft landscaping works which shall be established and thereafter maintained for a period of 3 years by and at the expense of the undertaker.

(4) The undertaker must submit Stage 4 Road Safety Audits for each Phase as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such.

Final Certificate

8. Highways England must issue of the final certificate in respect of each Phase at the expiration of the 12 month period in respect of that Phase referred to in paragraph 7(2) or if later on 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 such certificate not to be unreasonably withheld or delayed.

Security

9.—(1) Subject to paragraph 3(4) above the undertaker must provide security for the carrying out of the HE Works as follows—

- (a) prior to the commencement of each Phase the HE Works within that Phase must be secured by a bond from a bondsman first approved by Highways England substantially in the form of the draft bond attached at Annex 1 or such other form that may be agreed between the undertaker and Highways England to indemnify Highways England against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that Phase under the provisions of this Schedule provided that the maximum liability of the bond shall not exceed the Bond Sum relating to that Phase; and
- (b) prior to the commencement of the HE Works the undertaker must provide the Cash Surety which may be utilised by Highways England in the event of the undertaker failing to meet its obligations to make payments under paragraph 5 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker (which shall for the avoidance of doubt be a single cash surety for the entirety of the HE Works).

(2) Each Bond Sum and the cash surety (the latter in respect of the final phase only) shall be progressively reduced as follows—

- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the Contractors) from the undertaker of the payments made from time to time to the Contractor Highways England must in writing authorise the reduction of the Bond Sum by such proportion of the Bond Sum as amounts to 80% of those payments provided that an evaluation of the HE Works completed and remaining has been carried out by the undertaker and audited and agreed by Highways England to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the Contractors. Highways England shall only be required to provide the said authorisation should it be satisfied that the monies remaining secured by the Bond Sum shall be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the HE Works plus an additional 20%;
- (b) within 20 working days of completion of each Phase of the HE Works (as evidenced by the issuing of the provisional certificate in respect of that Phase pursuant to paragraph 6(1)) Highways England must in writing release the bond provider from its obligations in respect of 80% of the Bond Sum relating to that Phase (“the Revised Bond Sum”) save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs; and
- (c) within 20 working days of the issue of the final certificate for each Phase of the HE Works referred to in paragraph 8 Highways England must in writing release the bond provider from its obligations in respect of the Revised Bond Sum relating to that Phase and (in respect of the final phase) release the remainder of the cash surety to the undertaker save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs.

Commuted sums

10. The undertaker must pay to Highways England the Commuted Sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 within 28 days of the date that each Phase of the HE Works becomes maintainable by Highways England pursuant to paragraph 7(3).

Insurance

11. The undertaker must prior to commencement of the HE Works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) against any legal

liability for damage loss or injury to any property or any person as a direct result of the execution of the HE Works or any part thereof by the undertaker.

Indemnification

12.—(1) The undertaker must in relation to the carrying out of the HE Works take such precautions for the protection of the public and private interest 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 carrying out of the HE Works provided that—

- (a) the foregoing indemnity shall not extend to any costs expenses liabilities and damages caused by or arising out of the neglect or default of Highways England or its officers servants agents or contractors or any person or body for whom is responsible;
- (b) Highways England must notify the undertaker forthwith upon receipt of any claim; and
- (c) Highways England must following the acceptance of any claim notify the quantum thereof to the undertaker in writing and the undertaker shall within 14 days of the receipt of such notification pay to Highways England the amount specified as the quantum of such claim.

(2) The undertaker must notify Highways England of the intended date of opening of each Phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify Highways England of the actual date that each Phase is open to public traffic on each occasion within 14 days of that occurrence.

Warranties

13. The undertaker must procure warranties from the contractor and designer of each Phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that Phase including the selection of materials, goods, equipment and plant such warranties to be provided to Highways England before that Phase commences.

Land Transfer

14.—(1) Following the issuing of the final certificates for all the HE Works Highways England may serve notice on the undertaker that it wishes to take a freehold transfer of land within the then extent of highway land which is not in the ownership of HE but has been acquired by the undertaker for the purposes of carrying out the HE Works.

(2) If the undertaker receives a notice under sub-paragraph 14(1) then the undertaker must cooperate in a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to Highways England which, for the avoidance of doubt, shall include the undertaker being responsible for the reasonable legal costs incurred by Highways England in connection with such transfer.

Approvals

15.—(1) Any approvals, certificates, consents or agreements required or sought from or with Highways England pursuant to the provisions of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approval certificate, consent or agreement shall be deemed to have been given if it is neither given nor refused within 42 days of the specified day.

(2) In this paragraph “specified day” means—

- (a) the day on which particulars of the matter are received by Highways England under the provisions of this Schedule; or
- (b) the day on which the undertaker provides Highways England with any further particulars of the matter that have been reasonably requested by Highways England within 28 days of the date in sub-paragraph (2)(a)

whichever is the later.

Expert Determination

16.—(1) Article 49 (arbitration) does not apply to this part 2 of Schedule 13 except in respect of sub-paragraph (5) below.

(2) Any difference under this Schedule must 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 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 submission to the expert in writing and copied to the other party 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 party 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 49.

(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 determination, equally.

Annex 1

BY THIS BOND [] [(Company Regn No)] whose registered office is situate at [] (“**the undertaker**”) and [] [(Company Regn No)] whose registered office is situate at [] (“**the Surety**”) are jointly and severally bound to [] of [] (“the []”) this [] day of [] 200[] in the sum of [] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as The Northampton Gateway Rail Freight Interchange Order 201[X] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to Highways England such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 2 of Schedule 13 of the DCO on the undertaker's part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by Highways England thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by Highways England under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of Highways England shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 9 of Part 2 of Schedule 13 of the DCO.

[Attestation]

PART 3

FOR THE PROTECTION OF NORTHAMPTONSHIRE COUNTY COUNCIL AS HIGHWAY AUTHORITY

Application

1. The provisions of this part of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Northamptonshire County Council and shall apply to the County Highway Works.

Interpretation

2.—(1) The terms used in this Schedule are as defined in article 2 of this Order save where inconsistent with sub-paragraph (2) below which shall prevail; and

(2) In this Schedule—

“As Built Information” means one digital copy of the following information where applicable to the Phase in question—

- (a) As constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the Undertaker;
- (b) List of suppliers and materials used, test results and CCTV surveys;
- (c) Product data sheets, technical specifications for all materials used;
- (d) As constructed information for any Utilities discovered or moved during the works
- (e) Method Statements for 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;
- (g) Plan of temporary signage indicating new road layouts;
- (h) Populated post construction inventory in the form of the Northamptonshire County Council post construction inventory dated [];
- (i) Organisation and methods manuals for all products used in the construction of the authorised development;
- (j) As constructed programme;
- (k) Test results and records required by the Detailed Design Information and during the construction phase of the project;
- (l) RSA3 and exceptions agreed; and
- (m) Health and Safety File;

“the Bond Sum” means the sum equal to 110% of all the costs of the carrying out of the Phase of the County Highway Works concerned and 100% of the Commuted Sum relating to that Phase or such other sum agreed between the undertaker and the local highway authority;

“Commuted Sum” means such sum as shall be calculated for each phase as provided for in paragraph 9(2) of this Schedule and to be used to fund the future cost of maintenance the County Highway Works.

“Contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the County Highway Works or any Phase of the County Highway Works and approved by the local highway authority pursuant to paragraph 3(2) below;

“County Highway Works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 7, 9, 12, 13, 14, 15, 16 and 17 on the works plans the general arrangement of which is shown on the highway plans and any ancillary works thereto;

“Detailed Design Information” means drawings, specifications and other information which shall be in accordance with the general arrangements of the County Highway Works shown on the highway plans unless otherwise agreed between the local highway authority and the undertaker—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraints systems supporting Road Restraint Risk Assessment
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, 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);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures;
- (l) Stage 2 Road Safety Audit and exceptions agreed and in the event that any works are not commenced within five years of the date of this Order comes into force a further Stage 1 Road Safety Audit and exceptions agreed;
- (m) landscaping;
- (n) Utilities diversions;
- (o) topographical survey;
- (p) identification of any land to be dedicated as highway; and
- (q) pre- construction health and safety information
where relevant to the Phase concerned.

“Estimated Costs” means the estimated costs in respect of each Phase agreed pursuant to paragraphs 5(1) and (5) of this Schedule;

“the Excess” means the amount by which the local highway authority estimates that the costs referred to in paragraph 5(1) will exceed the Estimated Costs pursuant to paragraph 5(5)(b);

“Nominated Persons” means the undertakers representatives or the Contractors representatives on site during the carrying out of the County Highway Works as notified to the local highway authority from time to time;

“Phase” means that part of the County Highway Works which is to be carried out in separate phases in the areas identified as separate works numbers on the works plans or such other phasing arrangements as shall be agreed with the local highway authority;

“Programme of Works” means a document setting out the sequence and timetabling of the Phase in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard GG 119 or any successor document;

“Utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

“Winter Maintenance” means maintenance of the road surface to deal with snow and ice during the winter months.

Prior Approvals and Security

3.—(1) No work must commence on any Phase of the County Highway Works until the Detailed Design Information and a Programme of Works in respect of that Phase has been submitted to and approved by the local highway authority.

(2) No works must commence on any Phase of the County Highway Works other than by a Contractor employed by the undertaker for that Phase but first approved by the local highway authority.

(3) No work must commence on any Phase of the County Highway Works until the local highway authority has agreed the Bond Sum for that Phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph 8 below or some other form of security acceptable to the local highway authority.

(4) No work must commence on any Phase of the County Highway Works until a Stage 2 Road Safety Audit has been carried out in respect of that Phase and all issues raised incorporated into an amended design approved by the local highway authority or any relevant exceptions approved by the local highway authority.

(5) No work must commence on any Phase of the County Highway Works until a scheme of traffic management provisions have been agreed with the local highway authority.

(6) No work must commence on any Phase of the County Highway Works until the local highway authority has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for that Phase in accordance with the Road Safety Audit Standard.

(7) No works must commence on any Phase of the County Highway Works until the undertaker has agreed the Commuted Sum for that Phase with the local highways authority to be calculated in accordance with paragraph 9(2) of this Schedule.

(8) No works must commence on any Phase of the County Highway Works until the undertaker had provided confirmation of ownership to the local highway authority for any land which is to be dedicated as highway following completion of the County Highway Works.

Carrying out of works

4.—(1) The undertaker must prior to commencement of each Phase of the County Highway Works give the local highway authority 28 days’ notice in writing of the date on which that Phase will start unless otherwise agreed with the local highway authority.

(2) The undertaker must comply with the local highway authority’s usual road space booking procedures prior to and during the carrying out of each Phase of the County Highway Works and no County Highways Works for which a road space booking is required must commence without a road space booking having first been secured.

(3) Each Phase of the County Highway Works must be carried out to the satisfaction of the local highway authority in accordance with—

- (a) the relevant Detailed Design Information and a Programme of Works approved pursuant to paragraph 3(1) above or as subsequently varied by agreement between the undertaker and the local highway authority;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works) all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 and any amendment to or replacement thereof for the time being in force save to the

extent that they are inconsistent with the highway plans or a departure from such standards has been approved by the local highway authority;

- (c) such approvals or requirements of the local authority that are required by the provisions of paragraph 3 to be in place prior to the relevant Phase of the County Highway Works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker as client shall ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of the local highway authority.

(4) The undertaker must permit and require the Contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously notified to the undertaker by the local highway authority) to gain access to the land upon which the County Highway Works are being carried out for the purposes of inspection and supervision and the undertaker must provide to the local highway authority contact details of the Nominated Persons with whom the local highway authority should liaise during the carrying out of the County Highway Works.

(5) At any time during the carrying out of the County Highway Works the Nominated Persons must act upon any reasonable request made by the local highway authority in relation to the carrying out of the County Highway Works as soon as practicable following such request being made to the Nominated Persons or the undertakers obligations in this Order.

(6) If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any Phase of the County Highway Works having been given notice of an alleged breach and an adequate opportunity to remedy it by the local highway authority then the local highway authority shall on giving to the undertaker 14 days' notice in writing to that effect be entitled to either (i) carry out and complete that Phase of the County Highway Works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or (ii) carry out such necessary works of reinstatement of the highways and other land and premises of the local highway authority and in either case the undertaker must within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(7) If at any time the undertaker in carrying out any Phase of the County Highway Works causes any damage or disruption to the local road network not hereby authorised then the local highway authority shall give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of the local highways authority then the local highway authority shall on giving the undertaken 7 days' notice in writing to that effect be entitled to carry out such necessary works deemed appropriate to remedy the damage or disruption and the undertaker shall within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(8) Nothing in this Schedule shall prevent the local highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public the cost to the local highway authority of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the County Highway Works.

(9) For the avoidance of doubt it is confirmed that the undertaker in carrying out each Phase of the County Highway Works must at its own expense divert or protect all Utilities as may be necessary to enable the County Highway Works to be properly carried out and all agreed alterations to existing services shall be carried out to the reasonable satisfaction of the local highway authority.

(10) In the event that the local highways authority incur additional costs in the Winter Maintenance of the highways as a result of traffic management measures regulating the Phase concerned (over and above the costs that would have been incurred in the absence of the County Highway Works being carried out) then the undertaker must reimburse the local highway authority those additional costs such costs to include any administration costs incurred.

(11) the undertaker must notify the local highway authority of the intended date of opening of each Phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify the local highway authority of the actual date that each Phase is open to public traffic on each occasion within 14 days of that occurrence.

Payments

5.—(1) The undertaker must fund the whole of the cost of the County Highway Works and all costs incidental to the County Highway Works and must also pay to the local highway authority in respect of each Phase of the County Highway Works a sum equal to the whole of any costs and expenses which the local highway authority incur 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 the County Highway Works and arising out of them and their implementation including without prejudice to the generality thereof—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that Phase;
- (b) costs in relation to agreeing the Programme of Works for that Phase;
- (c) the carrying out of the inspection of that Phase; and
- (d) all administrative costs in relation to (a) and (b) and (c) above,

(the costs in (a),(b), (c) and (d) being together “the Estimated Costs”).

(2) The undertaker must pay to the local highway authority upon demand and prior to such costs being incurred the total costs that the local highway authority believe will be properly and necessarily incurred by the local highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the County Highway Works provided that this paragraph shall not apply to the making of any orders which duplicate orders contained in this Order.

(3) The undertaker and the local highway authority must agree a schedule of the Estimated Costs to be incurred pursuant to sub-paragraph (1) above in respect of each Phase prior to the commencement of that Phase.

(4) The undertaker must make the payments referred to in sub-paragraph (1) as follows—

- (a) the undertaker must pay a sum equal to the agreed Estimated Costs to the local highway authority prior to the local highway authority undertaking those tasks in respect of any Phase of the County Highway Works;
- (b) if at any time or times after the payment in respect of a Phase referred to in paragraph (5)(4)(a) above has become payable the local highway authority reasonably estimates that the costs in respect of that Phase referred to in paragraph (1) above will exceed the Estimated Costs for that Phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the Estimated Costs (“the Excess”) and the undertaker must pay to the County Highway Authority within 28 days of the date of that notice a sum equal to the Excess.

(5) Within 91 days of the issue of the final certificate for each Phase of the County Highway Works pursuant to paragraph 7 the local highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) above and within 28 days from the expiry of the 91 day period—

- (a) if the account shows a further sum as due to the local highway authority the undertaker must pay to the local highway authority the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs the local highway authority must refund the difference to the undertaker.

(6) If any payment due under any of the provisions 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 party to whom it was due interest at 1% above the rate payable in respect of compensation under Section 32 of the Land Compensation Act 1961 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.

Provisional Certificate and Defects and Maintenance Period

- 6.—(1) As soon as each Phase of the County Highway Works has been completed and—
- (a) a Stage 3 Road Safety Audit for that Phase has been carried out;
 - (b) any resulting recommendations have been complied with and any exceptions agreed;
 - (c) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by the local highway authority upon the issue of the final certificate referred to in paragraph 7;
 - (d) the undertaker providing confirmation that any additional land which is to be dedicated as highway maintainable at public expense is so dedicated; and
 - (e) the As Built Information has been provided to the local highway authority,

the local highway authority must issue a provisional certificate of completion in respect of that Phase of the County Highway Works such certificate not to be unreasonably withheld or delayed.

(2) The undertaker must at its own expense remedy any and all defects and of any and all imperfections and all other faults arising out of defective design materials or workmanship or of any other nature whatsoever (which for the avoidance of doubt shall include all traffic damage whether accidental or otherwise (but only that attributable to defective design materials or workmanship and excluding Winter Maintenance) in that Phase of the Highway Works as reasonably required to be remedied by the local highway authority and identified by the local highway authority during a period of 12/24 months from the date of the provisional certificate in respect of that Phase.

(3) The undertaker must submit Stage 4 Road Safety Audits for each Phase of the County Highway Works as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such audits.

Final Certificate

7.—(1) The undertaker shall apply to the local highway authority for the issue of the final certificate in respect of each Phase at the expiration of the 12 24 month period in respect of that Phase referred to in paragraph 6(2) or if later on the date on which any defects or damage arising during that period which are the responsibility of the undertaker under the provisions of paragraph 6. have been made good to the reasonable satisfaction of the local highway authority.

(2) If the provisions of sub-paragraph 7(1) are satisfied the local highway authority must issue a final certificate for the Phase of the County Highway Work concerned such certificate not to be unreasonably withheld or delayed.

Security

8.—(1) Subject to paragraph 3(3) above the undertaker must provide security for the carrying out of the County Highway Works as follows—

- (a) prior to the commencement of each Phase the County Highway Works within that Phase will be secured by a bond from a bondsman first approved by the local highway authority substantially in the form of the draft bond attached at Annex 1 or such other form that may be agreed between the undertaker and the local highway authority to indemnify the local highway authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that Phase of the County Highway Works under the provisions of this Schedule provided that the maximum liability of the bond shall not exceed the Bond Sum relating to that Phase.

(2) Each Bond Sum shall be progressively reduced as follows—

- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the Contractors) from the undertaker of the payments made from time to time to the Contractor (“the submission”) the local highway authority may in writing authorise the reduction of the Bond Sum by such proportion of the Bond Sum as amounts to 75% of those payments provided that (i) there shall not be more than two submissions of written confirmation to the local highway authority during each phase of the county Highway Works (ii) an evaluation of the County Highway Works completed and remaining has been carried out by the undertaker and audited and agreed by the local highway authority to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the Contractors. The local highway authority shall only be required to provide the said authorisation should it be satisfied that the monies remaining secured by the Bond Sum shall be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the County Highway Works plus an additional 10% and (iii) the operation of this paragraph will not enable the overall reduction of the bond to be greater than 70% of the original Bond Sum;
- (b) within 20 working days of completion of each Phase of the County Highway Works (as evidenced by the issuing of the provisional certificate in respect of that Phase pursuant to paragraph 6(1)) the local highway authority must in writing release the bond provider from its obligations in respect of 75% of the Bond Sum relating to that Phase save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date; and
- (c) within 20 working days of the issue of the final certificate for each Phase of the County Highway Works referred to in paragraph 7 the local highway authority must in writing release the bond provider from all its obligations in respect of the bond relating to that Phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date.

Commuted sums

9.—(1) Within 28 days following the issue of the final certificate in respect of any Phase the undertaker must pay to the local highway authority any commuted sums payable in respect of that Phase calculated as provided for in sub-paragraph (2).

(2) The rates to be applied in calculating the Commuted Sums payable must be calculated in accordance with Northamptonshire County Council’s Commuted Sum Calculator or as otherwise agreed between the undertaker and the local highway authority prior to commencement of work on any Phase.

Insurance

10. The undertaker must prior to commencement of the County Highway Works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) for any one claim against any legal liability for damage loss or injury to any property or any person arising out of or in connection with the execution of the County Highway Works or any part thereof by the undertaker.

Indemnification

11.—(1) The undertaker must in relation to the carrying out of the County Highway Works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify the local highway authority 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 carrying out of the County Highway Works; provided that—

- (a) the foregoing indemnity shall not extend to any costs expenses liabilities and damages caused by or arising out of the neglect or default of the local highway authority or its officers servants agents or contractors or any person or body for whom is responsible;

- (b) the local highway authority must notify the undertaker upon receipt of any claim; and
- (c) the local highway authority must following the acceptance of any claim notify the quantum thereof to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the local highway authority the amount specified as the quantum of such claim.

Warranties

12. The undertaker must procure warranties from the contractor and designer of each Phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that Phase including the selection of materials, goods, equipment and plant such warranties to be provided to the local highway authority before that Phase commences.

Approvals

13.—(1) Any approvals, certificates, consents or agreements required or sought from or with the local highway authority pursuant to the provisions of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approvals, certificates, consents or agreements shall be deemed to have been given if it is neither given nor refused within 42 days of the specified day.

(2) In this paragraph “specified day” means—

- (a) the day on which particulars of the matter are submitted to the local highway authority under the provisions of this Schedule; or
- (b) the day on which the undertaker provides the local highway authority with any further particulars of the matter that have been reasonably requested by the local highway authority or within 28 days of the date in sub-paragraph (2)(a), whichever is the later

Expert Determination

14.—(1) Article 49 (arbitration) does not apply to this part 3 of Schedule 13 except in respect of sub-paragraph (5) below.

(2) Any difference under this Schedule must 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 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 28 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party 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 party within 21 days of receipt of the submission; and
- (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 49.

(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 determination, equally.

Annex 1

BY THIS BOND [] [(Company Regn No)] whose registered office is situate at [] (“**the undertaker**”) and [] [(Company Regn No)] whose registered office is situate at [] (“**the Surety**”) are jointly and severally bound to [] of [] (“the []”) this [] day of [] 200[] in the sum of [] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as The Northampton Gateway Rail Freight Interchange Order 201[X] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to the local highway authority such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 3 of Schedule 13 of the DCO on the undertaker’s part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by the local highway authority thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by the local highway authority under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of the local highway authority shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 8 of Part 3 of Schedule 13 of the DCO.

[Attestation]

PART 4

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

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

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable it to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protection, cables or other apparatus belonging to or maintained by Cadent for the purpose of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to the apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for

the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“Cadent” means Cadent Gas Limited (Company Number 10080864) whose registered office is situate at Ashbrook Court, Prologis Park, Central Boulevard, Coventry CV7 8EP and any successor in title or assign including any success to their license as a gas transporter under Part 1 of the Gas Act 1986;

“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 and/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, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent 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; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise; and/or
- (b) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent 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

3.—(1) Except for paragraphs 4 (apparatus of Cadent in stopped up streets), 6 (removal of apparatus) and 7 (facilities and rights for alternative apparatus) (in so far as paragraph 3(2) below applies), 8 (retained apparatus: protection), 9 (expenses) and 10 (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 undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 6 and 7 of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within adopted public highway.

Apparatus of Cadent in stopped up streets

4.—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 10 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to the Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph shall affect any right of the undertaker or Cadent to require removal of the Apparatus under paragraph 6.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 11 (temporary stopping up of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

(3) The protective provisions in this Part of this Schedule apply and take precedence over article 37(2) to (7) of this Order which do not apply to Cadent.

Acquisition of land

5.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not acquire any land interest or apparatus or acquire, extinguish, interfere with or otherwise override any easement and/or other interest or right of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in paragraph 5(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) 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 and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/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 such authorised works.

(3) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by Cadent under paragraph 8 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 5(1).

Removal of apparatus

6.—(1) If, in the exercise of the agreement reached in accordance with paragraph 5 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Cadent in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent 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 Cadent reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Cadent to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the undertakers assistance if required by Cadent, save that this obligation shall not extend to the requirement for Cadent 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 undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of 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 undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under paragraph 7(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 Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter will be referred to arbitration in accordance with paragraph 14 of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to the undertaker a plan and, if reasonably required by Cadent, 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 and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;

- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraph (1) applies until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) applies, Cadent 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 (5), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Cadent for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any 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 Cadent in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent 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) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent 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".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9.

Expenses

9.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or 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 new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by the undertaker as a consequence of Cadent—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under 6(3); and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) or article 37 (apparatus and rights of statutory undertakers in stopped up streets) 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—

- (i) 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
- (ii) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save 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 will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

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

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent 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) will be subject to the full terms of this Part of this Schedule including this paragraph 10.

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

Enactments and agreements

11. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to Cadent on the date on which this Order is made.

Co-operation

12.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 6(2) Cadent makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent’s undertaking and Cadent shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent’s consent, agreement or approval 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

13. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 49 (arbitration).

Notices

15. The plan and scheme submitted to Cadent by the undertaker pursuant to paragraph 8(1) must be sent to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PART 5

FOR THE PROTECTION OF ANGLIAN WATER LIMITED

1. For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the Undertaker and Anglian Water, have effect.

2. In this part of this Schedule—

“Anglian Water” means Anglian Water Services Limited (Company Registration Number 02366656) whose registered office is situated at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridge PE29 6XU

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and—

- (a) any drain or works vested in Anglian Water under The Water Industry Act 1991;
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of The Water Industry Act 1991 or an agreement to adopt made under section 104 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;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in no 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

“standard protection strips” means the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus; 2.25 metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres, 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres.

3. The undertaker shall not interfere with, build over or within 6 metres of any apparatus within the Order Land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or execute an filling around the 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.

4. The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting Regulations 2010 or other legislations 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 undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to 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.

5. In the situation, where in exercise of the powers conferred by the Order, the undertaker 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 shall 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.

6. Regardless of any provision in this Order or anything shown on any plan, the undertaker 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 in the Order land, the undertaker shall, 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 49.

7. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such 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.

8. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the company, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

9. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 6 and 8 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, or in the supply of any goods, by Anglian Water, the undertaker shall —

- (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 incurred by Anglian Water,
- by reason or in consequence of any such damage or interruption.

PART 6

FOR THE PROTECTION OF ELECTRICITY UNDERTAKERS

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

2. In this Part of this Schedule—

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;

“functions” includes powers and duties;

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

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

“utility undertaker” means any licence holder within the meaning of Part 1 of the Electricity Act 1989 for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

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

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 10 (permanent stopping up), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 6 or the power of the undertaker to carry out works under paragraph 8.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 11 (temporary stopping up), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

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

(a) 1989 c. 29.

Removal of apparatus

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

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

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

Retained apparatus

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

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

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

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

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

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

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(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 that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of 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 utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 6 (2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,
- (c) by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

11. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 6(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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

PART 7
FOR THE PROTECTION OF OPERATORS OF ELECTRONIC
COMMUNICATIONS CODE NETWORKS

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

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in Part 1 of Schedule 3 of the Digital Economy Act 2017(b);

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications code network” means—

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

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

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

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

3. The exercise of the powers conferred by article 33 (statutory undertakers and operators of the electronic communications code network) is subject to Part 10 of Schedule 3A to the 2003 Act.

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

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

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 49 (arbitration).

(5) This Part of this Schedule does not apply to—

(a) 2003 c. 21.

(b) 2017 c. 30.

(c) See section 106 of the Communications Act 2003 (c. 21). Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

SCHEDULE 14

Article 46

MISCELLANEOUS CONTROLS

Public general legislation

Introduction

1. This Schedule applies, modifies and excludes statutory provisions which relate to matters for which provision may be made in this Order.

Highways Act 1980

2.—(1) Section 141 of the 1980 Act(a) (restriction on planting trees etc. in or near carriageway) shall not apply to any tree or shrub planted in the course of the authorised development before completion of construction.

(2) Section 167 of the 1980 Act(b) (powers relating to retaining walls near streets) shall not apply in relation to—

- (a) the erection of a wall in the course of the authorised development before completion of construction, or
- (b) a wall on land on which works are being carried out, or are to be carried out, in pursuance of the authorised development before completion of construction.

New Roads and Street Works Act 1991

3.—(1) The powers conferred by section 56(1) and (1A) of the 1991 Act(c) (powers to give directions as to the timing of proposed and subsisting street works) shall not apply in relation to the authorised development.

(2) Section 56A of the 1991 Act(d) (power to give directions as to placing of apparatus) shall not apply in relation to the placing of apparatus in the course of the authorised development.

(3) No restriction under section 58(1) of the 1991 Act(e) (power to impose restriction on execution of street works in the twelve months following completion of substantial road works) shall have effect in relation to the authorised development.

(4) Section 61(1) of the 1991 Act (under which the consent of the street authority is required for the placing of apparatus in a protected street) shall not apply to the placing of apparatus in the course of the authorised development.

(5) Section 62(2) of the 1991 Act (power following designation of protected street to require removal or repositioning of apparatus already placed in the street) shall not apply in relation to apparatus placed in the course of the authorised development.

(a) 1980 c. 66. Section 141 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).
(b) 1980 c. 66. Section 167 was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48).
(c) 1991 c. 22. Section 56(1) and (1A) were amended by section 43 of the Traffic Management Act 2004 (c. 18).
(d) 1991 c. 22. Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).
(e) 1991 c. 22. Section 58(1) was amended by section 51(1), (2) of the Traffic Management Act 2004 (c. 18).

(6) Section 62(4) of the 1991 Act (power when designation as protected street commences or ceases to give directions with respect to works in progress) shall not apply in relation to the authorised development.

(7) Section 63(1) of the 1991 Act (under which Schedule 4 to that Act has effect for requiring the settlement of a plan and section of street works to be executed in a street designated by the street authority as having special engineering difficulties) shall not apply in relation to the authorised development.

(8) The powers conferred by section 73A(1) and 78A(1) of the 1991 Act(a) (requirements for undertaker to re-surface street) may not be exercised in relation to the authorised development.

(9) Sections 74 and 74A of the 1991 Act(b) (charge for occupation of the highway and charge determined by reference to duration of works) shall not apply in relation to the authorised development.

(10) Schedule 3A to the 1991 Act (restriction on works following substantial street works) shall not apply where a notice under section 54 (advance notice of certain works) or 55 (notice of starting date of works) of that Act(c) is given in respect of the authorised development.

(11) No notice under paragraph 2(1)(d) of that Schedule (power by notice to require notification of works which an undertaker proposes to carry out in a part of a highway to which a proposed restriction applies) shall have effect to require the notification of works proposed to be carried out in the course of the authorised development.

(12) No directions under paragraph 3 of that Schedule (directions as to the date on which undertakers may begin to execute proposed works) may be issued to the undertaker.

(13) Paragraph 3(4) of that Schedule (under which it is an offence for an undertaker to execute street works before the completion of certain other street works) shall not apply in relation to the execution of works in the course of the authorised development.

(14) Paragraph 5(1) of that Schedule (effect of direction under paragraph 4 restricting further works) shall not apply in relation to the execution of works in the course of the authorised development.

Local Government (Miscellaneous Provisions) Act 1976

4. Section 42 of The Local Government (Miscellaneous Provisions) Act 1976(d) (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) shall not apply to the extent that it would make provisions of this Order authorising the authorised development subject to other provisions.

SCHEDULE 15

Article 47

CERTIFICATION OF PLANS AND DOCUMENTS

1. Documents for certification that they are true copies of the documents referred to in this Order—

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- (a) 1991 c. 22. Section 73A was inserted by section 55(1) of the Traffic Management Act 2004 (c. 18). Section 78A was inserted by section 57(1) of the Traffic Management Act 2004 (c. 18).
 - (b) 1991 c. 22. Section 74 was amended by sections 256 and 274 of, and Part V(2) of Schedule 31 to, the Transport Act 2000 (c. 38), section 40(4) and section 52(5) of the Traffic Management Act 2004 (c. 18), and section 1(6) of, and paragraphs 113 and 119 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). Section 74A was inserted by section 255(1) of the Transport Act 2000 (c. 38) and was amended by section 1(6) of, and paragraphs 113 and 120 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and section 40(4) of the Traffic Management Act 2004 (c. 18).
 - (c) 1991 c. 22. Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004 (c. 18). Section 54 was amended by section 40(1) and (2) and section 49(1) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18). Section 55 was amended by section 40(1) and (2), section 49(2) and section 51(1) and (9) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (d) 1976 c. 57. Section 42 was amended by section 6(2) of, and the Schedule to, the Ports (Finance) Act 1985 (c. 30), and section 15 of the Food and Environment Protection Act 1985 (c. 48).

<i>Document/Plan</i>	<i>Document Number</i>	<i>Document date/Plan number with revision number [TO BE UPDATED IN FINAL DRAFT]</i>
Access and rights of way plans		
Key Plan	2.3	P4
Sheet 1	2.3A	P6
Sheet 2	2.3B	P5
Sheet 3	2.3C	P7
Sheet 4	2.3D	P6
Sheet 5	2.3E	P5
The book of reference	4.3	18 May 2018
The design and access statement	6.9	18 May 2018
The environmental statement	5.2	18 May 2018 (subject to the substitutions set out below): [e.g. updated CEMP/LEMP to be submitted for Deadline 3]
The highway classification plans		
Key Plan	2.5	P5
Sheet 1	2.5A	P5
Sheet 2	2.5B	P5
Sheet 3	2.5C	P5
Sheet 4	2.5D	P5
The highway plans		
Key Plan	2.4	P6
General Arrangement Sheet 1	2.4A	P8
General Arrangement Sheet 2	2.4B	P9
General Arrangement Sheet 3	2.4C	P9
General Arrangement Sheet 4	2.4D	P9
General Arrangement Sheet 5	2.4E	P8
General Arrangement Sheet 6	2.4F	P9
Cross Sections Sheet 1	2.4G	P7
Cross Sections Sheet 2	2.4H	P5
Cross Sections Sheet 3	2.4J	P5
Cross Sections Sheet 4	2.4K	P6
Cross Sections Sheet 5	2.4L	P4
Long Sections Sheet 1	2.4M	P7
Long Sections Sheet 2	2.4N	P6
Long Sections Sheet 3	2.4P	P5
Long Sections Sheet 4	2.4Q	P4
Long Sections Sheet 5	2.4R	P4
Long Sections Sheet 6	2.4S	P3
General Arrangement Alternative to Document 2.4A	2.4T	P3
General Arrangement Alternative to Document 2.4B	2.4U	P4
The illustrative rail terminal plan	2.8	S1
The land plans		
Key Plan	2.1	07
Sheet 1	2.1A	06
Sheet 2	2.1B	07
Sheet 3	2.1C	06
Sheet 4	2.1D	07
Sheet 5	2.1E	06

Sheet 6	2.1F	07
The parameters plan	2.10	S1
The railway plans		
Key Plan	2.9	P6
Sheet 1	2.9A	P4
Sheet 2	2.9B	P4
Sheet 3	2.9C	P4
Sheet 4	2.9D	P4
The speed limit plans		
Key Plan	2.7	P5
Sheet 1	2.7A	P6
Sheet 2	2.7B	P6
Sheet 3	2.7C	P6
Sheet 4	2.7D	P5
The traffic regulation plans		
Key Plan	2.6	P5
Sheet 1	2.6A	P3
Sheet 2	2.6B	P3
Sheet 3	2.6C	P1
The works plans		
Key Plan	2.2	P12
Sheet 1	2.2A	P9
Sheet 2	2.2B	P7
Sheet 3	2.2C	P8
Sheet 4	2.2D	P6
Sheet 5	2.2E	P6
Sheet 6	2.2F	P6
Sheet 7	2.2G	P4

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Roxhill (Junction 15) Limited (“the undertaker”) to construct, operate and maintain, the new Northampton Gateway Rail Freight Interchange together with associated development. The undertaker is authorised by the Order to acquire compulsorily land and rights over land. The Order also authorises the making of alterations to the highway network, stopping up and diversion of public rights of way and the discharge of water.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 47 (certification of plans and documents) of this Order may be inspected free of charge at the offices of South Northamptonshire District Council at The Forum, Moat Lane, Towcester NN12 6AD and at Northampton Borough Council at The Guildhall, St Giles’ Square, Northampton NN1 1DE.