

East Midlands Gateway  
Phase 2 (EMG2)

Document DCO 3.1

# Draft Development Consent Order

~~OCTOBER 2025~~ FEBRUARY 2026

The East Midlands Gateway Phase 2  
and Highway Order 202X and The East Midlands Gateway  
Rail Freight and Highway (Amendment) Order 202X

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**SEGRO**

# **The East Midlands Gateway Phase 2 and Highway Order 202X**

## **DRAFT DEVELOPMENT CONSENT ORDER (DOCUMENT DCO 3.1)**

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**202[ ] No.**

**INFRASTRUCTURE PLANNING**

**The East Midlands Gateway Phase 2 and Highway Order 20[ ]**

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*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.

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(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).  
 (b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378 and S.I. 2019/734.

The application was examined in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(a) by a Panel of ~~three~~ member[s] (“the Panel”) appointed by the Secretary of State in accordance with Chapter 2 of Part 6 of the 2008 Act.

The Panel, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 74(2) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn and the report of the Panel, has decided to make an order granting development consent for the development described in the application with modifications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

The Secretary of State is satisfied that the land plots identified in the special category land plan and the book of reference as open space authorised to be permanently compulsorily acquired under this Order are required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and that the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public and that, accordingly, section 131(5) of the 2008 Act applies.

The Secretary of State in exercise of the powers conferred by section ~~114, 115, 117, 120, and 122~~ to 123, 127, 131 and 132 of, and paragraphs 1 to 3, 10 to 15, 17, 19, 20, 22 to 24, 26, 33 to 37 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 East Midlands Phase 2 and Highway Order 20[ ] and comes into force on [ ].

### Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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

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

(b) 1961 c. 33.

(c) 1965 c.56.

(d) 1980 c.66.

(e) 1981 c.66.

(f) 1984 c. 27.

(g) 1990 c. 8.

(h) 1991 c. 22.

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

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

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

“access and rights of way plans” means the plans of that description referred to in Schedule 16 (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;

“ancillary buildings” means buildings which are incidental or ancillary to the primary warehousing use, including gatehouses, administration buildings and offices, or service buildings;

“apparatus” for the purposes of article 8 (street works) and article 34 (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 DCO 6.10C of the environmental statement;

“authorised activity” means for the purpose of article 25 (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 buildings” means any buildings erected as part of the authorised development;

“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 16 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(d);

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

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

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

“community park” means the community park comprised within Works No. 21 as shown on the community park plan to be provided as part of the authorised development;

“community park plan” means the document of that description referred to in Schedule 16 (certification of plans and documents) and certified by the Secretary of State as the community park plan for the purposes of this Order;

~~“construction and environmental management plan” means the document of that description contained in appendix DCO 6.3A of the environmental statement;~~

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(a) 2008 c. 29.

~~(b) S.I. 2010/948 as amended by S.I. 2011/987, S.I. 2012/635, S.I. 2012/666, S.I. 2012/702, S.I. 2012/2975, S.I. 2013/982, S.I. 2014/385, S.I. 2015/377, S.I. 2015/664, S.I. 2015/836, S.I. 2018/172, S.I. 2019/966 and S.I. 2019/1103.~~

(c) S.I. 2017/572, amended by S.I. 2017/1012, S.I. 2018/695, S.I. 2018/834 and S.I. 2018/1232.

(d) 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<sup>(a)</sup>;

“electronic communications code” has the same meaning as in section 106(1) (application of the electronic communications code) of the Communications Act 2003<sup>(b)</sup>;

“electronic communications code network” means—

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

“EMG1” means the SEGRO Logistics Park East Midlands Gateway located to the north of East Midlands Airport;

“~~the~~ environmental statement” means the document of that description referred to in Schedule 16 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;

“framework travel plan” means the document of that description referred to in requirement 4 (sustainable transport) and attached at appendix DCO 6.6C of the environmental statement;

“hedgerow” includes hedgerows to which the Hedgerow Regulations 1997<sup>(c)</sup> apply;

“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 plan” means the plan of that description referred to in Schedule 16 and certified as the highway classification plan by the Secretary of State for the purposes of this Order;

“highway plans general arrangement” means the plans of that description referred to in Schedule 16 and certified as the highway plans general arrangement by the Secretary of State for the purposes of this Order;

“highway works” means the works comprised in Works Nos. 6 to 19;

“highway plans long sections” means the document of that description referred to in Schedule 16 (certification of plans and documents) and certified by the Secretary of State as the highway works long sections for the purposes of this Order;

“land plans” means the plans of that description referred to in Schedule 16 and certified as the land plans by the Secretary of State for the purposes of this Order;

“lead local flood authority” means Leicestershire County Council or any successor in function as lead local flood authority or equivalent body pursuant to Section 6(7) of the Flood and Water Management Act 2010;

“local highway authority” means Leicestershire County Council or any successor in function as local highway authority pursuant to Section 1(2) of the 1980 Act;

“local planning authority” means North West Leicestershire District Council or any successor in district planning authority function specified in Section 1(b) of the 1990 Act as local planning authority for the area in which the authorised development is situated;

“maintain” includes inspect, repair, adjust, alter, clear, refurbish or improve, landscape, preserve, remove, decommission, reconstruct, refurbish or replace, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, and any derivative of “maintain” is to be construed accordingly;

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(a) 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) 2003 c. 21. Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).  
(c) S.I. 1997/1160. There are amendments to the Regulations which are not relevant to this Order.

“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 to 5;

“National Highways” means National Highways Limited (company number 09346363), whose registered office is at [Three Snowhill, Snow Hill, Queensway, Birmingham, B4 6GA](#)~~Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4ZZ~~, appointed as highway authority for the highways specified in article 2 (appointment of a Strategic Highways Company) of the appointment of a Strategic Highways Company Order 2015(a) or any successor in function;

“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(b);

“parameters plan” means the plan of that description referred to in Schedule 16 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;

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

“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 34;~~

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

“speed limit plan” means the plan of that description referred to in Schedule 16 and certified as the speed limit plan 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(c);

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

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

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

“sustainable transport strategy” means the document of that description contained in appendix 6B of the environmental statement;

“sustainable transport working group” means the group membership, duties and protocol of which is set out in Schedule 15;

“toucan crossing” means a signalised crossing that allows both pedestrians and cyclists to cross at the same time;

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(a) S.I. 2015/376.

(b) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 but none are relevant to this Order.

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

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

“traffic authority” has the meaning as in section 121A(a)(traffic authorities) of the 1984 Act;  
~~“traffic officer” means a person designated under section 2 (designation of Traffic Officers) of the Traffic Management Act 2004(b);~~

“traffic regulation plan” means the plans of that description referred to in Schedule 16 and certified as the traffic regulation plan by the Secretary of State for the purposes of this Order;

“transport assessment” means the document of that description contained within appendix DCO 6.6A of the environmental statement;

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

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

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

- (a) section 10 (general provision as to trunk roads) or 19(1) (certain special roads and other highways to become trunk roads) of the 1980 Act(d); or
- (b) an order or direction under section 10 of that Act; or
- (c) this Order; or
- (d) any other enactment;

“the undertaker” means SEGRO Properties Limited (company number 00448911) whose registered office is at 1 New Burlington Place, London W1S 2HR;

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

~~“water authority” means Severn Trent Plc (company number 02366619) registered at Severn Trent Centre, 2 St John’s Street, Coventry CV1 2LZ and any successor in function;~~

“warehouse” and “warehousing” means the warehouses or the warehousing constructed as part of the authorised development;

“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

“works plans” means the plans of that description referred to in Schedule 16 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 airspace 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.

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

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

(6) 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 16.

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(a) Section 121A was inserted by section 168(1) of, and paragraph 70 of Part 2 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.

~~(b) 2004 c. 18.~~

~~(c) 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 Parts 1 and 2 of, Schedule 19 to, the Planning and Compensation Act 1991 (c. 34) and section 42(3) of the Planning and Compulsory Purchase Act 2004 (c. 5).~~

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

## 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 and used within the Order limits.

#### **Parameters of authorised development**

4.—(1) 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 Works No. 6 and 8 deviate vertically from the proposed ground levels shown on the highway plans long sections to a maximum of 1.5m above or below the specified levels and where no proposed ground levels are shown on the highway plans long sections deviate vertically from the existing ground level to a maximum of 0.5m above or below the level of the existing highway;
- (c) in respect of Works No. 7 deviate vertically from the proposed ground levels shown on the highway plans long sections to a maximum of 0.2m above or below the specified levels;
- (d) in respect of Works No. 9, 10, 11, 14 and 19 deviate vertically from the proposed ground levels shown on the highway plans long sections to a maximum of 1.5m above or below the specified levels;
- (e) in respect of Works No. 12a, 12b, 13, 15, 17 and 18 deviate vertically from the existing ground levels to a maximum of 0.5m above or below the level of the existing highway; and
- (f) in respect of Works No. 20 deviate vertically from the existing ground levels to a maximum of 0.5 metres above or 2.5 metres below the level of the existing substation.

(2) The maximum limits described in paragraph (1)(a) to (f) do not apply to constrain the authorised development when it is demonstrated by the undertaker, on application, to the local planning authority's satisfaction, and the local planning authority certifies accordingly, that a deviation in excess of these limits would not be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement.

#### **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 5 for the purposes of logistics and advanced manufacturing uses, 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 1 and 2 of Schedule 13 (protective provisions).

(3) Paragraph (1) does not extend to any maintenance works which would be likely to give rise to any materially new or materially different significant effects on the environment that have not been

assessed in the environmental statement 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 provisions of this Order have effect solely for the benefit of the undertaker.

(2) SEGRO Properties Limited, has the sole benefit of the provisions of Part 5 (powers of acquisition) unless SEGRO Properties Limited and the Secretary of State consents to the transfer of the benefit of those provisions.

(3) SEGRO Properties 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 1 and 2 of Schedule 13 (protective provisions) unless—

- (a) SEGRO Properties Limited and the Secretary of State consents to the transfer of the benefit of those provisions; or
- (b) the relevant provisions of paragraph 8 of Part 1 or paragraph 4(6) of Part 2 of Schedule 13 apply in which case the relevant highway authority will 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 1 and 2 of Schedule 13 (protective provisions).

### **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 Order limits 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 relevant street authority but such consent must not be unreasonably withheld and if the relevant street 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 21 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

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

### **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 streets 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 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 34 (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 21 days beginning with the date on which the application was submitted with all relevant information, it is deemed to have granted consent.

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

### **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; and
- (c) temporarily stop up public rights of way to the extent agreed with the local 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.

(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 2 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 1 and 2 of Schedule 13 (protective provisions).

(3) If a highway authority or street authority, other than National Highways, 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 21 days beginning with the date on which the application was made, it is deemed to have granted consent. Any application to which this paragraph applies must include a statement that the provisions of this paragraph (3) apply to that application.

~~(3)~~

(4) If National Highways, as the highway authority, upon receiving an application for consent under paragraph (1) fail to notify the undertaker of its decision before the end of 21 days beginning on the date on which the application was made, the undertaker may serve upon National Highways written notice requiring National Highways to give consent or refusal within a further 14 days beginning with the date upon which National Highways received written notice from the undertaker. Subject to paragraph (5), if by the expiry of the further 14 days National Highways has failed to notify the undertaker of its decision, National Highways is deemed to have granted consent.

(5) Any further notice given by the undertaker to National Highways under paragraph (4) must include a written statement that the provisions of paragraph (4) apply to the relevant application.

(6) 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.

(7) 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.

### **Maintenance of highway works**

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

(2) With effect from the date of the provisional certificate referred to in paragraph 10 of Part 1 of Schedule 13 the highway works to which that certificate relates will be maintained in accordance with paragraph 13 of Part 1 of Schedule 13.

(3) With effect from the date of the final certificate referred to in paragraph 14 of Part 1 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of National Highways.

(4) With effect from the date of the final 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 the local highway authority.

(5) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 10 of Part 1 of Schedule 13 then it is deemed to be dedicated as part of the public highway on the issue of that certificate.

(6) 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 is deemed to be dedicated as part of the public highway on the issue of that certificate.

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

### **Classification of highways**

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

- (a) classified as set out in column (3) 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 Schedule 7.

(2) From the date on which the undertaker notifies the Secretary of State that the new highways described in Schedule 7 have been completed, as evidenced by issue of the provisional certificate in

accordance with paragraph 10 of Part 1 of Schedule 13 (protective provisions), or are open for through traffic, whichever is the earliest—

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

### **Speed limits**

16.—(1) Upon the event listed in column (4) of the table in Part 1 of Schedule 8 (existing orders) the existing orders specified in columns (1) and of that table are varied as set out in column (3) of the table in Part 1 of Schedule 8.

(2) Upon the event listed in column (3) of the table in 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 on the lengths of highway identified in column (2) of the table in Part 2 of Schedule 8.

(3) Without limiting the scope of the specific powers conferred by paragraphs (1) and (2) 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.

(4) The undertaker must not exercise the powers in paragraph (3) 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.

(5) 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.

(6) 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(a) when used in accordance with regulation 3(5) of those Regulations.

### **Traffic regulation**

17.—(1) On occurrence of the event in column (3) of the table in Schedule 9 (new traffic regulation orders), the orders specified in column (2) are to be made in respect of the road specified in column (1) of that table.

(2) 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—

- (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;

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(a) S.I. 2011/935.

- (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 is not to exercise the powers in paragraph (2) 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 (2) is to—

- (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 (power of local authorities to provide parking places) of the 1984 Act<sup>(a)</sup>; and
- (b) be deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004.

(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 (1) at any time.

(6) Expressions used in this article and in the 1984 Act 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 (2) that is accompanied by all relevant information the relevant traffic authority is deemed to have given consent.

~~(7)~~<sup>(8)</sup> Any application to which this article applies must include a statement that the provisions of paragraph (7) apply to that application.

### Agreements with highway authorities

18.—(1) A relevant highway authority and the undertaker may enter into agreements related to the authorised development with respect to—

- (a) the construction and ~~or~~ maintenance of any new highway including any structures carrying the new highway;
- (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;
- ~~(e)~~<sup>(f)</sup> the provision of signage relating to the authorised development within the highway; or
- ~~(f)~~<sup>(g)</sup> 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)—

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(a) 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.

- (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**

19.—(1) Subject to paragraphs (3) to (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 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(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, but must not be unreasonably withheld or delayed.

(5) The undertaker must not do work on, over, under or near an ordinary watercourse (within nine metres of the landward toe of the bank), make changes to any structure that helps control water or 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(b).

(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(c) have the same meaning as in that Act.

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(a) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 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).

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

(c) 1991 c. 57.

~~(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.

~~(10)~~~~(11)~~ Any application to which this article applies must include a statement that the provisions of paragraph (10) apply to that application.

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

20.—(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 14 days' notice has been served on every owner, who is not the undertaker, and occupier of the land.

(3) The notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.

~~(3)~~~~(4)~~ 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
- (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)~~~~(5)~~ 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)~~~~(6)~~ 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.

~~(6)~~~~(7)~~ 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 28 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**

21.—(1) The undertaker must not exercise a power conferred by articles 22 to 25 or 31 to 33 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 local planning authority; but such approval must not be unreasonably withheld or delayed.

(3) The undertaker must provide the local planning authority with such information as the local planning authority may reasonably require relating to the interests in the land affected by the exercise of the powers conferred by articles 22 to 25 or 31 to 33 for the local 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 ~~must 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**

22.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it or is incidental to it, 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(a) (notice of authorisation of compulsory acquisition) of the 2008 Act 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 case may be) was previously subject are discharged or suspended, so far as their continuance would be inconsistent with the exercise of the powers under this Order.

(3) Any person who suffers loss by the extinguishment or 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.

(4) This article is subject to—

- (a) article 23 (compulsory acquisition of rights);
- (b) article 24 (private rights);
- (c) article 27 (time limit for exercise of authority to acquire land and rights compulsorily); and
- (d) article 32(9) (temporary use of land for carrying out the authorised development).

### **Compulsory acquisition of rights**

23.—(1) The undertaker may acquire compulsorily the existing rights over land 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 (notice of authorisation of compulsory acquisition) 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 will 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(b) (other provisions as to divided land) of, and Schedule 2A(c) (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 12 (modifications of compensation and compulsory purchase enactments for creation of new rights)),

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(a) Section 134 was amended by sections 142(1) to (4) and section 237 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2017/16.

(b) Section 8 was amended by paragraphs 1 and 2 of Schedule 17 to the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(c) Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016 (c. 22).

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.

(5) Any person who suffers loss by the extinguishment or 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.

### Private rights

24.—(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)(a) (power of entry) of the 1965 Act,

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 owned by the undertaker within the Order limits which are required to be interfered with or breached for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(3)(4) 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)(5) 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)(6) 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(b) (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6)(7) This article does not apply in relation to any right to which section 138(c) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 32 (statutory undertakers and operators of the electronic communications code network) applies.

(7)(8) Paragraphs (1) to (54) 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;

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(a) 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).

(b) Section 152 was amended by S.I. 2009/1307.

(c) Section 138 was amended by section 23(4) of the Growth and Infrastructure Act 2013 (c. 27) and, S.I. 2017/1285.

- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

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

~~(8)~~(9) If any agreement referred to in paragraph ~~(87)~~(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)~~(10) References in this article to private rights over land include references to any trusts, ~~or~~ incidents, easements, liberties, privileges, rights or advantages annexed to land and adversely affecting other land, including any natural right to support and including restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect to which the land is subject.

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

25.—(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
- (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(a) (further provisions as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections 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.

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(a) Section 10 was amended by S.I. 2009/1307.

(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**

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

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for "compulsory purchase order" substitute "The East Midlands Gateway Phase 2 and Highway Order 202[ ]":
- (b)(c) for the “undertaking” substitute “authorised development”; and
- (e)(d) paragraph 8(3) is not incorporated.

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

27.—(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
- (b) no declaration is to be executed under section 4(b) (execution of declaration) of the 1981 Act as applied by article 29 (application of the 1981 Act).

(2) The authority conferred by article 32 (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.

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

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

(2) In section 4A(1)(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), ~~the three year period mentioned in section 4~~” substitute “section 118(d) of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 27 (time limit for exercise of authority to acquire land and rights compulsorily) of the East Midlands Gateway Phase 2 and Highway Order 20[ ](e)”.

(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 27 (time limit for exercise of authority to acquire land and rights compulsorily) of the East Midlands Phase 2 and Highway Order 20[ ]”.

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- (a) 1981 c. 67.
  - (b) 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).
  - (c) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
  - (d) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).
  - (e) S.I. 2019[ ]

- (4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) omit paragraphs 1(2) and 14(2); and
  - (b) after paragraph 29 insert—

**“PART 4  
INTERPRETATION**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 32 (temporary use of land for carrying out the authorised development) or 33 (temporary use of land for maintaining the authorised development) of the East Midlands Gateway Phase 2 and Highway Order 20[ ].”

**Application of the 1981 Act**

- 29.—(1) The 1981 Act applies as if this Order was a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act), for subsection 2 substitute—
- “(2) This section applies to any Minister, any local or other public authority or any body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 4(1) (execution of declaration) omit the words “in themselves”.
- (5) In section 5(2)(a) (earliest date for execution of declaration) omit the words from “, and this subsection” to the end.
- (6) Omit section 5A(b) (time limit for general vesting declaration).
- (7) In section 5B(1)(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 27 (time limit for exercise of authority to acquire land compulsorily) of the East Midlands Gateway Phase 2 and Highway Order 20[ ]”.
- (8) In section 6(1)(b)(d) (notices after execution of declaration) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(e) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (9) In section 7(1)(a)(f) (constructive notice to treat) omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (10) In Schedule A1(g) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (11) References to the 1965 Act in the 1981 Act are to be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 28 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land and rights under this Order.

**Statutory undertakers and operators of the electronic communications code network**

30. 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

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(a) Section 5 was amended by section 183 of, and paragraph 6 of 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 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 and S.I. 2012/16.  
 (f) 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).  
 (g) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

- (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**

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

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

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

~~(a) any subway or underground building; or~~

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

~~(4)~~(3) Subject to paragraph ~~(4)~~(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)~~(4) Compensation is not payable under paragraph ~~(3)~~(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)~~(5) 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**

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

- (a) enter on and take temporary possession of—
  - (i) the land specified in 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(a) (powers of entry) of the 1965 Act or no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (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.

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(a) 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 S.I. 2009/1307.

(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 1981 Act 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
- (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) Unless provided for in the book of reference and article 22 (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 the authorised development**

33.—(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 is 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(a) (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125(b) (application of compulsory acquisition provisions) 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**

34.—(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

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

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

(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 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

(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.

(8) In this article, “relocation works” means works executed, or apparatus provided, under paragraph (2) of article 34.

~~(b)~~

### **No double recovery**

35. 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**

#### **Operational land for the purposes of the 1990 Act**

36. 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) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

## Defence to proceedings in respect of statutory nuisance

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

38.—(1) Subject to paragraphs (4) to (6), the undertaker may fell or lop any tree, shrub or hedgerow within 25 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:

- (a) not cause unnecessary damage to any tree, shrub or hedgerow;
- (b) ~~and~~ must pay compensation to any person for any loss or damage arising from such activity; ~~and~~
- (c) ~~take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981(f) and the Conservation of Habitats and Species Regulations 2017(g) or any successor acts and regulations.~~

(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 local planning authority to any tree or hedgerow identified to be retained in the landscaping scheme approved under requirement 9 (provision of landscaping).

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

(b) 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 that section which are not relevant to this Order.

(c) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6(b) of Schedule 17 to the Environment Act 1995 (c. 25).

(d) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55).

(e) Section 61(9) was amended by paragraph 15(1) and (3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43) and section 120 of, and Schedule 24 to, the Environment Act 1995 (c. 25).

(f) 1981 c. 69.

(g) S.I. 2017/1012, amended by section 111(6) of the Environment Act 2021 (c. 30), Schedule 15 of the Levelling-up and Regeneration Act 2023, S.I. 2018/1307, S.I. 2019/295, S.I. 2019/579, S.I. 2019/1354, S.I. 2020/94, S.I. 2021/77, S.I. 2022/858, S.I. 2024/924 and S.I. 2025/412.

(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 ~~f~~ree preservation order (as identified in table 2 of the arboricultural assessment) with the prior approval of the local 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 is not to do 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) (replacement of frees) of the 1990 Act does not apply.

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

~~(8)~~(9) In this article, “tree preservation order” has the meaning given in section 198(a) (tree preservation orders) of the 1990 Act.

### **Protective provisions**

39. Schedule 13 (protective provisions) to this Order has effect.

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

40.—(1) When in any requirement or in Parts 1 and 2 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 the approval of details or plans under the requirements) such approval or agreement—

- (a) must not be given if it would permit a change to the development which would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement; and
- (b) is to be treated as if it were a “subsequent application” under the provisions of the 2017 EIA Regulations (whether or not it accords with the definition of “subsequent application” in the 2017 EIA Regulations) and the provisions of the 2017 EIA Regulations apply accordingly.

(2) When any details, plans or other matters have been agreed or approved by the local planning authority under a requirement or the relevant highway authority under a requirement or Parts 1 and 2 of Schedule 13 then such details, plans or other matters may subsequently be amended by agreement with the local 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 a change to the development which would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement.

(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, applies.

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(a) 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 Parts 1 and 2 of, Schedule 19 to, the Planning and Compensation Act 1991 (c. 34) and section 42(3) of the Planning and Compulsory Purchase Act 2004 (c. 5).

## Disapplication, application and modification of legislative provisions

41.—(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) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(a) in relation to watercourses for which Leicestershire County Council is the drainage board concerned;
- (b) section 32(b) (variation of awards) of the Land Drainage Act 1991;
- (c) the provisions of any byelaws made under section 66(c) (powers to make byelaws) of the Land Drainage Act 1991; and
- (d) section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981(d).

(2) The provisions of the Neighbourhood Planning Act 2017(e) do not apply in so far as they relate to the temporary possession of land under articles 32 (temporary use of land for carrying out the authorised development) and 33 (temporary use of land for maintaining the authorised development) of this Order.

(3) 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 is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the 2008 Act(f).

(4) Regulation 4 (requirement for consent) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007(g) 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.

(5) This Order does not constitute a planning permission for the purposes of Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within regulation 5(h) (meaning of planning permission) of the 2010 Regulations.

(6) 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.

(7) Paragraphs (1) to (6) 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.

(8) In this article, “the 2010 Regulations” means the Community Infrastructure Levy Regulations 2010(i).

(7)

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- (a) 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).
  - (b) Section 32 was amended by S.I. 2013/755.
  - (c) 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). There are other amendments to section 66 but none are relevant.
  - (d) 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).
  - (e) 2017 c. 20.
  - (f) Sections 160 and 161 were amended by 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).
  - (g) S.I. 2007/783.
  - (h) Regulation 5 was amended by S.I. 2012/2975 and S.I. 2013/982.
  - (i) S.I. 2010/948 as amended by S.I. 2011/987, S.I. 2012/635, S.I. 2012/666, S.I. 2012/702, S.I. 2012/2975, S.I. 2013/982, S.I. 2014/385, S.I. 2015/377, S.I. 2015/664, S.I. 2015/836, S.I. 2018/172, S.I. 2019/966 and S.I. 2019/1103.

## Planning permission

42.—(1) To the extent any development carried out or used pursuant to a planning permission granted under section 57(c) (requirement of planning permission) of the 1990 Act or compliance with any conditions of that permission is inconsistent with the exercise of any power, right or obligation under this Order or the authorised development—

- (a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission is capable of physical implementation; and
- (b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that planning permission, or compliance with any conditions of that permission, whether inside or outside the Order limits.

(2) Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act including permissions falling under paragraph (1) or otherwise, is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

## Certification of plans and documents

43.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the plans and documents identified in Schedule 16 (certification of plans and documents) for certification that they are true copies of those plans and documents

(2) Where any plan or document set out in Schedule 16 is required to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

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

(4) The undertaker must liaise with the local planning authority to ensure that—

(a) as soon as practicable following the making of this Order, a copy of each of the documents listed in Schedule 16 is included under Part 2 of the local planning register as if this Order were a planning permission granted under the 1990 Act;

(b) a register of those requirements contained in Part 1 of Schedule 2 of this Order (requirements) that provide for further approvals to be given by the local planning authority is included within the local planning register under regulation 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015(a) as if each requirement were a condition of a planning permission granted under the 1990 Act; and

(2)(c) the reference number, the date and the effect of the decision of the Secretary of State of an appeal under paragraph 4 of Part 2 of this Order is included within the local planning register under regulation 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

## Service of notices

44.—(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

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(a) S.I. 2015/595, amended by S.I. 2016/873, S.I. 2016/912, S.I. 2017/402, S.I. 2017/571, S.I. 2017/1013, S.I. 2017/1243, S.I. 2017/1309, S.I. 2018/119, S.I. 2018/695, S.I. 2020/505, S.I. 2021/746, S.I. 2021/814, S.I. 2023/279 and S.I. 2024/50.

(c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(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) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

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

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

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

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date 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.

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(a) 1978 c. 30.

## Arbitration

45. ~~(1) Except Subject to paragraph (2) except~~ where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order, other than a difference which falls to be determined by the tribunal or is the subject of enforcement action under Part 8 of the 2008 Act, 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.

~~(2) Paragraph (1) does not apply to any decisions of the Secretary of State made pursuant to the provisions of this Order.~~

Signed by authority of the Secretary of State for [ ]

*Name*  
Department for [ ]

# SCHEDULES

## SCHEDULE 1

Article 2(1)

### AUTHORISED DEVELOPMENT

#### PART 1

##### COMMERCIAL AND BUSINESS DEVELOPMENT

In the County of Leicestershire and the District of North West Leicestershire—

###### **Works No. 1**

Within the area of land shown on the works plans for Works No. 1, the construction of logistics and advanced manufacturing development including the construction and provision of—

- (a) construction of development plateaux;
- (b) buildings for logistics and advanced manufacturing use including warehouses and ancillary buildings in accordance with the parameters specified on the parameters plan (Document DCO 2.5);
- (c) internal estate roads, maintenance accesses, bus turning areas and footways for vehicle, cycle and pedestrian access routes including signage, gatehouses and barriers;
- (d) roof mounted photovoltaics;
- (e) external plant;
- (f) vehicle maintenance, service yards, washing and refuelling facilities, weighbridges, and electric vehicle charging units;
- (g) hardstandings and container storage;
- (h) parking facilities including HGVs and other vehicles (including cycles), driver welfare facilities and HGV fuelling areas;
- (i) the stopping up of the lengths of existing public rights of way as shown on the access and rights of way plans; and
- (j) the stopping up of existing private accesses as shown on the access and rights of way plans.

###### **Works No. 2**

Within the area shown on the works plans for Works No. 2, the construction of road infrastructure including—

- (a) roads and associated junctions;
- (b) roundabout junctions and turning areas;
- (c) footways and shared use footways/cycleways;
- (d) footpaths, cycle tracks and bridleways as shown on the access and rights of way plans;
- (e) bus stop lay-bys, shelters and signage;
- (f) a signalised toucan crossing connecting to Hyam's Lane (Works No. 6c); and
- (g) the stopping up of existing private accesses as shown on the access and rights of way plans.

###### **Works No. 3**

Within the area shown on the works plans for Works No. 3, the construction of a bus interchange including—

- (a) roads and hardstandings, connecting to the road infrastructure (Works No. 2), including bus turning areas;
- (b) vehicle maintenance, service yards, washing and refuelling facilities and electric vehicle charging units;
- (c) bus interchange building in accordance with the parameters specified on the parameters plan (Document DCO 2.5);
- (d) footways and shared use footways/cycleways; and
- (e) bus stop, shelters and signage.

**Works No. 4**

Within the area shown on the works plans for Works No. 4, the construction of HGV parking including—

- (a) roads and hardstandings, connecting to the road infrastructure (Works No. 2), including HGV turning areas, signage, gatehouses and barriers;
- (b) vehicle maintenance, service yards, washing and refuelling facilities, weighbridges, and electric vehicle charging units;
- (c) welfare facilities and amenity buildings; and
- (d) footways and shared use footways/cycleways.

**Works No. 5**

Within the area shown on the works plans for Works No. 5, the provision of hard and soft landscape works including—

- (a) earthworks to create screening bunds;
- (b) soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements;
- (c) basins for surface water attenuation;
- (d) new and diverted footpaths, bridleways and cycle tracks;
- (e) wildlife habitat creation and appropriate improvements to connectivity between areas of ecological interest;
- (f) amenity open space;
- (g) fencing and ~~for~~ landscape screening;
- (h) the stopping up of existing public rights of way as shown on the access and rights of way plans; and
- (i) signage and totems located within the areas indicated on the parameters plan.

**Works No. 6**

Within the area shown on the works plans for Works No. 6, the creation of an access junction on the A453 the general arrangement of which is shown on the highway plans general arrangement including—

- (a) enlargement of the A453 Hunter Road roundabout to increase its capacity;
- (b) construction of the private means of access into the main site connecting to the road infrastructure (Works No. 2);
- (c) a signalised toucan crossing across the A453; and
- (d) the stopping up of existing private accesses as shown on the access and rights of way plans.

### **Works No. 7**

Within the area shown on the works plans for Works No. 7, works to Hyam's Lane the general arrangement of which is shown on the highway plans general arrangement including—

- (a) surfacing of the western section of Hyam's Lane and construction of a turning head;
- (b) provision of cycle signage at the junction between Hyam's Lane and Grimes Gate;
- (c) works to the eastern section of Hyam's Lane including:
  - (i) the stopping up of Hyam's Lane to the extents shown on the access and rights of way plans;
  - (ii) the construction of a cycle track as shown on the access and rights of way plans; and
  - (iii) the stopping up of existing private accesses as shown on the access and rights of way plans.

## **PART 2**

### **ALTERATION OF EXISTING HIGHWAYS**

In the County of Leicestershire and in the District of North West Leicestershire —

### **Works No. 8**

Within the area shown on the works plans for Works No. 8, works to the M1 northbound the general arrangement of which is shown on the highway plans general arrangement including—

- (a) construction of a new diverge connecting to the link road to the A50 westbound (Works No. 9);
- (b) demolition and construction of new or alterations to existing gantries and gantry mounted signs and signals;
- (c) alterations to the existing M1 northbound exit slip road to M1 junction 24; and
- (d) alterations to the road markings at the merge of the M1 northbound entry slip road at M1 junction 23A.

### **Works No. 9**

Within the area shown on the works plans for Works No. 9, the construction of the link road from the M1 northbound to the A50 westbound the general arrangement of which is shown on the highway plans general arrangement including—

- (a) construction of a new motorway link road between the M1 northbound (Works No. 8) and the A50 westbound (Works No. 10);
- (b) construction of a bridge taking the link road over the A453; and
- (c) alterations to the screening bunding between M1 junction 24 and the EMG1 rail terminal.

### **Works No. 10**

Within the area shown on the works plans for Works No. 10, works to the A50 westbound the general arrangement of which is shown on the highway plans general arrangement including—

- (a) construction of a new merge connecting to the link road from the M1 northbound (Works No. 9);
- (b) widening of the A50 to the north of the new merge from the link road; and
- (c) construction of a lane reduction taper to reduce the number of lanes-drop on the A50 westbound from three to two, including provision for merge overrun.

### **Works No. 11**

Within the area shown on the works plans for Works No. 11, works to the link road from the M1 southbound and A50 eastbound to M1 junction 24 the general arrangement of which is shown on the highway plans general arrangement including—

- (a) widening of the link road between the M1 junction 24A A50 southbound diverge and M1 junction 24 A50 southbound merge from one to two lanes; and
- (b) widening of the link road between the M1 junction 24 A50 southbound merge and the M1 junction 24 roundabout from two to three lanes.

### **Works No. 12**

Within the area shown on the works plans for Works No. 12, works to the M1 junction 24 roundabout and A453 approaches the general arrangement of which is shown on the highway plans general arrangement including—

- (a) works to the west side of the M1 junction 24 roundabout and A453 northbound approach including—
  - (i) widening of the circulatory carriageway of the roundabout provide three lanes from the M1 northbound to A453 northbound and two lanes from the A453 northbound to the M1 northbound;
  - (ii) removal of the segregated left-turn lane from the A453 northbound to A50 westbound;
  - (iii) removal of the lane reduction taper to reduce the number of lanes ~~drop~~ at the A50 westbound exit from the roundabout; and
  - (iv) alterations to the traffic signals, road makings and signage in connection with (i) to (iii) above; and
- (b) alterations to the west side of the M1 junction 24 roundabout and the A453 southbound approach road makings and signage to demarcate that lanes two and three at the A453 Southbound roundabout stop line are to be used for onward progression to the A453 southbound.

## **PART 3**

### **ASSOCIATED DEVELOPMENT**

In the County of Leicestershire and in the District of North West Leicestershire —

Associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising—

### **Works No. 13**

Within the area shown on the works plans for Works No. 13, improvements to the access junction to EMG1 the general arrangement of which is shown on the highway plans general arrangement including widening of the A453 southbound within the junction to provide two right turning lanes into EMG1.

### **Works No. 14**

Within the area shown on the works plans for Works No. 14, construction of the active travel link between the access junction to EMG1 and the A453 west of the Finger Farm roundabout the general arrangement of which is shown on the highway plans general arrangement including—

- (a) construction of a 3m wide shared use footway/cycleway alongside the A453 between the EMG1 access junction and the northern end of the existing A453 lay-by;

- (b) construction of a 3m wide public cycle track as shown on the access and rights of way plans within land to the west of the A453 between the northern end of the existing A453 lay-by and the A453 to the west of Finger Farm roundabout, connecting to the authorised development (Works No. 6); and
- (c) the stopping up of the lengths of existing public rights of way as shown on the access and rights of way plans.

#### **Works No. 15**

Within the area shown on the works plans for Works No. 15, provision of an uncontrolled crossing on the A453 at the East Midlands Airport signalised access junction including—

- (a) works to provide an uncontrolled crossing over the A453 within the traffic signal junction; and
- (b) a footway along the south side of the A453 connecting to the new public right of way constructed within the main site (Works No. 5) as shown on the access and rights of way plans.

#### **Works No. 16**

Within the area shown on the works plans for Works No. 16, alterations to verge and gantry mounted signs on the M1 northbound approach to Junction 23A shown on the highway plans general arrangement.

#### **Works No. 17**

Within the area shown on the works plans for Works No. 17, works to Long Holden the general arrangement of which is shown on the highway plans general arrangement including—

- (a) works to connect Long Holden to the new public rights of way constructed within the main site (Works Nos. 5 and 21) as shown on the access and rights of way plans;
- (b) works to control access to Long Holden by vehicles by provision of lockable gates with bypass arrangement for pedestrians, cyclists and horse-riders; and
- (c) the stopping up of existing private accesses as shown on the access and rights of way plans.

#### **Works No. 18**

Within the area shown on the works plans for Works No. 18, works to A42/A453 Finger Farm roundabout the general arrangement of which is shown on the highway plans general arrangement including—

- (a) widening of the A453 westbound exit and provision of new and replacement directional signage within the strategic road network; and
- (b) widening of the A453 westbound exit and provision of new and replacement directional signage within highway maintained by the local highway authority.

#### **Works No. 19**

Within the area shown on the works plans for Works No. 19, the upgrade of public footpath L57 to a cycle track the general arrangement of which is shown on the highway plans general arrangement.

#### **Works No. 20**

Within the area shown on the works plans for Works No. 20, an upgrade to the existing substation to provide power to the authorised buildings.

## Works No. 21

Within the area shown on the works plans for Works No. 21, the provision of the community park including—

- (a) hard and soft landscaping, including biodiversity enhancements and wildlife habitat creation;
- (b) basins for water attenuation;
- (c) fencing and ~~for~~ landscape screening; and
- (d) the stopping up of existing and creation of new public rights of way as shown on the access and rights of way plans.

## Further works

The following further works provided that such works are not likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement 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, 20 and 21—
  - (a) site preparation works, site clearance, regrading and adjustments to ground levels and excavation;
  - (b) works associated with archaeology and heritage investigation;
  - (c) removal of existing hedgerows and making good of existing hedgerows;
  - (d) swales, landscaping and boundary treatments, earthworks and earthwork retaining structures;
  - (e) the provision of footways, cycle tracks, bridleways and footpath linkages;
  - (f) water supply works, foul drainage provision, foul pumping stations, surface water management systems, balancing ponds (surface and underground), attenuation and culverting;
  - (g) connections to mains services and provision of utilities infrastructure including primary and secondary substations and pressure reducing stations;
  - (h) diversion and provision of utilities including foul water sewers;
  - (i) the clearing of and making good to existing watercourses, works to alter the course of or otherwise interfere with a watercourse;
  - (j) ducting;
  - (k) public art and amenities;
  - (l) traffic signs, traffic signals and carriageway markings;
  - (m) lighting and electrical equipment;
  - (n) CCTV equipment;
  - (o) temporary works including but not limited to—
    - (i) traffic management;
    - (ii) earthworks, trenching, ducting and stock piling of aggregates, topsoil and subsoil materials;
    - (iii) statutory undertakers plant diversions;
    - (iv) haul roads;
    - (v) road construction;
    - (vi) signage and fencing;
    - (vii) construction compounds including temporary buildings, welfare facilities, batching plants, storage and parking areas; and

- (viii) drainage systems; 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 5, 20 and 21.
- (2) Within the area of land described on the works plans as Works Nos. 6 to 19 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) motorway communications equipment;
  - (m) retaining walls;
  - (n) diversion and provision of utilities including foul water sewers;
  - (o) temporary works including but not limited to—
    - (i) traffic management;
    - (ii) earthworks, trenching, ducting and stock piling of aggregates, topsoil and subsoil materials;
    - (iii) statutory undertakers plant diversions;
    - (iv) haul roads;
    - (v) road construction;
    - (vi) signage and fencing;
    - (vii) construction compounds including temporary buildings, welfare facilities, batching plants, storage and parking areas; and
    - (viii) drainage systems; and
  - (p) such other works as may be necessary or expedient for the purpose of or in connection with the construction of Works Nos. 6 to 19.

## SCHEDULE 2 REQUIREMENTS

Article 2(1) and 42

### PART 1 REQUIREMENTS

#### Interpretation

1. In this Schedule unless the context requires otherwise—

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

“construction and environmental management plan” means the document of that description contained in appendix 3A of the environmental statement (Document DCO 6.3A);

~~“non-working days” means a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(b);~~

~~“CTMP” means the detailed construction traffic management plan contained in appendix 03 of the construction and environmental management plan;~~

~~“the design approach document” means the document of that description referred to in Schedule 16 (certification of plans and documents) and certified by the Secretary of State as the design approach document for the purposes of this Order;~~

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

~~“employment scheme” means a scheme for the provision of employment and training for those employed at the authorised development comprising—~~

~~(a) details of how the initial employment opportunities at the authorised development will be advertised and how liaison with the local planning authorities and Leicestershire County Council or any successor body will take place with the objective of maximising access to information about such employment opportunities for the local workforce and, in particular, unemployed persons;~~

~~(b) details of how training opportunities will be provided for employees;~~

~~(c) details of an apprenticeship scheme;~~

~~(d) details of measures to be taken to provide college and/or work placement opportunities for students and unemployed persons within the locality;~~

~~(e) other measures where appropriate (including but not limited to)—~~

~~(i) a recruitment/training programme for construction employees with a focus on the job centres in locations where employment deprivation has been identified;~~

~~(ii) provision of skills training; and~~

~~(iii) preference to be given to procurement of local products and services where efficient, cost effective and lawful; and~~

~~(f) details of the reporting and monitoring of the above measures;~~

“flood risk assessment” means the document of that description contained in appendix 13G of the environmental statement;

~~“HGV park” means the HGV park to be provided within the main site for use by HGV traffic to the main site pursuant to Works No. 4 as described in schedule 1 (authorised development);~~

~~“highway works” means Works Nos. 6 to 19 as described in schedule 1 (authorised development);~~

~~“illustrative landscape masterplan” means the document of that description contained in appendix 10D of the environmental statement;~~

“landscape and ecological management plan” means the document of that description contained in appendix 9J of the environmental statement; and

~~“lighting strategy” means the document of that description contained in appendix 11A of the environmental statement;~~

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

“phase” means a phase of the authorised development approved by the local planning authority in accordance with requirement 3.

~~“relevant body” means, in respect of each of the highway works, the body who is the highway authority for the highway affected by the relevant highway works;~~

~~“relevant highway authorities” means both the local highway authority and National Highways;~~

~~“sustainable drainage statement” means the document of that description contained in appendices 13J, 13K and 13L of the environmental statement;~~

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

~~“sustainable transport strategy” means the document of that description contained in appendix 6B of the environmental statement;~~

~~“sustainable transport working group” means the group membership, duties and protocol of which is set out in Schedule 15.~~

## **Time limit**

2. The authorised development must commence within 5 years of the date on which 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 which shall be substantially in accordance with the construction and environmental management plan unless otherwise approved by the local planning authority have been submitted to and approved in writing by the local planning authority. Where they are located within the relevant component of the authorised development, the components for the purposes of this schedule are—

- (a) earthworks;
- (b) roads within the main site;
- (c) surface water and foul drainage;
- (d) authorised buildings;
- (e) landscaping works and planting, including ecological mitigation;
- (f) any temporary means of enclosure;
- (g) any temporary site notices or advertisements; and
- (h) services.

(2) The authorised development must be carried out in accordance with the approved details unless otherwise agreed in writing with the local 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 local planning authority.

(2) Prior to the occupation of each individual authorised building but excluding any ancillary buildings an occupier-specific travel plan is to be submitted to, and approved in writing by, the local planning authority. Each specific travel plan must be in accordance with the framework travel plan or any approved variation thereto pursuant to sub-paragraph (1) and must be complied with at all times following the occupation of the relevant building to which it relates.

(3) The sustainable transport strategy must be implemented and complied with at all times in collaboration with but subject to any amendments approved by the sustainable transport working group.

(4) Where in the framework travel plan or sustainable transport strategy reference is made to employees in the context of sustainable transport measures then that reference must be construed as including all persons attending the authorised development as their usual place of work and is not to be confined solely to persons who are directly employed by an occupier of the authorised development.

(5) Prior to the commencement of the construction of any authorised buildings excluding any ancillary buildings, the undertaker must establish the sustainable transport working group to discharge the role of that group in relation to the provisions of the framework travel plan and sustainable transport strategy in accordance with the provisions of Schedule 15 (membership, role and protocol of the sustainable transport working group).

(6) The membership, role and protocol of the sustainable transport working group will be as set out in Schedule 15 and the group will be administered by the undertaker, and operated, in accordance with the provisions of Schedule 15.

(7) The sustainable transport working group is to continue its duties until the expiry of five years from full occupation of the authorised development unless otherwise agreed with the local planning authority.

### **Design and phasing of highway works**

5.—(1) The highway works must be carried out in accordance with details first submitted to and approved by the relevant body-highway authority in accordance with the provisions of Parts 1 and 2 of Schedule 13 (protective provisions).

6. The undertaker must complete the highway works so that they are open for traffic prior to occupation of any authorised buildings or such alternative later stage or event as agreed by the relevant body-highway authority.

### **Detailed design approval**

7.—(1) The details of each component of the authorised development on the main site referred to in requirement 3 (components of development and phasing), the community park and the substation must be in accordance with the parameters plan and the principles set out in the design approach document. The design approach document can be reviewed and updated by the undertaker in agreement, and in writing, with the local 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 local planning authority. The details of each component must include details of the following where they are located within that component—

- (a) embankments and bunds;
- (b) hard landscaping, cycle tracks, footpaths and bridleways;
- (c) surface and foul drainage;
- (d) bicycle, motorcycle and vehicle parking;
- (e) built development design and layout (including external materials and plant and sustainable energy measures unless otherwise agreed in writing with the local planning authority);
- (f) location and quantum of bin stores;

- (g) site levels and finished floor levels;
- (h) estate roads;
- (i) weighbridges;
- (j) gatehouses;
- (k) public transport infrastructure;
- (l) bicycle storage;
- (m) any temporary means of enclosure, including site compounds;
- (n) any temporary site notices or advertisements;
- (o) fencing walls and other means of enclosure (including acoustic fencing) which must not exceed be a maximum height of 3 metres above ground level;
- (p) design of access points to public rights of way to deter any unauthorised use;
- (q) location of interpretation boards and litter bins; and
- (r) substations.

(3) The details in requirement 7(2)(a) to (r) can be subject to alteration by approval in writing from the local planning authority. The authorised development must be carried out in accordance with the details as approved in writing by the local planning authority from time to time.

“the design approach document” means the document of that description referred to in Schedule 16 (certification of plans and documents) and certified by the Secretary of State as the design approach document for the purposes of this Order;

8. In this requirement, “the design approach document” means the document of that description referred to in Schedule 16 (certification of plans and documents) and certified by the Secretary of State as the design approach document for the purposes of this Order.

### **Provision of landscaping**

9.—(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 landscaping scheme for that component has been submitted to and approved in writing by the local 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 masterplan 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.

(2) In this requirement, “illustrative landscape masterplan” means the document of that description contained in appendix 10D of the environmental statement;

(e)

## Landscape and ecological management plan

10.—(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 local planning authority.

(2) The ongoing management and maintenance of the green infrastructure (as described in the landscape and ecological management plan) following its completion must be agreed in writing with the local planning authority prior to the occupation of any warehouse, such management and maintenance must be in accordance with the principles set out in the landscape and ecological management plan and must be carried out as approved for the life of the authorised development.

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

(4) If within a period of five years from the date of provision of any landscaping that landscaping, or any landscaping provided in replacement for it, is removed, uprooted or destroyed or dies, replacement planting of the same type as that originally planted shall be provided at the same place, unless the local planning authority gives its written consent to any variation.

## Construction environmental management plan

11.—(1) ~~Save for archaeological investigation, ecological mitigation works and geotechnical or ground contamination investigation, No~~ phasepart 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 phasepart of the authorised development, has been submitted to and approved in writing by the local planning authority or the relevant highway authority where the P-CEMP relates to the highway works.

(2) Each P-CEMP shall be drafted in accordance with the principles and management plans set out in the construction environmental management plan, and, insofar as on-site construction plant are concerned, having regard to the principles in “The Institute of Air Quality Management guidance on assessing dust emissions”, current from time to time, ~~has been submitted to and approved in writing by the local planning authority or the relevant highway authority where the P-CEMP relates to the highway works.~~

~~11.~~(3) Unless agreed otherwise with the local planning authority or the relevant highway authority where the P-CEMP relates to the highway works, each P-CEMP shall include for that phase:

- (a) Aa dust management plan;
- (b) Aa soil management plan;
- (c) Aa foul water management plan;
- (d) Aa material management plan; and
- (e) Aa construction traffic management plan which shall be substantially in accordance with the ~~CTMP.~~ detailed construction traffic management plan contained in appendix 03 of the construction and environmental management plan.

~~(e)~~

(4) Each P-CEMP is to be reviewed and updated if necessary to address unacceptable impacts arising from construction works.

(5) Each P-CEMP (and revision) must be submitted by the undertaker for approval in writing by the local planning authority or the relevant highway authority where the P-CEMP (or revision) relates to the highway works.

~~(2)~~(6) All construction works must be carried out in accordance with the relevant P-CEMP (as revised) as approved.

## Earthworks

12. Where earthworks are required for any component of the authorised development on the main site or the community park then that component shall not commence (excluding archaeological investigation, ecological mitigation works and geotechnical or ground contamination investigation) 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 local planning authority, such details to be substantially in accordance with the soil management plan approved as part of the relevant P-CEMP. The details can be subject to alteration with the approval in writing of the local planning authority. All earthworks must be carried out in accordance with the details as approved.

## Archaeology and built heritage

13.—(1) No ~~part-phase~~ of the authorised development is to commence until the undertaker has commissioned a programme of further exploratory archaeological investigation to identify areas which should be excavated and archaeological remains recorded which has been submitted to and approved in writing by the local 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-phase~~ 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 local 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 local planning authority.

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

## Lighting details

14.—(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 component must be submitted to and approved in writing by the local planning authority. The lighting details must accord with the principles established in the lighting strategy contained in appendix 11A of the environmental statement and include the means of operation and the hours of operation.

(2) The approved lighting scheme must be implemented and maintained as approved in writing by the local 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 local 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**

15.—(1) No construction of an authorised building but excluding any ancillary buildings must start until a BREEAM Pre-Assessment Report based upon the BREEAM 2023 method (or equivalent) has been submitted to and approved in writing by the local planning authority demonstrating that the authorised building concerned is expected to achieve at least a BREEAM 2023 “Excellent” rating.

(2) The construction of each of the authorised buildings but excluding any ancillary buildings 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 local planning authority within three months of completion or occupation (whichever is the sooner) of the relevant authorised building confirming that the measures in respect of that authorised building committed to within the Pre-Assessment Report have been implemented.

### **Flood risk and surface water drainage**

16. The authorised development must be carried out in accordance with the mitigation measures detailed within the flood risk 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(a), whichever of these is the body having jurisdiction over the watercourse in question.

17.—(1) No **partphase** of the authorised development shall commence (excluding any preparatory earthworks or site levelling but excluding archaeological investigation, ecological mitigation works and geotechnical or ground contamination investigation) until a surface water drainage scheme for that **partphase** based on sustainable drainage principles and the assessment of the hydrological and hydrogeological context of that **partphase** of the authorised development in accordance with the sustainable drainage statement and flood risk assessment has been submitted to and approved in writing by the local lead flood authority. The scheme must include:

- (a) the limitation of surface water run-off generated by all rainfall events up to the critical 1 in 100 year return period rainfall event (plus 25% for climate change) to the equivalent greenfield rate or lowest practical rate;
- (b) detailed design (plans, cross sections and calculations) in support of any surface water drainage scheme, including details of any attenuation system and the outfall arrangements; and
- (c) details in relation to the management of surface water on site during construction of the development in order to mitigate flood risk, and for the removal of suspended solids from surface water discharging from the site. Details shall demonstrate how surface water will be managed on site to prevent an increase in flood risk during the various construction stages of development from initial site works through to completion. This shall include temporary attenuation, additional treatment, controls, maintenance and protection.

(2) No **partphase** of the authorised development shall be occupied until details of the long-term maintenance of the surface water drainage system within that **partphase** have been submitted to and approved in writing by the local lead flood authority. The maintenance details must include:

- (a) details of routine maintenance, access, remedial actions and monitoring of the separate elements of the surface water drainage system that will not be adopted by a third party; and
- (b)** where relevant, procedures that must be implemented in the event of pollution incidents.

(3) In this requirement, “sustainable drainage statement” means the document of that description contained in appendices 13J, 13K and 13L of the environmental statement.

~~(b)~~

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(a) 2010 c. 29.

## Foul water drainage

18. 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 local 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 local planning authority. Such details must be implemented as approved by the local planning authority.

## Construction hours

19.—(1) Subject to sub-paragraph (2), construction works on the main site (which for the purposes of this requirement excludes archaeological investigations and any non-intrusive internal fit-out works but does 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 and not at all on ~~non-working days~~Sundays nor on public holidays, unless otherwise agreed in writing by the local planning authority. Outside the above periods the following working is permitted—

- (a) pre-planned construction works to highway infrastructure requiring possessions where first notified to the local planning authority and local residents;
- (b) emergency works; and
- (c) works which do not give rise to significant noise or vibration ~~effects which cause an adverse impact~~ 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 or before 08:00 and after 13:00 on Saturdays, and not at all on ~~non-working days~~Sundays nor on public holidays, unless otherwise agreed in writing by the local planning authority.

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

## Construction noise

20. The management of construction noise must be carried out in accordance with the relevant P-CEMP. If ~~requested to do so by the local~~ired by the reliant planning authority, ~~the undertaker shall apply for~~ consents under section 61 of the Control of Pollution Act 1974(a) ~~are to be sought~~ for the works or specific phases of the works.

## Noise during the operational phase

21. —(1) Prior to installation, details of:

- (a) all fixed mechanical and ventilation plant (including substations) and any other noise-making machinery that is intended to be used on any of the warehouses or other buildings within the main site; and
- (b) ~~or~~all mobile plant (including HGV chiller units) that is intended to be used in relation to any of the warehouses or other buildings within the main site

~~that is intended to be used on any of the warehouses or other buildings within the main site,~~ must be submitted to and approved in writing by the local planning authority, including details of mitigation measures to any such machinery or plant. This will include an assessment of the expected noise impact at relevant receptors using the methodology set out in BS 4142:2014+A1:2019 (BSI Standards: Methods for rating and assessing industrial and commercial sound) or such other methodology as may replace it or as may be approved in writing by the local planning authority. The assessment will ~~consider~~have regard to the likely noise from the proposed plant and machinery to demonstrate compliance with

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(a) 1974 c 40.

government and local policy on noise. ~~The installation of all fixed mechanical and ventilation plant (including substations) and any other noisemaking machinery or mobile plant (including HGV chiller units) must be carried out in accordance with the approved details. Any fixed plant or ventilation equipment or mobile plant must be installed and operated in accordance with manufacturers' instructions at all times.~~

(2) The installation of all fixed mechanical and ventilation plant (including substations) and any other noisemaking machinery or mobile plant (including HGV chiller units) must be carried out in accordance with the approved details.

21. Any fixed plant or ventilation equipment or mobile plant must be installed and operated in accordance with manufacturers' instructions at all times.

(3) Any fixed mechanical and ventilation plant (including substations) and any other noisemaking machinery or mobile plant (including HGV chiller units) must be operated in accordance with manufacturers' instructions at all times.

(4) Subject to Save where prevented by health and safety requirements, broadband or white noise reversing alarms must be operated on mobile plant.

### Contamination risk

22.—(1) No ~~re~~component 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 14 of the environmental statement until:

- (a) further investigations and a ~~risk-based~~ 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
- (b) the ~~assessment~~is has been submitted to and approved in writing by the local planning authority.

22.(2) The risk-based land contamination assessment referred to in sub-paragraph (1) must be carried out in accordance with the Environment Agency's Land Contamination Risk Management manual (or any successor document) ("the LCRM").

(3) Should any unacceptable risks be identified in the ~~risk-~~based ~~land~~ain 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 the LCRM. 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) the LCRM.

(4) 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~~area, 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.

### Verification

23.—(1) Prior to the use of any ~~component~~part of the completed authorised development—

- (a) if no remediation scheme or verification was required under requirement 22 (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 ~~component part~~ of the completed authorised development; or

(b) if a remediation scheme and verification plan were agreed under requirement 22 for the relevant ~~component part~~ of the completed authorised development:

(i) a verification investigation must be undertaken in line with the agreed verification plan for any works outlined in the remedial scheme; and

(ii) a report showing the findings of the verification investigation relevant to that ~~component 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

24. 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 local planning authority such scheme to be substantially in accordance with the site waste and material management plan (document DCO 6.18E). The scheme may be amended by agreement with the local planning authority. The approved schemes must be implemented and maintained for the duration of the operation of that component of the authorised development.

### Employment

25.—(1) Prior to the commencement of the construction of any ~~component part~~ of the authorised development an employment scheme in respect of employees to be involved in the construction of that ~~component part~~ of the authorised development must be submitted to and approved in writing by the local planning authority.

(2) Prior to the occupation of the first warehouse to be occupied, and any subsequent change in occupation of any warehouse, an employment scheme, in respect of employees to be employed in that warehouse, must be submitted to and approved in writing by the local planning authority.

(3) The approved employment schemes in respect of employees to be involved in construction of the authorised development and in each warehouse must be implemented and complied with at all times.

(4) In this requirement, “employment scheme” means a scheme for the provision of employment and training for those employed at the authorised development comprising—

(a) details of how the initial employment opportunities at the authorised development will be advertised and how liaison with the local planning authorities and Leicestershire County Council or any successor body will take place with the objective of maximising access to information about such employment opportunities for the local workforce and, in particular, unemployed persons;

(b) details of how training opportunities will be provided for employees;

(c) details of an apprenticeship scheme;

- (d) details of measures to be taken to provide college or work placement opportunities for students and unemployed persons within the locality;
  - (e) other measures where appropriate (including but not limited to)—
    - (i) a recruitment/training programme for construction employees with a focus on the job centres in locations where employment deprivation has been identified;
    - (ii) provision of skills training; and
    - (iii) preference to be given to procurement of local products and services where efficient, cost effective and lawful; and
  - (f) details of the reporting and monitoring of the above measures.
- ~~(3)~~

### **Community liaison group**

26.—(1) Prior to the commencement of the authorised development the undertaker must establish a community liaison group to facilitate liaison between various bodies in relation to the construction and operation of the authorised development.

(2) The following parties must be provided with the opportunity to participate in the community liaison group—

- (a) the undertaker;
- (b) the local planning authority;
- (c) the relevant local highway authority;
- (d) National Highways;
- (e) representatives from Diseworth Parish Council;
- (f) representatives from Breedon on the Hill Parish Council;
- (g) representatives of Kegworth Parish Council; and
- (h) any other stakeholder that the local planning authority wishes to be included.

(3) The community liaison group must be administered by the undertaker, and operated, in accordance with a protocol agreed with the local planning authorities in writing prior to the commencement of the authorised development.

(4) The community liaison group is to continue to meet until the expiry of five years from full occupation of the authorised development unless otherwise agreed with the local planning authorities.

### **Mezzanines**

27. No more than 200,000 square metres of total cumulative mezzanine floorspace shall be provided ancillary to the ground floor logistics and advanced manufacturing development uses. Such floorspace shall be used solely for the purposes of storage and distribution. For the avoidance of doubt, no office use shall be permitted on the mezzanine floors.

### **Community park**

28. —(1) Prior to occupation of any of the authorised buildings on the main site but excluding any ancillary buildings, the community park must be provided substantially in accordance with the community park plan.

(2) Following provision of the community park, the undertaker must—

- (a) make the community park available for use by the general public for the purposes of recreation and play in perpetuity; and
- (b) manage and maintain the community park or ~~proeure~~secure the management and maintenance of the community park in accordance with a management and maintenance scheme approved by the local planning authority.

## HGV park

29. —(1) Prior to occupation of any of the authorised buildings on the main site but excluding any ancillary buildings, the HGV park must be completed and available for use.

(2) Use of the HGV park shall not commence until a management plan for the HGV park has been submitted to and approved in writing by the local planning authority. The HGV park shall be managed in accordance with the approved management plan or any variations to it approved by the local planning authority.

(3) In this requirement, “HGV park” means the HGV park to be provided within the main site for use by HGV traffic to the main site pursuant to Works No. 4 as described in schedule 1 (authorised development).;

(2)

## PART 2

### 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 of this Part of this Schedule, eight weeks 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 of this Part of this Schedule, eight weeks 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 20 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.

#### Fees

3.—(1) Where an application is made to the discharging authority for written consent, agreement or approval in respect of a requirement, a fee calculated in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a), as though the application were a reserved matter application, is to be paid to that authority.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 42 days of—

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(a) S.I. 2012/2920, as amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/2026, S.I. 2015/643 and S.I. 2017/1314.

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph 1 of this Part of this Schedule, unless within that period the undertaker agrees, in writing, that the fee is to be retained by the discharging authority and credited in respect of a future application.

## Appeals

4.—(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 of this Part of this Schedule;
- (c) on receipt of a request for further information under paragraph 2 of this Part of this Schedule 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 of this Part of this Schedule;
- (b) the undertaker must submit the appeal documentation to the Secretary of State 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 are to 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, as soon as reasonably practicable.

(4) The appointment of the person pursuant to paragraph 2(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(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 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

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(a) The appointment is made at the discretion of the Secretary of State, and such appointment may be made by the Planning Inspectorate on behalf of the Secretary of State.

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 time limits 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<sup>(a)</sup>.

(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 as amended from time to time or any replacement of it.

## **Interpretation of Part 2 of Schedule 2**

5. In this Part of this Schedule—

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

“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

“working day” means a day other than Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(b).

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(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 sections 78 and 79 of the 2008 Act. See the National Infrastructure Planning website for more information: <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

## SCHEDULE 3

Article 8

### STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street within the Order limits subject to street works</i>
District of North West Leicestershire	A42 trunk road
District of North West Leicestershire	A453 trunk road (maintainable by National Highways)
District of North West Leicestershire	A453 (maintainable by the local highway authority)
District of North West Leicestershire	A50 trunk road
District of North West Leicestershire	M1 motorway
District of North West Leicestershire	Diseworth Lane
District of North West Leicestershire	Long Holden
District of North West Leicestershire	Grimes Gate
District of North West Leicestershire	Hyam's Lane
District of North West Leicestershire	Moira Dale

SCHEDULE 4

Article 10

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
District of North West Leicestershire	Hyam's Lane (part)	The existing highway within the area marked i on the access and rights of way plans (Document DCO 2.4A) shown edged blue with grey and white hatching	Proposed privately maintainable cycle track between the points marked 6-9 on the access and rights of way plans (Document DCO 2.4A) shown with a dashed pink line

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)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>Substitute to be provided</i>	<i>(5)</i> <i>Stage of the authorised development by which time the stopping up must be completed</i>
Parish of Kegworth and Parish of Long Whatton and Diseworth	Public footpath L45 (part)	The existing footpath between the points marked 1-2 on the access and rights of way plans (Document DCO 2.4B) shown with a dashed red line	Proposed cycle track maintainable at public expense between the points marked 3-4 on the access and rights of way plans (Document DCO 2.4B) shown with a dashed light green line	Completion of Works No. 14
Parish of Long Whatton and Diseworth	Public footpath L45 (part)	The existing footpath between the points marked 5-6 on the access and rights of way plans (Document DCO 2.4A) shown with a dashed red line	Proposed cycle track maintainable at private expense between the points marked 6-7 on the access and rights of way plans (Document DCO 2.4A) shown with a dashed pink line	Completion of Works Nos. 2 and 7
Parish of Long Whatton and Diseworth	Public footpath L45 (part)	The existing footpath between the points marked 6-8 on the access and rights of way plans (Document DCO 2.4A) shown with a dashed red line	Proposed cycle track maintainable at private expense between the points marked 6-9 on the access and rights of way plans (Document DCO 2.4A) shown with a dashed pink line	Completion of Works No. 7

			Proposed public bridleway between the points marked 8-9 on the access and rights of way plans (Document DCO 2.4A) shown with an unbroken yellow line	
Parish of Castle Donington and Parish of Lockington cum Hemington	Public footpath L57	The existing footpath between the points marked 17-18 on the access and rights of way plans (Document DCO 2.4B) shown with a dashed red line	Proposed cycle track maintainable at public expense between the points marked 17-18 on the access and rights of way plans (Document DCO 2.4B) shown with a dashed light green line	Completion of Works No. 19

## PART 2

### NEW PUBLIC RIGHTS OF WAY TO BE CREATED

<i>(1)</i> Area	<i>(2)</i> Public right of way to be created	<i>(3)</i> Extent of new public right of way to be created	<i>(4)</i> Stage of the authorised development
Parish of Long Whatton and Diseworth	Public footpath	Proposed public footpath between the points marked 10-11 on the access and rights of way plans (Document DCO 2.4A) shown indicatively with a dashed and dotted brown line on an alignment to be agreed with the local highway authority and constructed as part of Works No. 21	Completion of Works No. 21
Parish of Long Whatton and Diseworth	Public bridleway	Proposed public bridleway between the points marked 8-12 on the access and rights of way plans (Document DCO 2.4A) shown	Completion of Works No. 21

		indicatively with an unbroken yellow line on an alignment to be agreed with the local highway authority and constructed as part of Works No. 21	
Parish of Long Whatton and Diseworth	Public footpath	Proposed public footpath between the points marked 6-13-14-15-16 on the access and rights of way plans (Document DCO 2.4A) shown indicatively with a dashed and dotted brown line on an alignment to be agreed with the local highway authority and constructed as part of Works No. 5	Completion of Works No. 21

SCHEDULE 6

Article 13

PRIVATE MEANS OF ACCESS

PART 1

PRIVATE MEANS OF ACCESS TO BE REPLACED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Replacement</i>	<i>(4)</i> <i>Stages of the authorised payment</i>
District of North West Leicestershire	The private means of access shaded purple and marked M on the access and rights of way plans (Document DCO 2.4A)	The private means of access hatched turquoise and marked N on the access and rights of way plans (Document DCO 2.4A)	Completion of Works No. 6

PART 2

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private Means of Access</i>	<i>(3)</i> <i>Stage of the authorised development</i>
District of North West Leicestershire	The private means of access shaded purple and marked A on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5
District of North West Leicestershire	The private means of access shaded purple and marked B on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5
District of North West Leicestershire	The private means of access shaded purple and marked C on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5
District of North West Leicestershire	The private means of access shaded purple and marked D on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5
District of North West Leicestershire	The private means of access shaded purple and marked E on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5
District of North West Leicestershire	The private means of access shaded purple and marked F on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5
District of North West Leicestershire	The private means of access shaded purple and marked G on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5
District of North West Leicestershire	The private means of access shaded purple and marked H on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5

District of North West Leicestershire	The private means of access shaded purple and marked I on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5
District of North West Leicestershire	The private means of access shaded purple and marked J on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5
District of North West Leicestershire	The private means of access shaded purple and marked K on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5
District of North West Leicestershire	The private means of access shaded purple and marked L on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5
District of North West Leicestershire	The private means of access shaded purple and marked O on the access and rights of way plans (Document DCO 2.4A)	Commencement of Works No. 5

SCHEDULE 7

Article 15

CLASSIFICATION OF HIGHWAYS

NEW HIGHWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of Highway</i>	<i>(3)</i> <i>Classification</i>	<i>(4)</i> <i>Classes of Traffic</i>	<i>(5)</i> <i>Relevant Highway Authority</i>
District of North West Leicestershire	The length of road shown coloured light blue and between the points 1 and 2 on the highway classifications plans (Document DCO 2.12)	Special road	Class I and Class II	National Highways

SCHEDULE 8  
SPEED LIMITS

Article 16

PART 1  
EXISTING ORDERS

<i>(1)</i> <i>Statutory Instrument / Order Title</i>	<i>(2)</i> <i>S.I. Number</i>	<i>(3)</i> <i>Changes</i>	<i>(4)</i> <i>Event</i>
The A50 Trunk Road (Derby Southern Bypass) (Derestriction) Order 1998	1998 No. 378	In the Schedule, omit paragraph (x) and substitute— “(x) the eastbound carriageway of the A50 from a point 600 metres west of the A6/A50 Aston Interchange overbridge to a point 138 metres west of the centre point of the M1 Junction 24A underbridge, and the westbound carriageway of the A50 from a point 983 metres north of its roundabout junction with the A453 (M1 Junction 24) to A50 westbound link road to a point 600 metres west of the A6/A50 Aston Interchange overbridge”	Completion of Works No. 10
The A453 and A50 Trunk Roads (M1 Junction 24, Kegworth, Leicestershire) (40 and 50 Miles Per Hour Speed Limit and Derestriction) Order 2015	2015 No. 1072	Omit article 4(b)	Completion of Works No. 10
The M1 Motorway (Junctions 23A to 25) (Variable Speed Limits) Regulations 2018 as amended	2018 No. 819 as amended	<del>In the Schedule, in</del> paragraph 5(b)—  omit “and” at the end of paragraph (ii); add “; and” at the end of paragraph (ii); and after paragraph (iii) add “(iv) the	Completion of Works Nos. 8 and 9

		carriageway from the northbound carriageway of the M1 to the westbound carriageway of the A50 beginning at the diverge from the northbound carriageway and ending at a point 255 metres north of the tip of the nose at the diverge.”	
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## PART 2

### HIGHWAYS SUBJECT TO 50MPH SPEED LIMIT

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Event</i>
M1 Northbound to A50 westbound link road	From a point 255 metres north of the tip of the nose at the diverge from the M1 northbound to its junction with the A50 westbound; the centreline of which is shown coloured light blue between points A and B as shown on the speed limit plan (Document DCO 2.14)	Opening of the link road to traffic
A50 westbound	From its junction with the roundabout at M1 Junction 24 for a distance of 983 metres; the centreline of which is shown coloured light green between points C and D as shown on the speed limit plan (Document DCO 2.14)	Completion of Works No. 10

## SCHEDULE 9

Article 17

### NEW TRAFFIC REGULATION ORDERS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Traffic regulation order sought</i>	<i>(3)</i> <i>Event</i>
Hyam's Lane	Prohibition of motor vehicles waiting at any time on: (i) Both sides of the road between points i and ii along the centreline shown orange on the traffic regulation plan (Document DCO 2.13) and (ii) Both sides of the road between points iii, ii and iv along the centreline shown orange on the traffic regulation plan (Document DCO 2.13)	Completion of Works No. 7
Long Holden	Prohibition of motor vehicles <u>passing and repassing</u> along Long Holden between points v and vi as shown purple on the traffic regulation plan (Document DCO 2.13) except for access	Completion of Works No. 17

SCHEDULE 10

Article 32

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Sheet 1 of the land plans			
District of North West Leicestershire	1/8	Provision of an uncontrolled crossing on the A453 at the East Midlands Airport signalised access junction including works to provide an uncontrolled crossing over the A453 within the traffic signal junction and a footway along the south side of the A453 connecting to the new public right of way constructed within the main site (Works No. 5)	Works No. 15
District of North West Leicestershire	1/9	Provision of an uncontrolled crossing on the A453 at the East Midlands Airport signalised access junction including works to provide an uncontrolled crossing over the A453 within the traffic signal junction and a footway along the south side of the A453 connecting to the new public right of way constructed within the main site (Works No. 5)	Works No. 15
District of North West Leicestershire	1/15	Provision of an uncontrolled crossing on the A453 at the East Midlands Airport signalised access junction including works to provide an uncontrolled crossing over the A453 within the traffic signal junction and a footway along the south side of the A453 connecting to the new public right of way constructed within the main site (Works No. 5)	Works No. 15
Sheet 2 of the land plans			
District of North West Leicestershire	2/8	Carrying out improvements to the access junction to EMG1 including widening of the A453 southbound within the junction to provide two right turning lanes into EMG1	Works No. 13
District of North West Leicestershire	2/15	Carrying out improvements to the access junction to EMG1 including widening of the A453	Works No. 13

		southbound within the junction to provide two right turning lanes into EMG1	
District of North West Leicestershire	2/19	Required to provide a working area for undertaking works to upgrade footpath L57 to a cycle track	Works No. 19
District of North West Leicestershire	2/21	Required to provide a working area for undertaking works to upgrade footpath L57 to a cycle track	Works No. 19
District of North West Leicestershire	2/22	Required to provide a working area for undertaking works to upgrade footpath L57 to a cycle track	Works No. 19
District of North West Leicestershire	2/24	Required to provide a working area for undertaking works to upgrade footpath L57 to a cycle track	Works No. 19

SCHEDULE 11

Article 23

LAND IN WHICH NEW RIGHTS MAY BE CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot of land shown on Land Plan</i>	<i>(3)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(4)</i> <i>Relevant part of Authorised Development</i>
<b>Sheet 2 of the land plans</b>			
District of North West Leicestershire	2/4	<p>Construction of a 3m wide public cycle track within land to the west of the A453 between the northern end of the existing A453 lay-by and the A453 to the west of Finger Farm roundabout, connecting to the authorised development (Works No. 6), and the stopping up of the lengths of existing public rights of way</p> <p>To provide utilities infrastructure including surface and foul water drainage and thereafter to use and maintain the infrastructure</p>	<p>Works Nos. 14(b) and 14c</p> <p>Further works</p>
District of North West Leicestershire	2/5	<p>Construction of a 3m wide public cycle track within land to the west of the A453 between the northern end of the existing A453 lay-by and the A453 to the west of Finger Farm roundabout, connecting to the authorised development (Works No. 6), and the stopping up of the lengths of existing public rights of way</p> <p>To provide utilities infrastructure including surface and foul water drainage and thereafter to use and maintain the infrastructure</p>	<p>Works Nos. 14(b) and 14c</p> <p>Further works</p>
<b>Sheet 3 of the land plans</b>			
District of North West Leicestershire	3/10	<p>To provide utilities infrastructure including a modified and extended substation to provide power to the authorised development</p>	<p>Works No. 20</p>

## 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 paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

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

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act (as modified by paragraph 5(5) of Schedule 12 to the East Midlands Gateway Phase 2 and Highway Order 20[ ]);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 12 to the East Midlands Gateway Phase 2 and Highway Order 20[ ]) 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.”

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

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

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

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

4. Part 1 of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act, and modified by article 28 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under article 22 (compulsory acquisition of land) applies to the compulsory acquisition of a right by the creation of a new right under article 23 (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 the 1965 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

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(a) 1973 c. 26.

(b) the land over which the right is or is to be exercisable.

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

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

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

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

~~(d)~~ 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.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 22 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections 11HA(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on a specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(2) (modification of Part 1 the 1965 Act) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For schedule 2A to the 1965 Act substitute—

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

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

### **Introduction**

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 29 (application of the 1981 Act) of the East Midlands Gateway Phase 2 and Highway Order 20[ ] 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.”

## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF NATIONAL HIGHWAYS

**Application etc.,**

1. —(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all National Highways' statutory functions.

**Interpretation**

2.—(1) Where the terms used in this Part of this Schedule are defined in article 2 (*interpretation*) of this Order are inconsistent with sub-paragraph (2) below the latter prevail.

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information where National Highways acting reasonably deems necessary—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with DMRB GG 184 Specification for the use of Computer Aided Design or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time or any successor of it including CCTV surveys.

“bond” means a bond in the form annexed hereto at Annex 1 (or substantially in such form) duly executed by the undertaker and a reputable UK surety company or other UK financial institution to be previously approved in writing by National Highways (such approval not to be unreasonably withheld or delayed);

“the bond sum” means 120% of the cost of carrying out the specified works (to include all costs plus any commuted sum), or such other sum agreed between the undertaker and National Highways, to be provided to National Highways in the form of:

- (a) a bond; or
- (b) a cash surety; or
- (c) where agreed by National Highways a combination of a bond and cash surety;

“cash surety” means a cash deposit to be paid by the undertaker into an account specified by National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 16 of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets, structures or apparatus provided under the Order;

“condition survey” means a survey of the condition of National Highways structures and assets that in the reasonable opinion of National Highways may be affected by the specified works and further to include a CCTV survey of specified drains that National Highways reasonably considers may be materially and adversely affected by a specified work;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the specified works—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (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 DMRB;
- (l) highway structures and any required structural approval in principle;
- (m) landscaping;
- (n) proposed departures from DMRB standards;
- (o) utilities diversions;
- (p) topographical survey;
- (q) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (r) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (s) other such information that may be required by National Highways acting reasonably to be used to inform the detailed design of the specified works;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 14;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“phase” means a part of the specified works which is to be carried out in a separate phase as approved in accordance with requirement 3 of the Order or as otherwise agreed in writing with National Highways;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 10 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard and “road safety audits shall be construed accordingly”;

“road safety audit standard” means DMRB Standard GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy and “road space bookings shall be construed accordingly”;

“Specification for Highway Works” means the specification for highway works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network or any successor of it;

“specified day” means the later of the day on which particulars of the matter are received by National Highways under the provisions of this Part of this Schedule or the day on which the undertaker provides National Highways with any further particulars of the matter that have been reasonably requested by National Highways within 28 days of that date;

“specified works” means so much of any work, including highway works, street works, surveys and signalisation, authorised by this Order including any maintenance of that work, as is undertaken on the strategic road network or land in which National Highways has an interest and “specified work” shall be construed accordingly;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway for which National Highways is the highway authority;

“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 (or such updated or revised legislation as may come into force from time to time).

(3) Where any agreement consent or approval is required to be given by National Highways pursuant to this Part of this Schedule then such agreement consent or approval shall not be unreasonably withheld or delayed.

(4) If National Highways fail to notify the undertaker of its decision in respect of any approval, consent or agreement pursuant to the provisions of this Part of this Schedule within 28 days of the specified day, the undertaker may serve upon National Highways written notice requiring National

Highways to give their decision within a further 28 days beginning on the date upon which National Highways received written notice from the undertaker. Subject to sub-paragraph (3), if by the expiry of the further 28 days National Highways has failed to notify the undertaker of its decision, National Highways are to be deemed to have given the relevant approval, consent or agreement.

(5) Any further notice given by the undertaker to National Highways under sub-paragraph (4) must include a written statement that the provisions of sub-paragraph (4) apply to the relevant approval, consent or agreement.

## **General**

3. For the purposes of any approvals required under this Part of this Schedule the undertaker shall liaise directly with National Highways.

4. Notwithstanding the limits of deviation permitted pursuant to article 4 of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out in under or over the strategic road network unless such works are agreed in writing with National Highways at the absolute discretion of National Highways acting reasonably.

5. References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

## **Works outside the Order limits**

6. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

## **Prior approvals and security**

7.—(1) No phase of the specified works must commence until in respect of that part of the specified works—

- (a) a stage 1 and stage 2 road safety audit has been carried out in respect of that phase and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works for that phase has been approved by National Highways;
- (c) the detailed design of the specified works in that phase comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
  - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);
  - (ii) details of the proposed road space bookings and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways;
  - (iii) the identity and qualifications of the contractor and nominated persons;
  - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker; and
  - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding or any successor document;
- (d) a scheme of traffic management for that phase has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;

- (e) stakeholder liaison has taken place for that phase in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
- (f) National Highways has approved for that phase the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
- (g) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) for that phase to be carried out by the undertaker during the construction of the specified works has been agreed in writing by National Highways;
- (h) the undertaker has procured to National Highways collateral warranties for that phase in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant;
- (i) any further information that National Highways may reasonably request within 14 days of the submission of the detailed design of a specified works for that phase has been supplied to National Highways; and
- (j) a condition survey and regime of monitoring for that phase has been agreed in writing by National Highways.

(2) The scope of all maintenance operations to be agreed with National Highways pursuant to sub-paragraph (h) shall only include winter maintenance where—

- (a) access to carry out such maintenance by National Highways is not available by virtue of the works being carried out; 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 specified works.

(3) National Highways must prior to the commencement of any phase of the specified works or the exercise of any power under this Order inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1).

(4) Any approval of National Highways required under this paragraph-

- (a) must not be unreasonably withheld;
- (b) must be given in writing; and
- (c) may be subject to any conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor ~~and~~/or designer of any phase of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 7(1) of this Part.

### **Construction of the specified works**

8.—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which any phase of the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures when booking road space on the strategic road network prior to and during the carrying out of any phase of the specified works and no phase of any of the specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the reasonable satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that they are inconsistent with the general arrangement of the highway works as shown on the highway plans or a departure from those standards apply which have been approved by National Highways; and
- (c) 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, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways. For the avoidance of doubt no approval or consent issued by National Highways shall be taken to be a consent or approval pursuant to the Construction (Design and Management) Regulations 2015.

(4) The undertaker must use reasonable endeavours to ensure that (where possible) without entering the highway the highway is kept free from mud, soil and litter as a result of carrying out specified works.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works pursuant to the Order including all the land in which National Highways has an interest for the purposes of inspection and supervision of the specified works subject at all times to National Highways or any persons authorised by them complying with any reasonable health and safety requirements imposed by the undertaker or nominated persons.

(6) If any phase of the specified works is constructed-

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,
- (c) National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the reasonable satisfaction of National Highways.

(7) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(8) If within 28 days on which a notice under sub-paragraph (6) or sub-paragraph (7) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure reasonably and properly incurred by National Highways in so doing, such sum to be payable within 28 days of demand.

(9) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably and properly incurs in so doing.

(10) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of National Highways.

(11) Until such time that National Highways issues the provisional certificate in respect of the relevant specified works the undertaker must carry out all maintenance in accordance with the scope

of maintenance operations agreed by National Highways pursuant to paragraph 7(1)(h) and the undertaker must carry out such maintenance at its own cost.

(12) The undertaker must notify National Highways if it fails to complete any phase of the specified works in accordance with the agreed programme pursuant to paragraph 7(1)(b) of this Part or suspends the carrying out of any phase of the specified works beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

## **Payments**

9.—(1) The undertaker must pay to National Highways a sum equal to the costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 7(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land to National Highways required for the specified works;
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and
- (f) any value added tax which is payable by National Highways in respect of such costs and expenses arising under this paragraph and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways within 28 days of demand the total costs that National Highways believe will be properly and necessarily incurred by National Highways 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 authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).

(6) Within 28 days of the issue of the final account:

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

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from

time to time being in force 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**

10.—(1) Following the completion of any phase of the specified works or prior to reopening any part of the strategic road network following any closure or partial closure, whichever shall be sooner, the undertaker shall notify National Highways who will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways following the site inspection.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the relevant phase of the specified works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

- (a) a stage 3 road safety audit for the relevant phase of the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;
- (b) the relevant specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the reasonable satisfaction of National Highways;
- (c) the as built information has been provided to National Highways; and
- (d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) before that date National Highways will be at liberty to retain a sufficient sum in addition to the 20% to ensure it does not have to meet any costs for ~~and~~ or arising from ~~and~~ or in connection with the specified works.

(6) The undertaker must submit a stage 4 road safety audits 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 audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

### **Opening**

11. Unless otherwise agreed in writing by National Highways the undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of any new part of the strategic road network and the undertaker must notify National Highways of the actual date such strategic road network will be opened to the public within 14 days of that date and must not open the same to the public prior to the expiration of the requisite notice period.

### **Final condition survey**

12.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 10(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment

required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph 12(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted and such programme as National Highways may require..

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme and programme pursuant to paragraph 12(2) or fails to submit a scheme for remedial works to National Highways, National Highways may carry out the steps required of the undertaker and may recover on demand any expenditure from the undertaker it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 12(1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover on demand any expenditure from the undertaker it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

### **Defects Period**

13.—(1) The undertaker must at its own expense remedy any defects in any phase of the specified works as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 48 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the issuing of the provisional certificate National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

### **Final Certificate**

14.—(1) The undertaker must apply to National Highways for the final certificate for any phase of the specified works no sooner than 12 months from the date of the provisional certificate in respect of that phase of the specified works.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the relevant phase of the specified works; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).

(4) When National Highways is satisfied that:

- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 14(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the reasonable satisfaction of National Highways; and

- (b) the NH costs have been paid to National Highways in full;
- (c) National Highways must issue the final certificate for that phase of the specified works and upon the issue of the final certificate the bond sum is released in full provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) National Highways will be at liberty to retain a sufficient sum to ensure it does not have to meet any costs for ~~and~~ or arising from ~~and~~ or in connection with the specified works.

(5) The undertaker must pay to National Highways within 28 days of demand the costs incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to this paragraph 14.

### **Security**

15.—(1) No phase of the specified works shall commence until the undertaker procures that that phase of the specified works are secured by the bond sum to indemnify National Highways 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 the exercise of the powers under this Order and the relevant specified works under the provisions of this Part of this Schedule.

(2) If at any time the undertaker is in breach of these provisions of this Part of this Schedule or becomes insolvent without prejudice to any other remedy National Highways is entitled upon giving notice to the undertaker to use such parts of the bond sum as National Highways considers necessary. For the avoidance of doubt should National Highways have to carry out works pursuant to this Part of this Schedule it may, at its sole discretion, use the bond sum to forward fund such works.

### **Insurance**

16. Prior to the commencement of any phase of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (10 million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of that phase of the specified works or use of the strategic road network by the undertaker for the purposes of carrying out that phase of the specified works.

### **Indemnity**

17.—(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from or in connection to the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order and any such costs shall be paid to National Highways within 28 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways or persons acting on behalf of National Highways provided that—

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

### **Maintenance of the specified works**

18.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) During any maintenance works, the undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 11 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

### **Land**

19.—(1) Following the issue of a final certificate pursuant to paragraph 14(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect 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 National Highways.

(3) The undertaker must not under the powers of this Order:

- (a) acquire or use land forming part of;
- (b) acquire new or existing rights over; or
- (c) seek to impose or extinguish any restrictive covenants over;
- (d) any part of the strategic road network or land owned by National Highways, or extinguish any existing rights of or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways.

(4) Where any land or interest is proposed to be acquired pursuant to this Order for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 22 (*compulsory acquisition of land*) and article 23 (*compulsory acquisition of rights*) as applied by articles 29 (*application of the 1981 Act*) of this Order to acquire such land or interest for National Highways.

### **Expert Determination**

20.—(1) Article 45 (*arbitration*) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) 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 7 days of the expert's appointment;

- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) 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 45 (*arbitration*).

(7) 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.

(8) Where a dispute arises pursuant to this Part of this Schedule in respect of any matter which requires any action by the undertaker within any particular timescale then the time period for compliance with that timescale shall be extended by the same period as it takes to resolve or determine that dispute pursuant to this paragraph 20.

*Bond Agreement*

THIS BOND is made as a deed BETWEEN the following parties

PARTIES

- (1) The Undertaker: [ ], whose main office is at [ ]
- (2) The Guarantor: [ ] with company number [ ] and whose office for receipt of any claim is [ ]
- (3) The Beneficiary: National Highways Limited (company registration number 09346363) having its registered office at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ

WHEREAS

Pursuant to the Order [ ] (the Order), the Undertaker is permitted to carry out the Specified Works as defined in the Order upon and subject to the terms and conditions therein set out.

The Guarantor has agreed with the Beneficiary at the request of the Undertaker to guarantee the performance of the obligations of the Undertaker contained in the Order in accordance with the terms and conditions of this Bond subject to the limitation set out in clause

NOW THIS DEED WITNESSES as follows:

- 1. The Guarantor guarantees to the Beneficiary that if the Undertaker at any time:
  - (a) becomes insolvent and for the purposes of this Bond insolvent shall mean the Undertaker:
    - (i) has an administration order made against it or has an administrator appointed over it;
    - (ii) has an administrative receiver appointed over its assets;
    - (iii) has a winding up order made against it or a liquidator appointed over it (except for the purpose of solvent amalgamation or reconstruction);
    - (iv) enters into an arrangement, compromise or composition with its creditors (including, but not limited to, becoming subject to a moratorium under Part A1 of the Insolvency Act 1986); or
    - (v) otherwise becomes insolvent for the purposes of the Insolvency Act 1986;
  - (b) fails to pay an amount that is properly due to the Beneficiary in accordance with the Order; or
  - (c) is otherwise in breach of the Order,

2. the Guarantor shall subject to the provisions of this Bond satisfy and discharge the damages sustained by the Beneficiary as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Order and taking into account all sums due or to become due to the Undertaker.

3. The maximum aggregate liability of the Guarantor and the Undertaker under this Bond shall not exceed the Bond Sum (as set out in the Schedule) but, subject to such limitation and to clause 4, the liability of the Guarantor shall be co-extensive with the liability of the Undertaker under the Order.

4 The Guarantor shall not be discharged or released by any alteration of any of the terms, conditions ~~and~~/or provisions of the Order ~~and~~/or in the extent or nature of the Specified Works and no allowance of time or other forbearance or indulgence by the Beneficiary under or in respect of the Order or the Specified Works shall in any way release, reduce or affect the liability of the Guarantor under this Bond.

5 Whether or not this Bond shall be returned to the Guarantor the obligations of the Guarantor under this Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Order which has occurred and in respect of which a claim in writing and containing particulars of such breach has been made upon the Guarantor before Expiry.

6 The Undertaker having requested the execution of this Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Beneficiary or the Guarantor against the Undertaker) to perform and discharge the obligations on its part set out in the Order.

7 This Bond and the benefits thereof may not be assigned by the Beneficiary without the prior written consent of the Guarantor and the Undertaker to any party to whom the benefit of the Order is assigned although the Beneficiary may assign to a successor body/ organisation without the consent of the Guarantor and the Undertaker.

8 The parties to this Bond do not intend that any of its terms will be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it except pursuant to any assignment in accordance with clause 6 above.

9 This Bond shall be governed by and construed in accordance with the laws of England and only the courts of England shall have jurisdiction hereunder.

#### SCHEDULE TO BOND AGREEMENT

Bond Sum: shall have the same meaning as in the Order and shall be in the sum of [£ ] [amount in words] for the period until the Beneficiary has issued the Provisional Certificate (as defined in the Order) for the Specified Works and reduced thereafter until Expiry.

Expiry:

The Bond Sum shall be progressively reduced as follows:

(a) within 20 working days of the issue of the Provisional Certificate, the Beneficiary shall release the Guarantor in writing from its obligations under the terms of this Bond to the extent of eighty per cent of the Bond Sum save insofar as any claim or claims have been made against the Guarantor or liability on its part has arisen under this Bond before that date in which case the Beneficiary will be at liberty to retain a sufficient sum to ensure it does not have to meet any costs for ~~and~~/or arising from ~~and~~/or in connection with the Specified Works

(b) within 20 working days of the issue of the Final Certificate (as defined in the Order), the Beneficiary shall release the Guarantor in writing from its obligations under this Bond of the remaining Bond Sum save insofar as any claim or claims have been made against the Guarantor or liability on its part has arisen under this Bond before that date in which case the Beneficiary will be at liberty to retain a sufficient sum in line with the principle in sub clause (a) above.

**IN WITNESS** whereof the Undertaker, the Guarantor and the Beneficiary have executed and delivered this Bond as a Deed this [ ] day of [ ], 20[ ]

The common seal of [ ]  
was hereunto affixed in the presence of:

Register

**EXECUTED AND DELIVERED** as a deed by )  
[**UNDERTAKER**], by the signature of a director )  
and the company secretary or of two directors )  
of the company )  
\_\_\_\_\_ Director  
\_\_\_\_\_ Director/Company Secretary

**EXECUTED AND DELIVERED** as a deed by )  
[**GURANTOR**], by the signature of a director )  
and the company secretary or of two directors )  
of the company )  
Director

Director/Company Secretary

Executed and delivered as a Deed by affixing the Common Seal of  
**National Highways Limited** in the presence of

..... Director or Authorised Signatory

In the presence of a witness:

.....

Witness Name: .....  
Witness Address: .....  
Witness Occupation: .....

## PART 2

### FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY

#### Application

1. The provisions of this Part of this Schedule have effect, and apply to the county highway works, unless otherwise agreed in writing between the undertaker and the local highway authority.

## Interpretation

2.—(1) The terms used in this Part of this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) which will prevail.

(2) In this Part of 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) organisation and methods manuals for all products used in the construction of the authorised development;
- (i) as constructed programme;
- (j) test results and records required by the detailed design information and during the construction phase of the project;
- (k) RSA3 and exceptions agreed; and
- (l) 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 calculated for each phase as provided for in paragraph 9(2) of this Part of this Schedule and to be used to fund the future cost of maintenance of 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 in accordance with paragraph 3(2) of this Part of this Schedule;

“county highway works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 13 to 19 on the works plans, the general arrangement of which is shown on the highway plans general arrangement, and any ancillary works;

“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 general arrangement 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 and supporting Road Restraint Risk Appraisal Process assessment;
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification;
- (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 Part of this Schedule;

“the excess” means the amount by which the local highway authority estimates that the costs referred to in paragraph 5(1) of this Part of this Schedule will exceed the estimated costs pursuant to paragraph 5(5)(b) of this Part of this Schedule;

“nominated persons” means the undertaker’s representatives or the contractor’s 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 (DMRB) 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 1991 Act; 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 of this Part of this Schedule 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 has 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 highway authority to be calculated in accordance with paragraph 9(2) of this Part 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) of this Part of this Schedule or as subsequently varied by agreement between the undertaker and the local highway authority;
- (b) the Design Manual for Roads and Bridges (DMRB), 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(a) 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 general arrangement 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 of this Part of this Schedule 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(b) 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 undertaker's obligations in this Order.

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(a) S.I. 2016/362.  
(b) S.I. 2015/51

(6) If at any time the undertaker does not comply with any of the terms of this Part 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, the local highway authority, on giving the undertaker 14 days' notice in writing to that effect, is entitled to either—

- (a) 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
- (b) 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 is to 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 highway authority, the local highway authority, on giving the undertaker 7 days' notice in writing to that effect, is entitled to carry out such necessary works deemed appropriate to remedy the damage or disruption, and 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.

(8) Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as deemed appropriate, 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) 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 must be carried out to the reasonable satisfaction of the local highway authority.

(10) In the event that the local highway authority incurs additional costs in the winter maintenance of the highway 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), 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 on, including—

- (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 paragraphs (a), (b) and (c),

together comprising “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 sub-paragraph does 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) 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 (a) 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 30 days of the issue of the final certificate for each phase of the county highway works pursuant to paragraph 7 of this Part of this Schedule the local highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the expiry of the 30 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 Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the party to whom it was due interest at 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

### **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 of this Part of this Schedule;
- (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) Subject to sub-paragraph (3) 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 includes all damage to the highway whether accidental or otherwise (but only that attributable to defective design materials or workmanship and

excluding winter maintenance)) in that phase of the county 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 months from the date of the provisional certificate in respect of that phase.

(3) The local highway authority will provide to the undertaker all information on any accident or incident resulting in damage to the highway which occurs in any phase of the county highway works during the period of 12 months referred to in sub-paragraph (2).

(4) 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 must apply to the local highway authority for the 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 6(2) of this Part of this Schedule 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 of this Part of this Schedule have been made good to the reasonable satisfaction of the local highway authority.

(2) If the provisions of sub-paragraph (1) are satisfied the local highway authority must issue a final certificate for the phase of the county highway works concerned, such certificate not to be unreasonably withheld or delayed.

### **Security**

8.—(1) Subject to paragraph 3(3) of this Part of this Schedule 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 must be secured by a bond from a bondsman first approved by the local highway authority drafted substantially as detailed in Form 2 contained in paragraph 15 of this part of this Schedule, 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 Part of this Schedule, provided that the maximum liability of the bond does not exceed the bond sum relating to that phase.

(2) Each bond sum is to 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 is not 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 will only be required to provide the said authorisation if it is satisfied that the monies remaining secured by the bond sum will 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 paragraph (a) 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) of this Part of this Schedule) 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 of this Part of this Schedule 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 the local highway authority'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 it 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 Part 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 Part 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 paragraph (a),

whichever is the later.

## Expert determination

14.—(1) Article 45 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph (5).

(2) Any difference under this Part of 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 submissions 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 46.

(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.

15. Form 2 as referred to in paragraph 8—

<i>Bond – Local Authority Highway</i>
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 East Midlands Gateway Phase 2 and Highway Order 20[ ] (“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] to 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 2 of Schedule 13 to the DCO.

[Attestation]

## PART 3 FOR THE PROTECTION OF NATIONAL GRID

### **Application**

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

### **Interpretation**

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable it to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means electricity, electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid for the purposes of electricity supply;

“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, across, along or upon such land;

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Distribution (East Midlands) Plc (company number 02366923) registered at Avonbank, Feeder Road, Bristol BS2 0TB; and

“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.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in stopped up streets**

4.—(1) Where any street is stopped up under article 10 (permanent stopping up of streets), and any apparatus is in the street or accessed via that street, National Grid is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street.

(2) Regardless of the temporary stopping up or diversion of any street under the powers of article 11 (temporary stopping up of streets), National Grid is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

### **Acquisition of land**

5. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any land interest or apparatus, or override any easement or other interest, of National Grid otherwise than by agreement.

### **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, and any right of National Grid 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 National Grid in accordance with sub-paragraphs (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 National Grid 56 days' 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 National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 7(1)) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of 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 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, National Grid, on receipt of a written notice to that effect from the undertaker, must 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 save that this obligation must not extend to the requirement for National Grid 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 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 National Grid and the undertaker.

(5) National Grid must after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) For the avoidance of doubt this Part of this Schedule applies to apparatus the removal of which is covered by article 34 (apparatus and rights of statutory undertakers in stopped up streets).

## **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to National Grid 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 National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) 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 National Grid 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 then the matter must be determined by arbitration in accordance with article 45 (arbitration) and, the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid 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 56 days before the commencement of any authorised works authorised by 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 6(2) or otherwise, the undertaker must submit to National Grid a plan of such works and seek from National Grid details of the underground extent of its electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within—

- (a) 15 metres measured in any direction of any apparatus; or
- (b) involve embankment works within 15 metres of any apparatus,

the plan to be submitted to National Grid under sub-paragraph (1) must be detailed including a method statement and describing—

- (i) the exact position of the works;
- (ii) the level at which these are proposed to be constructed or renewed;
- (iii) the manner of their construction or renewal including details of excavation, positioning of plant;
- (iv) the position of all apparatus;
- (v) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (vi) details of a scheme for monitoring ground subsidence if required by National Grid.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted to National Grid under sub-paragraph (1) must be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (2)—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;

- (g) assessment of earth rise potential if reasonably required by National Grid’s engineers; and
  - (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead lines (OHL) construction traffic.
- (4) The undertaker must not commence any works to which sub-paragraph (2) or (3) apply until National Grid has given written approval of the plan so submitted.
- (5) Any approval of the undertaker required under sub-paragraph (2) or (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in subparagraph (6) or (8); and
  - (b) must not be unreasonably withheld.
- (6) In relation to a work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works to which sub-paragraphs (2) and (3) apply must be executed only in accordance with the plan submitted under sub-paragraph (1) or as relevant sub-paragraph (10), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid is entitled to watch and inspect the execution of those works.
- (8) Where National Grid require any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid’s satisfaction prior to the commencement of any relevant part of the authorised development and National Grid must give 56 days’ notice of such works from the date of submission of a plan in line with sub-paragraphs (1) or (10) (except in an emergency).
- (9) If National Grid in accordance with sub-paragraphs (6) or (8) 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).
- (10) 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 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.
- (11) The undertaker is 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 the undertaker in question notice as soon as is reasonably practicable and a plan of those works and must—
- (a) comply with sub-paragraphs (2), (3) and (4) insofar as is reasonably practicable in the circumstances; and
  - (b) comply with sub-paragraph (12) at all times.
- (12) At all times when carrying out any works authorised under the Order comply with National Grid’s policies for development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

## **Expenses**

9.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonable incurred by it in, or in connection with, the inspection, removal, relaying or replacing, 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 this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory powers to

acquire any necessary rights under paragraph 6(3) all costs incurred as a result of such action;

- (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) The value of any apparatus removed under the provisions of this Part of this Schedule or article 34 (apparatus and rights of statutory undertakers in stopped up streets), and which is not re-used as part of the alternative apparatus, must be deducted from any sum payable under sub-paragraph (1), 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 settled by arbitration in accordance with article 45 (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 National Grid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must 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 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 National Grid 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 National Grid 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.

## **Indemnity**

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) 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 those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker must—

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

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by an undertaker or in accordance with any requirement of an 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 neglect or default of National Grid, its officers, servants, contractors or agents.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to National Grid on the date on which this Order is made.

### **Co-operation**

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 6(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraphs 7 or 8 the undertaker must use its reasonable 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 National Grid's undertaking and National Grid must use its reasonable endeavours to co-operate with the undertaker for that purpose.

### **Access**

13. If in consequence of the agreement reached in accordance with paragraph 5 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 would enable National Grid 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 National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 45 (arbitration).

## PART 4

### FOR THE PROTECTION OF SEVERN TRENT

1. For the protection of Severn Trent, the following provisions shall, unless otherwise agreed in writing between the undertaker and Severn Trent, have effect.

2. In this Part of this Schedule—

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Severn Trent for the purposes of water supply and sewerage and—

- (a) any drain or works vested in Severn Trent under The Water Industry Act 1991(a);
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(b) of The Water Industry Act 1991 or an agreement to adopt made under section 104(c) 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 Severn Trent 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;

“Severn Trent” means Severn Trent Water Limited (company number 02366686) registered at Severn Trent Centre, St John’s Street, Coventry, CV1 2LZ and any successor in function; 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 any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with Severn Trent, 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 Severn Trent on alternative outfall locations as a result of such re-location are approved, such approvals from Severn Trent 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 Severn Trent 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

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(a) 1991 c.56

(b) Section 102(4) was amended by sections 56 and 96(1)(c) to (e) of, paragraphs 2 and 90 of Schedule 7 to, the Water Act 2014 (c. 21).

(c) Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37), section 42(3) of the Flood and Water Management Act 2010 (c. 29) and sections 11 and 56 of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014 (c.21).

reasonable requirements as may be made by Severn Trent 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 Severn Trent 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 Severn Trent to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Severn Trent, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Severn Trent such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 45.

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 Severn Trent 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 Severn Trent and afforded the same protection of other Severn Trent 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 Severn Trent, or there is any interruption in any service provided, or in the supply of any goods, by Severn Trent, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by Severn Trent in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Severn Trent for any other expenses, loss, damages, penalty or costs incurred by Severn Trent,

by reason or in consequence of any such damage or interruption.

## PART 5

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

1. The provisions of this Part of this Schedule 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);

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

“the electronic communications code” has the same meaning as in section 106(1)(c) (application of the electronic communications code) of the 2003 Act;

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(a) 2003 c. 21.

(b) See paragraph 5 of Schedule 3A (the electronic communications code) to the Communications Act 2003 (c. 21). Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).

(c) Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

“electronic communications code network” means—

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

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; “infrastructure system” has the same meaning as in the electronic communications code and reference to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

3. The exercise of the powers conferred by article 30 (statutory undertakers and operators of the electronic communications code network) is subject to Part 10 of the electronic communications code.

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 45 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 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.

## PART 6

### FOR THE PROTECTION OF THE AIRPORT OPERATOR

1. The undertaker must carry out the authorised development in accordance with the management strategy for the safeguarding of East Midlands Airport (Document DCO 6.20C).

2. The undertaker must produce a bird management plan to minimise any bird hazard impact (such plan to be substantially in accordance with the Bird Strike Hazard Management Plan (Document DCO 6.9K)) covering the design, construction and operation of the main site and obtain approval to the bird management plan from the airport operator prior to the submission of any details for approval under requirement 7 (detailed design approval). The approval of the bird management plan must not be unreasonably withheld or delayed. The approved bird management plan must then be complied with at all times.

3. The prior approval of the airport operator must be obtained by the undertaker for the installation and operation of any radio communication or radio survey equipment (including any such temporary equipment) within the authorised development, such approval not to be unreasonably withheld or delayed.

4. The undertaker must not obstruct or in any way interfere with the existing access (including all emergency access routes) to the airport, other than in accordance with the carrying out of the authorised development, without the prior consent of the airport operator such consent not to be unreasonably withheld or delayed. Any existing access route which is to be diverted as part of the authorised development must not be closed until the replacement route is constructed and available for use.

5. The prior approval of the airport operator (acting as the statutory aerodrome safeguarding authority) must be obtained by the undertaker for the installation of any solar photovoltaic panels or apparatus within the authorised development, such approval not to be unreasonably withheld or delayed. Any request for such approval must be accompanied by a full solar glare assessment and detailed risk assessment.

6. Any difference or dispute arising between the undertaker and the airport operator under this Schedule must, unless otherwise agreed between the undertaker and the airport operator, be determined by arbitration in accordance with article 45 (arbitration).

## PART 7

### FOR THE PROTECTION OF UK POWER DISTRIBUTION

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and UKPD.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable UKPD to fulfil its statutory functions in a manner not less efficient than previously;

“alternative rights” means all necessary legal easements, consents or permissions required by UKPD to permit a diversion of apparatus or to authorise the construction of alternative apparatus;

“apparatus” means any conduit overhead electric lines cables ducts pipes or other apparatus or equipment belonging to or maintained by UKPD for the purposes of electricity transmission and its distribution, and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

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

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus; and

“UKPD” means UK Power Distribution Limited (Company Registration Number 06339585) whose registered office is at Eleanor House, Queenswood Office Park, Newport Pagnell Road, Northampton NN4 7JJ.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and UKPD are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any apparatus otherwise than by agreement.

5.—(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 over which access to any apparatus is enjoyed or requires that UKPD’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of UKPD to maintain that apparatus in that land or gain access to it must not be extinguished without the prior consent of UKPD until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary all to the reasonable satisfaction of UKPD.

(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, it must give to UKPD written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order UKPD reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (6), afford to UKPD the necessary facilities and rights for the construction of alternative apparatus in other land owned or controlled by the undertaker and subsequently for the maintenance of that apparatus.

(3) If, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker must use reasonable endeavours to obtain alternative facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) Should the undertaker not be able to obtain the alternative rights required under sub-paragraph (3) then the undertaker and UKPD must use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights.

(5) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (3) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph (4), UKPD must on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to a requirement on UKPD to use its compulsory purchase powers to this end unless UKPD elects to do so.

(6) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between UKPD and the undertaker or in default of agreement settled in accordance with paragraph 10 of this Part of this Schedule.

(7) UKPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 10 of this Part of this Schedule, and after the grant to UKPD 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.

(8) Regardless of anything in sub-paragraph (7), if the undertaker gives notice in writing to UKPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by UKPD,

must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of UKPD.

(9) Nothing in sub-paragraph (8) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to UKPD 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 must be granted upon such terms and conditions as may be agreed between the undertaker and UKPD or in default of agreement settled in accordance with paragraph 10 of this Part of this Schedule.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) given effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the expert less favourable on the whole to UKPD 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 expert must make provision for the payment of compensation by the undertaker to UKPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work, the undertaker must submit to UKPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on UKPD under sub-paragraph (3).

(2) Subject to sub-paragraph (3) the undertaker must not commence any works to which sub-paragraph (1) applies until UKPD has given written approval of the submitted plan, and identified any reasonable requirements it has in relation to the carrying out of the works, such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 60 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted UKPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it is deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) must be executed in accordance with the plan, section and description approved under sub-paragraph (3) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by UKPD, and UKPD is entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker must comply with UKPD's relevant guidance.

(6) If in consequence of the works proposed by the undertaker, UKPD reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement in accordance with sub-paragraph (2), the provisions of this paragraphs apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2) of this Part of this Schedule.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having

done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to UKPD notice as soon as is reasonably practicable, submit a plan, section and description of those works to UKPD as soon as reasonably practicable subsequently and comply with sub-paragraph (4) in so far as is reasonably practicable in the circumstances.

8. The undertaker must repay to UKPD the reasonable expenses incurred by UKPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new connection arising as a result of the powers conferred upon the undertaker pursuant to this Order.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work, 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 UKPD, or there is any interruption in any service provided, or in the supply of any goods by, UKPD, the undertaker is to—

- (a) bear any pay the cost reasonably incurred by UKPD in making good such damage or restoring the supply; and
- (b) make reasonable compensation to UKPD for any other expenses, loss, damages, penalty or costs incurred by UKPD, 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 UKPD, its officers, servants, contractors or agents.

(3) UKPD 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 which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Arbitration**

10. Any difference or dispute arising between the undertaker and UKPD under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and UKPD, be determined by arbitration in accordance with article 45 (arbitration).

## **PART 8**

### **FOR THE PROTECTION OF CADENT GAS**

#### **Application**

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Cadent.

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 (interpretation) 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 Part of this Schedule;

“Cadent” means Cadent Gas Limited (Company Number 10080864) whose registered office is situated at Cadent, Pilot Way, Ansty, Coventry CV7 9JU and any successor in title or assign including any successor to their licence as a gas transporter under Part 1 of the Gas Act 1986(a);

“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” includes 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) of this Part of this Schedule or otherwise; 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 sub-paragraph (2) applies), 8 (retained apparatus: protection), 9 (expenses) and 10 (indemnity) of this Part 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, and subject to sub-paragraph (2), the other provisions of this Part 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) Notwithstanding sub-paragraph (1), paragraphs 6 and 7 of this Part of this Schedule apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is

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(a) 1986 c. 44.

diverted from an alignment within the existing adopted public highway but not wholly replaced within existing 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 affects any right of the undertaker or Cadent to require removal of the Apparatus under paragraph 6 of this Part of this Schedule.

(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.

#### **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 sub-paragraph (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 or other legal or land interest of Cadent 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 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 or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 8 or any other paragraph of this Part of this Schedule, is not be taken to constitute agreement under sub-paragraph (1).

#### **Removal of apparatus**

6.—(1) If, in the exercise of the agreement reached in accordance with paragraph 5 of this Part of this Schedule 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-paragraphs (2) to (5).

(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) of this Part of this Schedule) the necessary facilities and rights—

- (a) For the construction of alternative apparatus in other land of or land secured by the undertaker;
- (b) Subsequently for 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 undertaker's assistance if required by Cadent, save that this obligation does 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 sub-paragraph (1) 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 is to 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 Cadent 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 or 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-paragraph (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 Cadent 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) of this Part of this Schedule.

(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 must 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 of this Part of this Schedule.

## 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 Cadent 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 Cadent 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 34 (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—

- (a) apparatus of better type, or 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 45 (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 has 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) imposes 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 (benefit of order granting development consent) 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 paragraph (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 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 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) of this Part of this Schedule or Cadent makes requirements for the protection or alteration of apparatus under paragraph 8 of this Part of this Schedule, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

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

### **Access**

13. If in consequence of the agreement reached in accordance with paragraph 5(1) of this Part of this Schedule 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 45 (arbitration).

### **Notices**

15. The plan and scheme submitted to Cadent by the undertaker pursuant to paragraph 8(1) of this Part of this Schedule must be sent to Cadent Gas Limited Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

## 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 (restriction on planting trees etc. in or near carriageway) of the 1980 Act(a) does not apply to any tree or shrub planted in the course of the authorised development before completion of construction.

(2) Section 167 (powers relating to retaining walls near streets) of the 1980 Act(b) does 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) (powers to give directions as to the timing of proposed and subsisting street works) of the 1991 Act(c) do not apply in relation to the authorised development.

(2) Section 56A(d) (power to give directions as to placing of apparatus) of the 1991 Act do not apply in relation to the placing of apparatus in the course of the authorised development.

(3) No restriction under section 58(1)(e) (power to impose restriction on execution of street works in the twelve months following completion of substantial road works) of the 1991 Act has effect in relation to the authorised development.

(4) Section 61(1) (under which the consent of the street authority is required for the placing of apparatus in a protected street) of the 1991 Act does not apply to the placing of apparatus in the course of the authorised development.

(5) Section 62(2) (power following designation of a protected street to require removal or repositioning of apparatus already placed in the street) of the 1991 Act does not apply in relation to apparatus placed in the course of the authorised development.

(6) Section 62(4) (power when designation as protected street commences or ceases to give directions with respect to works in progress) of the 1991 Act does not apply in relation to the authorised development.

(7) Section 63(1) (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) of the 1991 Act does not apply in relation to the authorised development.

(8) The powers conferred by section 73A(1)(f) and 78A(1)(g) (requirements for undertaker to re-surface street) of the 1991 Act are not to be exercised in relation to the authorised development.

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- (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 (1 A) were amended by section 43 of the Traffic Management Act 2004 (c. 18).
  - (d) Section 56 A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).
  - (e) Section 58(1) was amended by section 51(1), (2) of the Traffic Management Act 2004 (c. 18).
  - (f) Section 73 A was inserted by section 55(1) of the Traffic Management Act 2004 (c. 18).
  - (g) Section 78 A was inserted by section 57(1) of the Traffic Management Act 2004 (c. 18).

~~(8)~~(9) Sections 74(a) and 74A(b) (charge for occupation of the highway and charge determined by reference to duration of works) of the 1991 Act do not apply in relation to the authorised development.

~~(9)~~(10) Schedule 3A(c) (restriction on works following substantial street works) to the 1991 Act does not apply where a notice under section 54(d) (advance notice of certain works) or 55(e) (notice of starting date of works) of that Act is given in respect of the authorised development.

~~(10)~~(11) No notice under paragraph 2(1)(d) (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) of Schedule 3A to the 1991 Act has effect to require the notification of works proposed to be carried out in the course of the authorised development.

~~(11)~~(12) No directions under paragraph 3 (directions as to the date on which undertakers may begin to execute proposed works) of Schedule 3A to the 1991 Act are to be issued to the undertaker in relation to the authorised development.

~~(12)~~(13) Paragraph 3(4) (under which it is an offence for an undertaker to execute street works before the completion of certain other street works) of Schedule 3 A to the 1991 Act does not apply in relation to the execution of works in the course of the authorised development.

~~(13)~~(14) Paragraph 5(1) (effect of direction under paragraph 4 restricting further works) of Schedule 3A to the 1991 Act does 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 (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) of the Local Government (Miscellaneous Provisions) Act 1976(f) does not apply to the extent that it would make provisions of this Order authorising the authorised development subject to other provisions.

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- (a) Section 74 was amended by sections 256 and 274 of, and Part 5(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).
  - (b) 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) Schedule 3 A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004 (c. 18).
  - (d) 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).
  - (e) 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).
  - (f) 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).

## MEMBERSHIP, ROLE AND PROTOCOL OF THE SUSTAINABLE TRANSPORT WORKING GROUP

1. The Sustainable Transport Working Group (“STWG”) will comprise representatives of—
- (a) the undertaker, who will normally take the Chair;
  - (b) the local highway authority;
  - (c) ~~each of the district~~the local planning authority~~ies within whose administrative area the Order limits lie;~~
  - (d) interested railway or bus operators (non-voting);
  - (e) travel plan co-ordinators for the individual warehouses (non-voting); and
  - (f) such other interested parties, stakeholders and expert bodies whose attendance members of the STWG may from time to time believe to be beneficial (non-voting),

except that if at the time the STWG is constituted or any time thereafter a unitary authority is established then paragraphs (b) and (c) will be replaced by both a highway representative and a planning representative of the unitary authority.

2. The role of the STWG will be—
- (a) to oversee the delivery of the framework travel plan and the sustainable transport strategy;
  - (b) to review the public transport services serving the authorised development in light of levels of usage and timing of provision with the objective of maximising usage as set out in the sustainable transport strategy;
  - (c) to oversee the work of the area-wide Travel Plan Co-ordinator appointed under the provisions of the framework travel plan, receiving the monitoring and review reports on the performance of the framework travel plan and sustainable transport strategy and recommending further action to maximise sustainable travel patterns in connection with the authorised development as deemed necessary;
  - (d) to consider all occupier-specific travel plans submitted pursuant to requirement 4(2) (sustainable transport) and to advise the local planning authority on their consistency with, and support for, the agreed measures and targets in the framework travel plan and sustainable transport strategy; and
  - (e) to participate in any reviews of the framework travel plan and the sustainable transport strategy.

3.—(1) The STWG will be administered by the undertaker in accordance with the following protocol.

(2) Meetings of the STWG will be convened, administered and serviced by the area-wide Travel Plan Co-ordinator appointed under the provisions of the framework travel plan.

(3) Meetings will take place at not more than 6 monthly intervals in a venue provided by the undertaker (or such other frequency, place and timing as the STWG members may subsequently agree upon).

(4) Not less than ten clear working days’ notice of meetings will be given to all parties accompanied by an agenda and background papers with relevant information for the matters to be considered.

(5) All members will have the right to propose an item to be discussed at the meeting under urgent business.

(6) A meeting will only be quorate if a representative from both the local highway authority and the undertaker is present.

(7) The area-wide Travel Plan Co-ordinator must minute each meeting and circulate copies of the minutes as soon as practical to all invited parties. Such minutes, once confirmed at the subsequent

meeting, will become a matter of public record, subject to redaction of individual items of commercial or personal confidentiality.

(8) The STWG will at all times be free to consult with other relevant authorities and bodies and will at the ~~electionrequest~~ of any member be at liberty to invite persons to attend meetings in a non-voting capacity.

4. Decisions of the STWG are to be taken on a majority vote with each voting member of the STWG present having a single vote. In the event of a vote causing an impasse, or if any of the voting members disagree with the decision made and wish it to be reviewed, the decision (the “disputed decision”) will be reviewed using the decision review mechanism set out in paragraph 5.

5.—(1) In the event of any disputed decision of the STWG being subject to review as provided by paragraph 4 the following protocol applies.

(2) The voting members involved in the disputed decision (“the relevant members”) will attempt to resolve the matter and reach agreement on the disputed decision if possible without delay.

(3) If the relevant members are unable to resolve the matter within three weeks of the disputed decision having been taken any relevant member may, by serving notice by email ~~and recorded delivery post~~ on all the other relevant members (“the notice”), with a copy to all other members of the STWG, within fourteen days of the expiry of the three weeks referred to above, or later by agreement between the relevant members, refer the disputed decision to an expert (“the expert”) for resolution.

(4) In order to refer the disputed decision to the expert the notice must specify—

- (a) the nature, basis and brief description of the disputed decision; and
- (b) the expert proposed.

(5) In the event that the relevant members are unable to agree whom should be appointed as the expert within 14 days after the date of the notice then any of the relevant members may request the President of the Law Society to nominate the expert at their joint expense.

(6) The expert will be appointed subject to an express requirement that the expert reaches a decision on how the disputed decision is to be resolved and communicates it to the relevant members within the minimum practicable timescale allowing for the process in sub-paragraph (7) and the nature and complexity of the disputed decision and in any event not more than 42 days from the date of the expert’s appointment to act.

(7) Following appointment the expert will be required to give notice to each of the relevant members inviting each of them to submit to the expert within 21 days written submissions and supporting material on their position in relation to the disputed decision with copies of those submissions and material being provided at the same time to the other relevant members. The expert will afford to each of the relevant members an opportunity to make counter submissions within a further 14 days in respect of any such submission and material.

(8) The expert when making the expert’s determination shall have regard to the contents of any relevant national planning or transport policy and any relevant transportation policy adopted by the local highway authority and, where relevant, any increase or decrease in the traffic including public transport and travel by other sustainable means arising from the authorised development compared with that presented in the transport assessment or such other assessment, automatic traffic counts or monitoring data as may be supplied by the relevant members.

(9) The expert will act as an expert and not as an arbitrator and the expert’s decision will (in the absence of manifest error) be final and binding on the relevant members and at whose cost will be at the discretion of the expert or in the event that the expert makes no determination, such costs will be borne by the relevant members in equal shares.

SCHEDULE 16

Article 43

CERTIFICATION OF PLANS AND DOCUMENTS

<i>(1)</i> <i>Document/Plan</i>	<i>(2)</i> <i>Document Number</i>	<i>(3)</i> <i>Document date or plan number with revision number</i>
Land plans Key plan Sheet 1 Sheet 2 Sheet 3 Sheet 4	DCO 2.2 DCO 2.2A DCO 2.2B DCO 2.2C DCO 2.2D	EMG2-237 P4 EMG2-237 P4 EMG2-237 P4 EMG2-237 P4 EMG2-237 P4
Works plans Key plan Sheet 1 Sheet 2 Sheet 3 Sheet 4	DCO 2.3 DCO 2.3A DCO 2.3B DCO 2.3C DCO 2.3D	EMG2-BWB-LSI-XX-DR-C-00160 P07 EMG2-BWB-LSI-01-DR-C-00161 P08 EMG2-BWB-LSI-02-DR-C-00162 P07 EMG2-BWB-LSI-02-DR-C-00163 P07 EMG2-BWB-LSI-02-DR-C-00164 P03
Access and rights of way plans Key plan Sheet 1 Sheet 2	DCO 2.4 DCO 2.4A DCO 2.4B	EMG2-BWB-LSI-XX-DR-C-00170 P02 EMG2-BWB-LSI-XX-DR-C-00171 P04 EMG2-BWB-LSI-XX-DR-C-00172 P03
Parameters plan	DCO 2.5	EMG2-UMC-SI-01-DR-A-0088 P22
Highway plans general arrangement Key plan Sheet 1 Sheet 2 Sheet 3 Sheet 4	DCO 2.8 DCO 2.8A DCO 2.8B DCO 2.8C DCO 2.8D	EMG2-BWB-HGN-XX-DR-H-0100 P02 EMG2-BWB-HGN-XX-DR-H-0101 P08 EMG2-BWB-HGN-XX-DR-H-0102 P08 EMG2-BWB-HGN-XX-DR-H-0103 P08 EMG2-BWB-HGN-XX-DR-H-0104 P03
Highway plans long sections Sheet 1 Sheet 2 Sheet 3 Sheet 4	DCO 2.10A DCO 2.10B DCO 2.10C DCO 2.10D	EMG2-BWB-HGT-M1NBS-DR-H-0651 P03 EMG2-BWB-HGT-A50EB-DR-H-0651 P04 EMG2-BWB-HGT-A453-DR-H-0651 P04 EMG2-BWB-HGT-HYAM-DR-H-0651 P04
Highway classification plan	DCO 2.12	EMG2-BWB-LSI-01-DR-C-0180 P03
Traffic regulation plan	DCO 2.13	EMG2-BWB-LSI-01-DR-C-0150 P03
Speed limit plan	DCO 2.14	EMG2-BWB-LSI-01-DR-C-0190 P03
Community park plan	DCO 2.16	EMG2-BCA-ELS-XX-DR-L-2313-23-17-S5 P13
Book of reference	DCO 4.3	October 2025
Design approach document	DCO 5.3	October 2025
Environmental Statement	DCO 6.1 – 6.23	October 2025

## **EXPLANATORY NOTE**

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

This Order grants development consent for, and authorises (“the undertaker”) to construct, operate and maintain East Midlands Gateway Phase 2 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 43 (certification of plans and documents) of this Order may be inspected free of charge at the offices of North West Leicestershire District Council at Belvoir Road, Coalville, Leicestershire LE67 0FW.