

# **M42 Junction 6 Development Consent Order**

## **Scheme Number TR010027**

### **8.45 Comparison between Application Draft and Second Draft DCOs**

Planning Act 2008

Rule 8(1)(k)

The Infrastructure Planning (Examination Procedure) Rules 2010

July 2019

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

**M42 Junction 6 Development Consent Order**  
Development Consent Order 202[ ]

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**Comparison between Application Draft and Second Draft DCOs**

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<b>Regulation Number</b>	Rule 8(1)(k)
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# 1. Highways England: Responses to Local Impact Report – Solihull Metropolitan Borough Council

## 1.1 Overview

- 1.1.1 In accordance with the requirements of the Planning Act 2008 and the Planning Inspectorate's Advice Note One: Local Impact Reports, Solihull Metropolitan Borough Council (SMBC) has prepared and submitted its Local Impact Report (LIR) [REP2-033] to the examination of the Development Consent Order (DCO) application for the M42 Junction 6 scheme (the Scheme).
- 1.1.2 SMBC's LIR covers matters that it considers to be relevant to the likely impact of the Scheme on its area. The Applicant has reviewed the content of SMBC's LIR and has provided responses and clarification on the matters recorded by SMBC.
- 1.1.3 The Applicant would like to thank SMBC for providing its LIR expressing support for the Scheme and acknowledging the regional and national benefits it will deliver.
- 1.1.4 The Applicant is continuing to work with SMBC to develop a Statement of Common Ground (SoCG), through which it is seeking to reach agreement on the matters raised.

## 1.2 Structure of the response

- 1.2.1 This document responds to the local impacts identified by SMBC. The Applicant acknowledges statements made within the LIR where SMBC has agreed with the assessment methodologies, approaches and conclusions presented within the Environmental Statement.
- 1.2.2 Where sections or paragraphs from the LIR have been omitted from this response and are not responded to directly by the Applicant, this is because the content comprises:
  - general summary observation(s);
  - introductory text around a topic;
  - statements of agreement (as outlined above);
  - conclusions or mirroring text presented within the Environmental Statement; and/or
  - statements on SMBC planning policy.
- 1.2.3 For the benefit of the Examining Authority (ExA), matters raised within the LIR will continue to be discussed further with SMBC and presented within future revisions of the SoCG [REP2-009].
- 1.2.4 **Table 1.1** of this response broadly corresponds to the following structure adopted in SMBC's LIR:
  - Section 1: Introduction
  - Section 2: Executive Summary
  - Section 3: Solihull Context
  - Section 4: Details of the proposal
  - Section 5: Policy Framework
  - Section 6: Other Relevant Considerations
  - Section 7: Local Impact Assessment
    - Section 7.5: Biodiversity
    - Section 7.6: Landscape
    - Section 7.7: Archaeology
    - Section 7.8: Cultural Heritage
    - Section 7.9: Air Quality
    - Section 7.10: Noise and Vibration

**Table 1.1 – Full Response**

Ref	SMBC LIR Comment	Highways England Response
<b>Section 1: Introduction</b>		
		Section noted by the Applicant.
<b>Section 2: Executive Summary</b>		
		Section noted by the Applicant. The points recorded within the Executive Summary have been discussed within the applicable sections presented below.
<b>Section 3: Solihull Context</b>		
		No response required.
<b>Section 4: Details of the proposal</b>		
		No response required.
<b>Section 5: Policy Framework</b>		
		No response required.
<b>Section 6: Other Relevant Considerations</b>		
		No response required.

Ref	SMBC LIR Comment	Highways England Response
<b>Section 7: Local Impact Assessment</b>		
		Section noted by the Applicant.
<b>Section 7.5: Biodiversity</b>		
	<p><b>Likely adverse impacts to Bickenhill Meadows SSSI SE Unit</b></p> <p>The submitted DCO contains less than six months of dipwell monitoring data within the SSSI, however monitoring will continue post submission for at least two years. 2018 was also an unusual year in that it contained a prolonged dry spell (June – August). Six months' data in an unusual year is a very low amount of data on which to base an impact assessment of this magnitude.</p>	<p>Following discussions with Natural England, visual monitoring of the Bickenhill Meadows Site of Special Scientific Interest (SSSI) commenced in June 2018 with dipwell monitoring commencing in August 2018 as the potential impact to the SSSI was identified as part of the Environmental Impact Assessment process. The data collected to submission of the DCO was primarily aimed at understanding the form and level of mitigation required to mitigate the impact and was deemed appropriate to Natural England.</p>
	<p>An alternative mitigation plan has been proposed which involves a passive, gravity fed solution for replacing the lost surface water catchment. The Council has not yet had sight of this solution from Highways England and the supporting evidence behind it. Until presented with this alternative solution, and acknowledging that the pumped solution is included within the DCO proposal and is likely to be pursued if the alternative mitigation scheme fails for any reason, the Council's Ecologist objects to the mitigation proposal for the SE Unit of Bickenhill Meadows SSSI for the following reasons:</p> <ul style="list-style-type: none"> <li>• The pumped option is heavily engineered and not sustainable in the long term.</li> <li>• Paragraph 5.29 of the NPSNN requires the applicant to demonstrate that their proposals to mitigate for harmful</li> </ul>	<p>The Bickenhill Meadows SSSI Preliminary Hydrological Investigation Technical Note (V.7) contained in Appendix 14.2 to Volume 3 of the Environmental Statement [APP-110/Volume 6.3] has been updated following submission of the DCO application.</p> <p>The revised version (V9.1) of the Technical Note [6.3 Appendix 14.3a] has been submitted as part of the Applicant's Deadline 3 submission. This note was however issued to SMBC (as well as Natural England and Warwickshire Wildlife Trust (WWT)) on 3 July 2019</p> <p>V.9.1 of the Technical Note incorporates the latest measurements recorded as part of the ongoing dipwell monitoring, and further interpretation in relation to the potential effects of the Scheme on the SSSI. Furthermore this took into account matters raised in discussion with Natural England and WWT in a meeting on 14 March 2019.</p>

Ref	SMBC LIR Comment	Highways England Response
	<p>impacts on SSSI's are acceptable. No information has been provided regarding the specific details of the mitigation scheme including who will be responsible for the ongoing management, maintenance and monitoring of the mitigation scheme, and how this will be funded. This information is fundamental to the success and deliverability of the mitigation scheme.</p> <ul style="list-style-type: none"> <li>No evidence has been provided to demonstrate that this mitigation solution will work and result in the negligible adverse magnitude impact reported in the ES (Chapter 9, para 9.9.16).</li> </ul>	<p>Following continued modelling and analysis of the Scheme's potential effects on the SSSI, V.9.1 of the Technical Note now presents a passive mitigation solution which does not rely on the pumping of water. This solution can be delivered within the Order Limits and would achieve the required levels of water replenishment to the SSSI.</p> <p>The biodiversity assessment presented in Chapter 9 Biodiversity of the Environmental Statement [APP-054/Volume 6.1] adopted a worst-case scenario, and the data collected and presented within the DCO application is considered to be sufficiently robust and comprehensive enough to inform the assessment of likely significant effects of the Scheme on the SSSI.</p>
	<p><b>Part destruction of Aspbury's Copse ancient woodland</b></p> <p>Acknowledging that ancient woodland is an irreplaceable habitat that cannot be replaced, a compensation scheme has been provided within the DCO proposal including translocation of ancient woodland soils and new woodland planting. The replacement ratio is 3:1 which falls below standards recommended by the Woodland Trust which is 30:1.</p>	<p>The Applicant acknowledges that ancient woodland is an irreplaceable habitat within Chapter 9 Biodiversity of the Environmental Statement [APP-054/Volume 6.1].</p> <p>The Applicant has sought to identify the potential effects of the Scheme on both parcels of ancient woodland either side of the existing M42 motorway at Aspbury's Copse, and is seeking to compensate for these effects by securing land contiguous with the parcel of woodland to the east of the M42 motorway within the DCO application for replanting.</p> <p>The 3:1 compensation ratio presented in Chapter 9 Biodiversity of the Environmental Statement [APP-054/Volume 6.1] has taken into account the following factors and considerations:</p> <ul style="list-style-type: none"> <li>The status of the Scheme as a Nationally Significant Infrastructure Project;</li> <li>The need for the Scheme;</li> <li>The form, status and condition of Aspbury's Copse ancient woodland;</li> </ul>

Ref	SMBC LIR Comment	Highways England Response
		<ul style="list-style-type: none"> <li>• The likely environmental effects of the Scheme on Asbury's Copse ancient woodland;</li> <li>• The impacts on third parties or private property; and</li> <li>• There being no national precedent as to what is an acceptable compensation ratio for the loss of ancient woodland resource to development projects.</li> </ul> <p>It should be noted that the 30:1 ratio recommended by the Woodland Trust is not a national standard.</p> <p>The Applicant contends that the form, location and ratio of the compensation planting presents a proportionate response to the predicted effects of the Scheme on Asbury's Copse ancient woodland.</p>
	<p><b>No commitment to providing net gain to biodiversity as a result of the scheme</b></p> <p>A biodiversity offsetting report including a calculation using the Defra metric is being produced, however it is unlikely that a final report will be available until the design of the scheme has been finalised. This will be in October/November 2019 after the scheduled DCO hearings, and possibly after the Examination has closed. An interim report and calculation has been requested from Highways England, on the understanding that it is subject to change as the design does. The rationale being that it will provide the Council and other Interested Parties with an understanding of the broad principles being applied and an indication of the potential level of biodiversity loss as a result of the scheme. This request is currently with Highways England for their consideration.</p>	<p>The Applicant has aspired to achieve a net gain for the Scheme; however, as discussed previously with SMBC, a large majority of the Scheme is located within the aerodrome safeguarding zone (which delineates, and to a degree protects, the take-off and landing routes up to 13km from the Birmingham Airport).</p> <p>This constraint has influenced the environmental mitigation strategy for the Scheme and has restricted the ability to implement the types of mitigation measure typically applied to road schemes of this nature, for example woodland planting.</p> <p>The Applicant is currently undertaking an interim biodiversity calculation, as agreed with SMBC on the 15 May 2019, and will report back to SMBC in due course.</p>



Ref	SMBC LIR Comment	Highways England Response
	<p><b>Methodology and Outstanding Surveys</b></p> <p>The methodologies employed to undertake ecological surveys and to assess the potential ecological impacts of the scheme are all in accordance with industry best practice. Some species groups can only surveyed at certain times of the year, and this seasonality has meant that some of the reports submitted as appendices to the ES are not complete and in the process of being updated. The following are awaiting updates from Highways England:</p> <ul style="list-style-type: none"> <li>• Bats</li> <li>• Aquatic habitats</li> <li>• Great crested newt</li> <li>• Fungi/lichen for Asbury's Copse</li> </ul> <p>Apart from the fungi/lichen report which is not expected imminently, the remaining updates are expected to be available in the near future. Highways England's consultants have confirmed that these updates are not going to change the assessments or conclusions made in the ES.</p> <p>The Bird Strike Management Plan is also yet to be submitted by Highways England.</p>	<p>A number of ecological surveys are being undertaken in 2019, the outcomes of which will be reported and submitted to the ExA as further environmental information to support the examination of the DCO application.</p> <p>The following updates the current position for each of these surveys:</p> <ul style="list-style-type: none"> <li>• The 2018 Bat Survey Report (which collates the remaining bat survey data that due to time constraints for submission meant it could not be included within the final biodiversity assessment) has been submitted at Deadline 3 [<b>Volume 8.38</b>].</li> <li>• The 2019 Bat Survey Report is proposed to be submitted at or before Deadline 5.</li> <li>• The 2019 Great Crested Newt Report is proposed to be submitted at or before Deadline 4.</li> <li>• The 2018 Aquatic Invertebrates (including habitats) Report (which collates the remaining survey data that due to time constraints for submission meant it could not be included within the final biodiversity assessment) has been submitted at Deadline 3 [<b>Volume 8.37</b>].</li> <li>• The Fungi surveys will be undertaken in September 2019 due to seasonal constraints and optimum survey windows and will be submitted at, or before, Deadline 6.</li> <li>• The Lichen surveys have been undertaken and are currently being interpreted. These are proposed to be submitted at or before Deadline 4.</li> </ul>

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		<p>The Outline Bird Strike Management Plan [REP2-023] was issued to SMBC on the 4 July 2019. The document issued to SMBC is the same version that was submitted to the ExA at Deadline 2 for consideration [Volume 8.25].</p>
	<p><b>Hedgerows</b></p> <p>It is proposed that all County important hedgerows in addition to H35 and H42, which are hedgerows that have been established for a long period of time, will be translocated as a mitigation measure. This proposal is welcomed, however it should also be built into the CEMP that if translocation fails or cannot be carried out for any reason, that new hedgerow planting be required in the same location.</p> <p>In addition to the translocation measures, it is proposed to plant 12km of new hedgerow as mitigation.</p> <p>The locations of hedgerow planting are shown on the Environmental Masterplan (ES Figure 8.8), however it is not clear from this which are translocated (and if so where from) or new planting.</p>	<p>The Applicant and the Contractor will agree the period of maintenance to be undertaken for translocated and new hedgerows, which will form a contractual requirement. This is expected to be a period of 3 to 5 years post construction of the Scheme, during which time the Contractor will be required to replace any hedgerows that fail to establish.</p> <p>The locations for translocation will be determined during the detailed design phase of the Scheme, and areas suitable for translocation will be identified within an Outline Biodiversity Management Plan (BMP), to be submitted to the examining authority.</p>
	<p><b>Protected Species – Bats</b></p> <p>The proposed scheme will also result in the fragmentation of bat commuting and foraging habitats, as the new road will create a new barrier to bat movement. Whilst the new sections of dual carriageway are proposed to be unlit, the new roundabouts and junctions will be lit. Catherine-de-Barnes Lane is currently unlit along the majority of its length.</p> <p>There are a number of bat roosts known to exist within Bickenhill village, and the creation of the proposed scheme will</p>	<p>The Applicant can confirm that Bickenhill roundabout will not be lit.</p> <p>As detailed in Chapter 9 Biodiversity of the Environmental Statement [APP-054/Volume 6.1], surveys have confirmed that bat foraging and commuting activity is low across the majority of the Order Limits, with the species present being representative of local records and unexceptional. Bats are therefore evaluated as being of Local importance.</p> <p>The introduction of the mainline link road has the potential to result in fragmentation impacts, which may influence the ability of bats to move</p>

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	<p>sever these roosts from foraging grounds to the west. This is acknowledged in the ES (paragraph 9.9.89), however the difference between the proposed scheme and the existing Catherine-de-Barnes Lane is downplayed. A dual carriageway in cutting including slip roads, overbridges and lighting is very different to a single carriageway rural road with established hedgerows and scrub on either side. This fragmentation impact is likely to be greatest during construction and whilst any new planting establishes, although the long term permanent impacts are likely especially for species that use established routes and do not like flying over open ground. More information in relation to specific mitigation for the fragmentation of bat habitat during construction is required in the OEMP, HEMP and subsequently in the CEMP.</p>	<p>between essential areas, for example roosts and favoured foraging areas.</p> <p>The fragmentation impacts associated with Scheme construction are considered in Paragraphs 9.9.89 &amp; 9.9.90 of Chapter 9 Biodiversity of the Environmental Statement [<b>APP-054/Volume 6.1</b>]. The biodiversity assessment acknowledges that there will be a fragmentation impact due to the removal of habitat (mainly hedgerows and trees) that bats use for commuting.</p> <p>The following provides further explanation of this assessment.</p> <p>Firstly, the levels of foraging and commuting activity are low, with no key flight paths and / or foraging routes of significant maternity roosts have been recorded. This indicates that the habitats are of low importance for bats. As bats forage away from roosts, the fragmentation impact needs to be considered in the overall extent of the range that bats may reasonably be expected to make use of, which, for species like common pipistrelle can be around 1 -2 km<sup>2</sup>, and with stronger flying bat species making use of larger areas. No significant roosts, for example, maternity or breeding roosts, have been confirmed within the Order Limits. It is therefore likely that any affected habitats within the Order Limits form part of the wider or peripheral range used by any significant roosts that may be present in the surrounding landscape, rather than being key habitat in close proximity to the roost. The Scheme does require the removal of a corridor of habitat, but significant amounts of habitat would be retained to maintain potential habitat linkages for bats. Therefore, given the low levels of observed activity, the wider range that is available to the local bat population and the presence of other connecting habitat to the surrounding landscape, it is considered that fragmentation impacts would be localised and limited.</p> <p>Chapter 9 Biodiversity of the Environmental Statement [<b>APP-054/Volume 6.1</b>] considers the effects during construction and</p>

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		<p>operation of the Scheme. This concludes a minor adverse effect as a result of the fragmentation of bat habitat, until such time as the replacement habitats establish, reducing the effect to negligible in the design year. A minor adverse effect is the largest effect that may result for any ecological feature of local importance.</p> <p>The Applicant maintains that this evaluation is proportionate to the magnitude of impacts, particularly in the context of the ecological importance of the bat population, and therefore disagrees that any element of the assessment has been downplayed.</p>
	<p><b>White-clawed Crayfish</b></p> <p>There is a population of white-clawed crayfish located in the Low Brook, which is to the west of the DCO proposal, outside of the Order Limits. Evidence of signal crayfish and crayfish plague has been found in the Shadow Brook catchment to the east of the proposed scheme. Under the DCO proposal, works are required in the Shadow Brook catchment and also in the catchment of an unnamed tributary of the Low Brook to the west of the scheme. The introduction of crayfish plague or signal crayfish to any watercourse to the west of the proposed scheme via contractors or machinery could result in the loss of the existing white-clawed crayfish population. No specific mention of this risk is made in the OEMP or the HEMP. A detailed method statement for this issue needs to be included in the CEMP once it is available.</p>	<p>Appendix C of the Outline Environmental Management Plan (OEMP) contains an Outline Environmental Control Plan for Invasive Species [APP-172/Volume 6.11] including signal crayfish.</p> <p>A detailed method statement detailing appropriate biosecurity measures to prevent the potential spread of crayfish plague between watercourses will be developed by the Contractor incorporated into the Construction Environmental Management Plan (CEMP). This will include measures such as, the washing down and decontamination of equipment and vehicles that may move between the watercourses during construction.</p>
	<p><b>Badger</b></p> <p>No main setts will be lost a result of the scheme, [REDACTED]. All badger sett closures will be carried out under Natural England licence, as detailed in the OEMP.</p>	<p>Badger mitigation will be secured through the following DCO documents:</p> <ul style="list-style-type: none"> <li>- Environmental Masterplan [APP-095/Volume 6.2]</li> <li>- DCO Requirement 5 [APP-015/Volume 3.1]</li> </ul>

Ref	SMBC LIR Comment	Highways England Response
	Mitigation for fragmentation of badger territories has been embedded within the design of the proposed scheme. Badger fencing and tunnels are provided at the [REDACTED] and at [REDACTED] More information is needed from Highways England regarding the maintenance requirements and responsibilities for these features, so that their long term upkeep is secured.	<ul style="list-style-type: none"> <li>- Outline BMP, which will be secured through an amendment to the draft Development Consent Order (dDCO) under Requirement 4.</li> </ul> <p>The Outline BMP will set out how the badger mitigation features will be managed and who will be responsible for their future maintenance.</p>
<b>7.6: Landscape</b>		
	<p><b>Legislative Policy Framework and Assessment Methodology</b></p> <p>The Council's Landscape Architect is satisfied with the review of legislation and planning policy that is of direct relevance to the assessment of landscape contained in the submitted Environmental Statement Chapter 8. The Council's Landscape Architect is reassured with the assessment methodology and guidance used to inform the scope and content of the assessment, to assist the identification and mitigation of likely significant effects. However the Council's Landscape Architect has requested confirmation from the applicant as to whether the recently published technical guidance on Residential Visual Amenity Assessment (RVAA) by the Landscape Institute has been used to supplement the advice and best practice currently presented within the assessment. In addition, the applicant has been asked whether the following sources of data were reviewed as part of the establishment of the baseline environment and assist in the initial identification of boundaries, qualities and elements of individual character areas, and their susceptibility to change:</p>	<p>The Residential Visual Amenity Assessment (RVAA) technical note was published by the Landscape Institute in March 2019 after the landscape and visual impact assessment (LVIA) of the Scheme had been undertaken and reported. Accordingly, the RVAA technical note has not been considered within the LVIA.</p> <p>Due to the extents of the Scheme, regional scale landscape character assessments have been used in the LVIA, specifically Solihull's Countryside Strategy 2010-2020 and the North Warwickshire Landscape Character Assessment.</p> <p>No comments challenging the use of regional scale landscape character information or requests to use the Solihull local character information were provided by SMBC as part of the Applicant's request for a Scoping Opinion, submitted to the Planning Inspectorate in October 2017.</p>

Ref	SMBC LIR Comment	Highways England Response
	<p>□ Solihull Boroughs Landscape Character Assessment (Waterman, December 2016); and</p> <p>□ Solihull's Local Character Guide (Waterman, November 2016).</p>	
	<p><b>Arboricultural Assessment</b></p> <p>The Council's Landscape Architect has sought clarification from the applicant as to whether an Arboricultural Impact Assessment has been completed to determine the impact of the development on trees on the site, and that this information presented in this report has been used to inform the layout of the development and guide mitigation options. The Landscape Architect asked the applicant to confirm that the Outline Environmental Management Plan (OEMP) [TR010027/APP/6.11] and the Construction Environmental Management Plan (CEMP) will include provisions for an Arboricultural Tree Protection Plan and Working Method Statement prior to works commencing on site. This should be informed by the Arboricultural Impact Assessment based on the final site layout. The Arboricultural Tree Protection Plan and Working Method Statement should cover detailed methods for construction and operations within any of the RPAs in order to minimise the potential for adverse effects on these trees, e.g. digging using hand tools and supervision by a suitably qualified arboriculturist, in accordance with BS5837:2012. At this time, the applicant has not responded on this matter.</p>	<p>The Applicant can confirm that an Arboricultural Survey was undertaken to inform the mitigation strategy for the Scheme. The survey sought to identify and map individual trees, grouped trees, veteran trees and hedgerows. The findings of the survey are presented within Appendix 8.2 of Volume 3 of the Environmental Statement [APP-128/Volume 6.3].</p> <p>Construction works in proximity to trees to be retained will be guided by "British Standard BS:5837:2012 Trees in relation to design, demolition and construction", which provides guidance on the identification of working zones around trees to ensure the protection of their root systems and, where necessary, their canopies.</p> <p>The Contractor will be required to identify appropriate working methods and protection areas around trees to be retained prior to the commencement of construction, the details of which will be contained within their CEMP and will be subject to approval in accordance with Requirement 4 of the DCO.</p>



<p><b>Design, Mitigation and Enhancement Measures</b></p> <p><b>Compensation</b></p> <p>The Council's Landscape Architect is satisfied with the proposed embedded and standard mitigation measures, and the compensation measures, identified within the submitted documents. However, further requests that these works also accommodate the principles adopted with the Council's European Regional Development Fund (ERDF) 'Wildlife Ways' Project have been made. Catherine De Barnes Lane, a key corridor within the scheme has been omitted from the Council's programme of works in light of the highway proposals identified within the DCO proposal. The aim of the Council's Wildlife Ways project is to contribute to the specific objectives set out in the European Structural and Investment Funds operational programme to preserve and protect the environment and promote resource efficiency and to undertake a wide range of habitat and nature improvement projects across large areas of the Borough.</p> <p>The Council's Landscape Architect welcomes the proposed mitigation measures and understands the planting strategy and landscaping scheme have been informed by the outcomes of the biodiversity assessment "<i>a key objective being to identify measures that, wherever possible, provide a combined function of landscape integration and/or screening, and habitat creation and replacement, to mitigate effects on biodiversity interest</i>". However, in light of <b>CAP 772</b> and, notwithstanding any potential restrictions on the proposed landscape planting or landscape strategy by Birmingham Airport's safeguarding zone, the Council have requested whether there is a species list to support the landscape strategy or proposed landscape planting in Figure 8.3 [TR010027/APP/6.2]. The Council needs to be assured that the planting proposals respond to other</p>	<p>The Applicant can confirm it has considered the documents provided by SMBC with regards to the Wildlife Ways in developing the Scheme's landscape mitigation strategy and the Environmental Masterplan as presented within Figure 8.3 and Figure 8.8 of Volume 2 of the Environmental Statement [APP-090/Volume 6.3; APP-095/Volume 6.3]. However, as noted by SMBC, the Applicant agrees there is a degree of incompatibility between the Wildlife Way of Catherine-de-Barnes Lane and the DCO application.</p> <p>The Applicant can confirm that an outline species list is being developed to inform the detailed design of the Scheme. Working drafts of these lists will either be shared with SMBC and the ExA (if the ExA considered this is to be of assistance) during the examination of the DCO application, or will be incorporated into the Outline BMP to be submitted to the ExA.</p> <p>The Applicant can confirm that the outline species list noted above will take into consideration (where appropriate) the wider Warwickshire Arden Landscape and the applicable defined 'Enhancement Zones' within Warwickshire Landscape Guidelines for Arden adopted SPG.</p>
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	<p>adopted Solihull MBC Policies regarding the protection and enhancement of the natural environment, landscape character and local distinctiveness. The applicant has not provided a response on this matter.</p> <p>The Council is mindful of the necessity for wildlife management on and within the proximity of the airfield and indeed Birmingham Airports Obstacle Limitation Surface (OLS), but the Airport's safeguarding zone, a 13km radius of the aerodrome includes the majority of the Borough and the Council would like to be assured that planting proposals respond to those species identified as characteristic of the wider Warwickshire Arden Landscape. Furthermore, part of the site falls within an 'Enhancement zone' (Warwickshire Landscape Guidelines for Arden adopted SPG) where the structure and character of the landscape is in decline. These areas termed 'Enhancement zones' represent priority areas where resources for landscape and habitat restoration should be targeted.</p>	
<b>7.7: Archaeology</b>		
	<p>Whilst the Planning Archaeologist notes that the ES acknowledges the potential for as yet unidentified archaeological sites to survive across this area and that the proposal could result in their total removal, the Planning Archaeologist is concerned that paragraph 7.9.13, states that it is assumed that '<i>in the absence of the findings of the planned archaeological evaluation, .... Unrecorded archaeological deposits would have a heritage value of no greater than</i></p>	<p>The applicant acknowledges the response from the County Archaeologist for Warwickshire. The archaeological evaluation trenching is on-going, and the results of the work will be disseminated when available and, where necessary, an addendum to Chapter 7 – Cultural Heritage [<b>APP-052</b>] will be issued.</p>



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	<p><i>medium</i>'. The Planning Archaeologist does not agree with this conclusion.</p> <p>At present there is insufficient information available to enable the Planning Archaeologist to complete an assessment of the significance of any as yet unidentified archaeological features which could be disturbed or destroyed by this DCO proposal. It is therefore premature to assume that the significance of any heritage assets present will be '<i>no greater than medium</i>' and to base the assessment of impacts on that assumption.</p> <p>There is a potential for archaeological features or deposits of greater than medium significance to survive across this site. This could include archaeological features or deposits of national importance whose loss, or substantial harm to, should be, as set out para. 5.1.31 of the National Policy Statement for National Networks (NPSNN), '<i>wholly exceptional</i>'. It further states that harm or loss affecting any such heritage asset '<i>should require clear and convincing justification</i>'. Should any such archaeological features or deposits be present across the site, which has not yet been determined, it may be appropriate for the proposal to be amended to help ensure their conservation.</p>	
	<p>This understating of the risk of heritage assets to be present which are of greater than medium significance and potentially worthy of conservation also occurs elsewhere in this chapter of the ES.</p> <p>For example, paragraphs 7.4.16 and 7.8.9 refer to mitigations measures to be implemented prior to, or in the early stages of construction, such as archaeological excavation, watching briefs etc, without referring to the potential need for the</p>	<p>Further stages of appropriate evaluation and mitigation will be developed in discussion with the County Archaeologist for Warwickshire following the results of the evaluation trenching.</p>

Ref	SMBC LIR Comment	Highways England Response
	scheme to be modified in order to avoid or minimise impacting any archaeological features deemed worthy of conservation.	
	The recommended geophysical survey has since been undertaken, and a Written Scheme of Investigation (WSI) produced for the trial trenching, the scope of which was agreed with the Planning Archaeologist (see paras. 7.3.19, 7.4.14). The Environmental Statement reports that the results of the trenching <i>'shall supplement the information presented within this chapter, and shall be submitted during examination of the DCO application as more evidence to inform the development of specific mitigation measures to be implemented either prior to, or in the early stages of construction'</i> (paragraph 7.4.16).	The Applicant can confirm an Interim Archaeological Trenching Report [REP2-020] was submitted at Deadline 2 for consideration.
	To date, it is understood that approximately half of the trial trenching detailed in the WSI has been completed.  Unfortunately, at this time, Highways England has not been able to obtain access for their archaeological contractor to undertake the remainder of the trial trenching.	The archaeological evaluation trenching is currently being undertaken in the remaining accessible areas.  As noted above, an Interim Report [REP2-020] was submitted to the ExA at Deadline 2 that included the first tranche of archaeological trenching.  The second tranche is currently being undertaken and the results and interpretation of these trenches will be submitted as soon as possible during the examination.
	The Planning Archaeologist is of the opinion that the archaeological implications of this proposal cannot be adequately assessed on the basis of the available information.	The archaeological implications of the Scheme have been assessed within Chapter 7 – Cultural Heritage of the Environment Statement [APP-052/Volume 6.1]. Where limitations to the assessment are known these have been presented within Section 7.4 of Chapter 7.

Ref	SMBC LIR Comment	Highways England Response
	The full programme of archaeological trial trenching detailed in the WSI, including those trenches proposed across the areas where it has not yet been possible to access, should be undertaken at the earliest opportunity. This will help to define the character, extent, state of preservation and importance of any archaeological remains present and will also provide information useful for identifying potential options for minimising or avoiding damage to them.	The Applicant confirms that efforts have been made to undertake archaeological trenching at the earliest opportunity to inform the archaeological assessment.
	The Council and Planning Archaeologist respectfully request the opportunity to provide comment on the results of the archaeological evaluation in advance of the close of the Examination.	The full report on the evaluation trenching (tranche 1 and 2) will be available on or before Deadline 5 of the DCO programme. Information on any significant archaeological sites will be reported to the County Archaeologist for Warwickshire in advance of this date.
<b>7.8 Cultural Heritage</b>		
	The Council submits that Bickenhill Conservation Area should be rated as High Value, as it includes a highly significant grade 1 listed building. This elevates it from the Medium Value reported in the Environmental Statement. This suggestion is based on the fact that the parish church is the pre-eminent building in the Conservation Area and remains visually evident as such. Its spire remains as prominent as intended at first design and the hilltop position further emphasises its high significance.	The Applicant accepts that St Peter's Church is a pre-eminent building within the conservation area and is visually prominent.  Volume 11 of the Design Manual for Roads and Bridges (DMRB) provides guidance for establishing the value of historic buildings, including conservation areas. This guidance and professional judgement has been applied in undertaking the cultural heritage assessment reported in Chapter 7 of the Environmental Statement [APP-052/Volume 6.1]. To this extent, the Applicant is of the view that the Medium Value attributed to the Conservation Area is correct.
	The harmful impacts that the M42, airport and other infrastructure are reported to have on the Conservation Area today are not, in the Council's opinion, as extensive as suggested. For example, whilst intermittent intrusion from the sight and sound of aircraft is very clear, the motorway is	The Applicant accepts that Bickenhill has undergone less change than other settlements, both locally and regionally.  However, the existing M42 remains a feature within the landscape which has eroded the rural setting of the village, above and beyond any

Ref	SMBC LIR Comment	Highways England Response
	beyond rising land that then drains to Shadow Brook and so sits out of views from and towards the CA. The Council considers that Bickenhill provides an example of the strong contrast that exists between some Conservation Areas and a part of their surroundings in which post war change has occurred on a significant scale that detracts in part from their setting but at the same time serves to emphasise the character and appearance of that Conservation Area.	visual impact. Both this and the intrusion from aircraft has been considered and referred to in the heritage assessment as they form part of the existing character of the area. Notwithstanding the above, the assessment has taken into consideration the limited effect of these on the significance of the assets and the effects of introducing the Scheme assessed accordingly.
	Looking from the south west or west the view includes expected elements such as hedgerows, narrow lane, fields, farm and Dutch barns, and above them the parish church. The scheme would significantly affect the experience of the designated heritage assets of St. Peter's church and the CA including Grange Farm from here and on approaching along Catherine de Barnes Lane. Impacts upon Grange Farm appear to be weighted as highly as those upon the church - given that the latter is grade 1 and significantly closer this seems impossible to conclude.	In accordance with the assessment methodology for road schemes (the Design Manual for Road and Bridges), and as presented within Chapter 7 – Cultural Heritage [APP-052/Volume 6.1] of the Environmental Statement, <i>impacts</i> do not take into consideration the value (significance) of the asset, they are an assessment of the level of impact experienced only. The significance of <i>effect</i> weighs the impact against the value of the asset.
	The impacts of new highway lighting for the link road, its roundabouts and the Clock Interchange area will adversely impact the setting of the Bickenhill Conservation Area, despite current lighting and the airport presence, because it will conflict further with the rural character of the Conservation Area and the parts of its setting comprising agricultural fields. The lighting at and near to the proposed junction 5a dumbbell roundabouts and link roads will detract from the wider setting and views out from the Hampton in Arden Conservation Area to the east of the scheme.	The effect on the conservation area takes into consideration the impact of lighting of the Scheme. It is agreed that lighting will add to the impact on the asset. It is considered that the level of impact as presented within Chapter 7 – Cultural Heritage of the Environmental Statement [APP-052/Volume 6.1] accurately reflects the effect on the conservation area.

Ref	SMBC LIR Comment	Highways England Response
	The Council submits that Hampton in Arden Conservation Area is also of High rather than Medium Value as it contains a grade 1 parish church and the grade 2* listed buildings of Hampton Manor Clock Tower and The Moat House.	For the significance to be raised the conservation area is required to contain a significant number of highly designated assets which define its character as a whole. While it is noted that the conservation area contains some important buildings, it is not considered that Hampton-in-Arden as a whole reflects this higher value.
	The Council does not agree with the suggestion that the linkage of the clock tower to Hampton Manor means that the setting of the grade 2 manor is the only impact to consider. The setting of each must be considered but they are inseparable in terms of what each adds to the overall value of the group here (including grade 2 listed walls, steps, terraces and unlisted structures too).	The impact on the Clock Tower has been considered within the assessment. The Applicant considered that it is the relationship between the clock tower and the manor that is impacted by the Scheme, as such it is this relationship that has been discussed and assessed within the Chapter 7 of the Environmental Statement <b>[APP-052/Volume 6.1]</b> .
	It appears that opportunities to enhance or better reveal the significance of heritage assets remain to be explored further. For example, opportunities to plant trees of Arden species types in strategic locations agreed with Birmingham Airport could reduce some visual impacts of the scheme and as added value, also filter some current views of roads and airport lighting from Bickenhill Conservation Area and the M42 from Hampton in Arden Conservation Area. the areas of land to be considered are north of Solihull Road and east of the junction 5 a easternmost dumbbell roundabout; and to the north and west of Bickenhill village in land identified for the temporary site compound. Planting could be distributed to retain some view corridors towards the Conservation Areas where appropriate and effective.	An Outline BMP is currently being drafted which will consider species types and mixes throughout the Scheme. Possible interactions between landscaping and heritage assets will be explored to inform the Outline BMP at this stage, with further consideration being undertaken at detailed design.  However, it should be noted that tree planting around Bickenhill Village and the Scheme in general is constrained by the aerodrome safeguarding zone, which heavily restricts what planting (particularly relating to height and species that bear seed) can be implemented.

Ref	SMBC LIR Comment	Highways England Response
	<p>Historic Landscape issues and the subsequent value to be attached to that are still under consideration, and the magnitude of impact upon this aspect of heritage is not yet clear. The Council may submit that its value is Moderate rather than the value of Low stated in Chapter 7, dependent upon further analysis of the surviving fieldscapes and their enclosure, woodlands, trees and evidence of past human settlement and use.</p>	<p>The Applicant will consider the Council's position on the Historic Landscape if this information is subsequently provided to the ExA.</p>
<b>7.9: Air Quality</b>		
	<p>Highways England have therefore been asked to provide additional information to confirm the air quality impacts of the scheme will not affect the ability of Solihull MBC to comply with the ministerial directions it has been issued. This information is outstanding.</p> <p>These same receptors would experience the greatest change in pollutant concentrations from the operational phase of the DCO proposal, due to the introduction of new traffic along the route. However, the ES assessment identifies that currently air quality is considered to be good at these receptors and the introduction of new traffic along the route is not predicted to give rise to any changes considered significant in pollutant concentrations.</p>	<p>The Applicant has confirmed to SMBC on various occasions that the air quality assessment has identified no significant adverse effects as a result of the operation of the Scheme.</p> <p>In paragraph 6.9.9 within Chapter 6 of the Environmental Statement <b>[APP-051/Volume 6.1]</b> the operational assessment (i.e. the opening year of the Scheme) identifies that receptor R16 (located near to the A45, between Clock Interchange and M42 Junction 6) will experience a decrease of 0.7µg/m<sup>3</sup> of NO<sub>2</sub>.</p> <p>Notwithstanding this, the Applicant will continue work with SMBC to further understand its obligations relating to Ministerial Directions on air quality compliance at links Census ID 86030 and 99175.</p>

Ref	SMBC LIR Comment	Highways England Response
<b>7.10: Noise and Vibration</b>		
	<p>Highways England are proposing a start time for construction at 7.00am which the Council consider is too early in a rural environment and also considering that the workforce would arrive before this time with deliveries and the sounds of reversing vehicles. The Council would also like to see that any work audible beyond the boundary of the site should only be carried out between the hours of 8.00 am to 6.00 pm on Mondays to Fridays and 8.00 am to 1.00 pm on Saturdays; there should be no noisy works carried out on Sundays or Bank Holidays.</p> <p>Exceptions to these operating times should be agreed in consultation with the Council and any mitigation measures implemented prior to operation. Justification for operating outside the permitted times, details of the proposed operating times and details of activity together with mitigation measures and predicted noise readings at noise sensitive housing should be submitted to the Council.</p>	<p>The Applicant considers the Hours of Working, as set in Requirement 4 of the dDCO (Volume 3.1(a)) to be appropriate and consistent with other Highways England schemes which have been consented. Furthermore, as confirmed to SMBC, the Applicant has taken into account these working hours as part of the environmental assessment.</p>
<b>7.11: Contaminated Land</b>		
		Section noted by the Applicant.
<b>7.12: Drainage</b>		
		Section noted by the Applicant.



Ref	SMBC LIR Comment	Highways England Response
<b>7.13: Population and Health</b>		
		Section noted by the Applicant.
<b>7.14: Climate Change</b>		
		Section noted by the Applicant.
<b>7.15: Community and Council Cabinet Concerns</b>		
		Section noted by the Applicant.
<b>8: Conclusions</b>		
		Section noted by the Applicant.



# INFRASTRUCTURE PLANNING

## PLANNING ACT 2008

### THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND PROCEDURE) REGULATIONS 2009

#### THE M42 JUNCTION 6 DEVELOPMENT CONSENT ORDER

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#### **2<sup>nd</sup> Draft Development Consent Order**

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202[ ] No. [ ]

## INFRASTRUCTURE PLANNING

### The M42 Junction 6 Development Consent Order 202[ ]

*Made* - - - - 202[ ]

*Coming into force* - - 202[ ]

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

The application was examined by a ~~{panel|single-appointed person}~~ (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The ~~{panel|single-appointed person}~~, having examined the application with the documents that accompanied the application, and considered the representations made and not withdrawn, has, in accordance with section 83 of the 2008 Act, submitted 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|single-appointed person}~~, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122 and 123 of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the M42 Junction 6 Development Consent Order 202[ ] and comes into force on [ ] 202[ ].

#### Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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- (a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524 and S.I. 2017/572.  
(b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).  
(c) S.I. 2010/103, amended by S.I. 2012/635.  
(d) 1961 c. 33.  
(e) 1965 c. 56.  
(f) 1980 c. 66.  
(g) 1981 c. 66.  
(h) 1984 c. 27.  
(i) 1990 c. 8.

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

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

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

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“authorised development” means the development and associated 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;

“the book of reference” means the document of that description referenced in Schedule 11 (documents to be certified) certified by the Secretary of State as the book of reference 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;

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

“~~C~~lassification of ~~R~~oad ~~P~~lans” means the plan of that description referred to in Schedule 11 (documents to be certified) certified by the Secretary of State as the ~~C~~lassification of ~~R~~oad ~~P~~lans for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, ecological surveys and pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of underground apparatus and site clearance, and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

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

“electronic transmission” means a communication transmitted—

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

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

“the engineering drawings and sections” means the drawings and sections listed in Schedule 11 (documents to be certified) and certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

“environmental statement” means the document of that description certified as the environmental statement by the Secretary of State for the purposes of this Order;

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

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

“the land plans” means the plans listed in Schedule 11 (documents to be certified) and certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 6 (limits of deviation) and shown on the works plans;

“maintain” in relation to any part of the authorised development includes to inspect, repair, adjust, alter, improve, landscape, preserve, remove, reconstruct, refurbish or replace, provided such works do not give rise to any materially new or materially different environmental effects

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(a) 1991 c. 22.

(b) 2008 c. 29.

to those identified in the environmental statement, and any derivative of “maintain” is to be construed accordingly;

“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;

“the Order limits” means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

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

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

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

“special road” means a highway which is a special road in accordance with section 16 (general provisions as to special roads) of the 1980 Act or by virtue of an order granting development consent;

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

“street” means a street within the meaning of section 48 (street, 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 (street works in England and Wales) of the 1991 Act;

“streets, rights of way and access plans” means the plans listed in Schedule 10 (documents to be certified) and certified as the streets, rights of way and access plans by the Secretary of State for the purposes of this Order;

“the temporary construction works” means Work Nos. 69, 70, 71, 72, 73, 74 and 75;

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

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

“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;
- (b) an order or direction under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

“undertaker” means Highways England Company Limited (Company No. 09346363), whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

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

“the works plans” means the plans listed in Schedule 11 (documents to be certified) 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 and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land

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(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to the Order.

(b) As inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999; paragraphs 70 and 95 of Schedule 1 to the Infrastructure Act (c.7); S.I. 1999/1920 and S.I. 2001/1400.



which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) References in this Order to the creation and acquisition of rights over land includes references to rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the direction of the undertaker, either—

- (a) to an affected person directly, whether that person's land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in the Order are to be granted for the benefit of the land in which that affected person has an interest at the time of the making of this Order; or
- (b) to any statutory undertaker for the purpose of their undertaking.

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

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

(6) References to any statutory body includes that body's successor bodies from time to time that have jurisdiction over the authorised development.

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

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

(9) In this Order, the expression "includes" is to be construed without limitation.

## PART 2

### PRINCIPAL POWERS

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

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

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

#### **Maintenance of authorised development**

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

#### **Maintenance of drainage works**

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

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

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(a) 1991 c. 59.

## Limits of deviation

6.—(1) In carrying out the authorised development the undertaker may, so far as the undertaker considers it necessary or convenient—

- (a) deviate laterally from the lines or situations shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections—
  - (i) in respect of the construction of a new Solihull Road Overbridge referred to in Work No. 3, to a maximum of 1.5 metres upwards or downwards; and
  - (ii) in respect of any other work comprised in the authorised development, to a maximum of 0.5 metres upwards or downwards.

~~(2) except that~~ These maximum limits of deviation set out in paragraph (1) do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially ~~worse~~ adverse ~~different~~ environmental effects from those reported in the environmental statement.

## Benefit of Order

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

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

## Consent to transfer benefit of Order

8.—(1) Subject to paragraph (4), the undertaker may—

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

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

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

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

- (a) Solihull Metropolitan Borough Council ~~of Council House, Manor Square, Solihull B91 3QB~~ for the purposes of undertaking Works Nos. 3, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 30, 31, 34, 35, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54;
- (b) Cadent Gas Limited (company number 10080864, whose registered office is at Ashbrook Court Prologis Park, Central Boulevard, Coventry CV7 8PE) (or a related subsidiary company) for the purposes of undertaking Works Nos. 55, 56, 57, 58, 59, 60 and 61;

- (c) Severn Trent Water Limited (company number 02366686, whose registered office is at Severn Trent Centre, 2 St John's Street, Coventry CV1 2LZ) for the purposes of undertaking Works Nos. 62 and 63;
- (d) Western Power Distribution Public Limited Company (company number 09223384, whose registered office is at Avonbank, Feeder Road, Bristol, Avon BS2 0TB) (or a related subsidiary company) for the purposes of undertaking Works Nos. 64 and 65; and
- (e) Esso Petroleum Company, Limited (company number 00026538, whose registered office is at Ermyn House, Ermyn Way, Leatherhead, Surrey KT22 8UX) for the purposes of undertaking Work No. 66.

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

9.—(1) This article applies where the land is used for the temporary construction works.

(2) Where this article applies, section 57(2) of the 1990 Act (planning permission required for development) applies as if the development consent granted by this Order were planning permission granted for a limited period.

### **Application of the Community Infrastructure Levy Regulations 2010**

10.—(1) The Community Infrastructure Levy Regulations 2010(a) apply to the authorised development as if regulation 5(2) of those Regulations (meaning of “planning permission”) referred to development consent which is deemed to be granted for a limited period by an order made under section 114(1)(a) of the 2008 Act (grant or refusal of development consent) rather than to planning permission which is granted for a limited period.

(2) Development consent is deemed to be granted for a limited period for the temporary construction works and any other temporary buildings or works authorised by this Order.

### **Planning permission**

11. If planning permission is issued pursuant to the 1990 Act for development any part of which is within the Order limits following the publication of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; and
- (b) required to complete or enable the construction, use or operation of any part of the development authorised by this Order,

then the carrying out, use or operation of such development pursuant to the terms of the planning permission is not to constitute a breach of the terms of this Order.

## **PART 3**

### **STREETS**

#### **Street works**

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) place or keep apparatus in the street;
- (d) maintain, renew or alter apparatus in the street or change its position;

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(a) S.I. 2010/948.

- (e) demolish, remove, replace and relocate any street furniture;
- (f) execute any works to provide or improve sight lines;
- (g) execute and maintain any works to provide hard and soft landscaping;
- (h) carry out re-lining and placement of road markings;
- (i) remove and install temporary and permanent signage; and
- (j) execute any works required for, or incidental to, any works referred to in subparagraphs (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.

(3) Subject to article 13 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### **Application of the 1991 Act**

**13.**—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and roundabouts)(a) of the 1980 Act or section 184 (vehicle crossings over footways and verges)(b) of that Act.

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

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

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

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(a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1965 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(b) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.

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

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

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

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

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

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

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

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

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 16 (temporary stopping up and restriction of use of streets), whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act<sup>(b)</sup> referred to in paragraph (4) are—

section 54 (advance notice of certain works)<sup>(c)</sup>, subject to paragraph (6);

section 55 (notice of starting date of works)<sup>(d)</sup>, subject to paragraph (6);

section 57 (notice of emergency works)<sup>(e)</sup>;

section 59 (general duty of street authority to co-ordinate works)<sup>(f)</sup>;

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 75 (inspection fees);

section 76 (liability for cost of temporary traffic regulation); and

section 77 (liability for cost of use of alternative route),

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

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

(7) Nothing in article 14 (construction and maintenance of new, altered or diverted streets and other structures)—

(a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;

(b) means the undertaker is by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

(c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

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

**14.—**(1) Any street (other than a special road or a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed in writing with the local highway authority, the street including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a special road or a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the local street authority in whose area the street lies and, unless otherwise agreed in writing with the local street authority, that part of the street, including any culverts or other structures laid

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

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

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

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

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

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

under it, must be maintained by and at the expense of the local street authority from its completion.

(3) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over a special road or a trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the undertaker.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street or other structure under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street or structure to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

- (a) the character of the street or structure and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street or structure of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street or structure;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street or structure to which the action relates was likely to cause dangers to users of the street or structure; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street or structure before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street or structure to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street or structure and that the competent person had carried out those instructions.

### **Classification of roads etc.**

**15.—**(1) The roads described in Part 1 (special roads) of Schedule 3 (classification of roads, etc.) are to be—

- (a) classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads; and
- (b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 to the 1980 Act.

(2) From the date on which the undertaker notifies the Secretary of State that the roads described in Part 1 (special roads) of Schedule 3 have been completed and are open for traffic—

- (a) the undertaker is the highway authority for those roads; and
- (b) they are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

(3) From the date on which the roads described in Part 2 (trunk roads) of Schedule 3 are completed and open for traffic, they are to become trunk roads as if they had become so by virtue of an order under section 10(2) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(4) From the date on which the roads described in Part 3 (classified roads) of Schedule 3 are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such

classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(5) From the date on which the roads described in Part 4 (unclassified roads) of Schedule 3 are completed and open for traffic, they are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.

(6) From the date on which the roads specified in Part 5 (speed limits) of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(7) Unless otherwise agreed with the relevant planning authority, the public rights of way set out in Part 6 (public rights of way) of Schedule 3 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.

(8) The application of paragraphs (1) to (7) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

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

**16.—**(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up, altered, diverted or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

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

(4) Without limitation on the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in column (2) of schedule 4 (streets to be temporarily stopped up) to the extent specified by reference to the letters and numbers shown on the streets, rights of way and access plans, in column (3) of that Schedule, and may provide a temporary diversion.

(5) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(6) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of a higher standard than the temporarily stopped up street or in column (2) of Schedule 4.

(7) 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.

(8) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

## **Permanent stopping up, restriction of use of streets, public rights of way and private means of access**

17.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets, public rights of way and private means of access specified in column (1) of Parts 1, 2, 3, 4, 5, 6 and ~~67~~ of Schedule 5 (permanent stopping up of streets, public rights of way and private means of access) to the extent specified and described in column (2) of those Parts of that Schedule.

(2) No street, public right of way or private means of access specified in columns (1) of Parts 1, 3 and 5 of Schedule 5 is to be wholly or partly stopped up under this article unless—

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

(3) No street, public right of way or private means of access specified in column (1) of Parts 2, 4 and 6 of Schedule 5 is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

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

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

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

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

(6) The undertaker may, in connection with the carrying out of the authorised development, alter the private means of access specified in column (1) of Part 7 of Schedule 5 as specified in column (2) of that Part.

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

(8) This article is subject to article 36 (apparatus and rights of statutory undertakers in stopped up streets).

## **Access to works**

18. The undertaker may, for the purposes of the authorised development, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.



## Clearways, prohibitions and restrictions

**19.**—(1) From such day as the undertaker may determine, except as provided in paragraph (3), no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (1) of Part 1 (traffic regulation measures (clearways and prohibitions)) of Schedule 6 (clearways, prohibitions and restrictions) where it is identified in the corresponding row of column (2) of that Schedule that such lengths of road are to become a clearway, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) From such day as the undertaker may determine, except as provided in paragraph (3), no person may cause or permit any vehicle to use any part of the length of road described in column (1) of Part 2 (traffic regulation measures (weight restrictions)) of Schedule 6 (clearways, prohibitions and restrictions) where that vehicle exceeds the weight restriction specified in column (2) of that Part.

(3) Nothing in paragraphs (1) or (2) applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—

- (i) the removal of any obstruction to traffic;
- (ii) the maintenance, improvement, reconstruction or operation of the road;
- (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003(a); or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

- (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
- (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
- (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
- (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(c); or

(c) in relation to a vehicle waiting when the person in control of it is—

- (i) required by law to stop;
- (ii) obliged to stop in order to avoid an accident; or
- (iii) prevented from proceeding by circumstances outside the persons control.

(4) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(5) Paragraphs (1), (2), (3) and (4) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(6) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(d).

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(a) 2003 c. 21. Schedule 3A was inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

(b) 1991 c. 56.

(c) 2000 c. 26.

(d) 2004 c. 18.

## Traffic regulation

**20.**—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

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

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

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—

- (a) given not less than—
  - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
  - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces)(a) of the 1984 Act,and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(b).

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

(b) 2004 c. 18.

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.

(8) Before exercising the powers conferred by paragraph (2), the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

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

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

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

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

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

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

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

(5) The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river, subject to the works that are authorised under this Order.

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

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

(8) In this article—

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

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

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

### **Protective work to buildings**

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

(2) Protective works may be carried out—

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

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

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 47 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

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(a) 1991 c. 57.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

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

(9) Without affecting article 46 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act.

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

(11) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

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

**23.—**(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 including, where reasonably necessary, any land which is adjacent to, but outside the Order limits, and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make any excavations or trial holes and boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water samples on to the land;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
- (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 and boreholes.

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

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

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

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

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

but such consent must not be unreasonably withheld or delayed.

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

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

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

## PART 5

### POWERS OF ACQUISITION AND POSSESSION OF LAND

#### Compulsory acquisition of land

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

(2) This article is subject to paragraph (2) of article 27 (compulsory acquisition of rights and restrictive covenants) and paragraph (9) of article 33 (temporary use of land for carrying out the authorised development).

#### Compulsory acquisition of land – incorporation of the mineral code

**25.**—(1) Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981<sup>(a)</sup> are incorporated in this Order subject to the modifications that—

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

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

**26.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 29 (modifications of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the 1981 Act).

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

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(a) 1981 c. 67.

## Compulsory acquisition of rights and restrictive covenants

27.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 7 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of, and 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 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 8 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

## Private rights over land

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

- (a) ~~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 over land subject to the compulsory acquisition of the rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant from whichever is the earlier of—

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

~~whichever is the earlier.~~

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

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act

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(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981, section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and sections 186 (1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

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

(6) This article does not apply in relation to any right to which section 138(a) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 35 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the right or the imposition of the restrictive covenant over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

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

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

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

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

### Modifications of Part 1 of the 1965 Act

**29.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(b) (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) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the M42 Junction 6 Development Consent Order 202[ ](e)”.

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

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

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

(4) In section 25(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 26 (time limit for exercise of authority to acquire land compulsorily) of the M42 Junction 6 Development Consent Order 202-1[ ]”.

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(a) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

(b) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 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. 202[ ]/\*\*\*\*.

(f) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).



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

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

“(2) But see article 31(3) (acquisition of subsoil or airspace only) of the M42 Junction 6 Development Consent Order 202[ ], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29, insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under articles 22 (protective work to buildings), 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the M42 Junction 6 Development Consent Order 202[ ].”.

### Application of the 1981 Act

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

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

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

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

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

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

(6) In section 5B(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 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008 the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the M42 Junction 6 Development Consent Order 202[ ](d)”.

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

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

(9) In Schedule A1(h) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 29 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

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

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

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

(d) S.I. 202[ ]/[ ]\*\*\*\*.

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

(f) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 and S.I. 2012/16.

(g) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

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

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

**31.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 24 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 29 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153 (4A)(a) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

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

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

**32.**—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order 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) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised development**

**33.**—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 26(1) (time limit for exercise of authority to acquire land compulsorily)—

(a) enter on and take temporary possession of—

- (i) the land specified in column (1) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that

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

Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and

- (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any electric line, electrical plant, structures, apparatus, buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings or structures on that land; and
- (d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

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

(3) The undertaker 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 (3) of Schedule 9 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 27 (compulsory acquisition of rights and restrictive covenants), or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.

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

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) restore the land to a condition better than the relevant land was in before temporary possession;
- (d) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (e) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (f) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

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

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

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

(8) Subject to article 46 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

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

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

(11) Section 13 (refusal to give possession to acquiring authority)(a) 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.

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

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

**34.—**(1) Subject to paragraph (3), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter onto 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 that purpose.

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

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

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

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

- (a) the authorised development or any of its parts;<sup>23</sup>
- (b) the public;<sup>23</sup> ~~and~~/or
- (c) the surrounding environment, and

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

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

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

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker is not required to restore the land to a condition better than the relevant land was in before temporary possession was taken.

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

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

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

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

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

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

(13) In this article "the maintenance period", in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

### **Statutory undertakers**

**35.**—(1) Subject to the provisions of Schedule 10 (protective provisions), article 27 (compulsory acquisition of rights and restrictive covenants) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over or within the Order land.

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

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 36 (apparatus and rights of statutory undertakers in stopped up streets) of this Order.

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

**36.**—(1) Where a street is stopped up under article 17 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 17 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

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

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

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

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

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

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

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

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

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

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

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

(8) In this article—

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

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

## **[Crown rights**

**37.—**(1) Nothing in this order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker to

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(a) 2003 c. 21.

take, use, enter upon or in any manner interfere with any land or rights of any description (including any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of The Crown Estate Commissioners;
- (b) belong to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department without the consent in writing of that government department.

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

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

**38.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 35, any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 36 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

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

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

## **PART 6**

### **OPERATIONS**

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

**39.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997<sup>(a)</sup> and includes important hedgerows.

## PART 7

### MISCELLANEOUS AND GENERAL

#### Application of landlord and tenant law

**40.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

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

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### Operational land for purposes of the Town and Country Planning Act 1990

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

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

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

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance

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<sup>(a)</sup> S.I. 1997/1160.

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



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<sup>(a)</sup>; 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 reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protection of interests**

**43.** Schedule 10 (protective provisions) to the Order has effect.

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

**44.**—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 11 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 11 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

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

### **Service of notices**

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

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

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

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

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

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

(b) 1978 c. 30.

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

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

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

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

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

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

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

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

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

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

### **No double recovery**

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

### **Arbitration**

**47.** 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) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

### **Removal of human remains**

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

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

(3) Subject to paragraph (12), before any such remains are removed from the specified land the undertaker must give notice of the intended removal describing the specified land and stating the general effect of the following provisions of this article by—

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

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

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

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker is to remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation is to be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from

which the remains were removed and the place in which they were reinterred or cremated; and

- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the relevant planning authority.

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In this article—

- (a) references to a relative of the deceased are to a person who—
  - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
  - (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased.
- (b) references to a personal representative of the deceased are to a person or persons who—
  - (i) is the lawful executor of the estate of the deceased; or
  - (ii) is the lawful administrator of the estate of the deceased.

(14) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(15) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(16) Section 25 of the Burial Act 1857<sup>(a)</sup> (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

(17) Section 239 (use and development of burial grounds) of the 1990 Act applies—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order,

and in section 240(1) (provisions supplemental to ss. 238 and 239) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (15) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(18) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950<sup>(b)</sup> do not apply to the authorised development.

### **Application, disapplication and modification of legislative provisions**

**49.**—(1) The provisions of the Neighbourhood Planning Act 2017<sup>(c)</sup>, insofar as they relate to temporary possession of land under articles 33 (temporary use of land for carrying out the authorised development) and 34 (temporary use of land for maintaining the authorised development) of this Order, do not apply in relation to the construction of any work or the

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(a) 1857 c. 81.  
(b) S.I. 1950/792.  
(c) 2017 c. 20.

carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 34(12), any maintenance of any part of the authorised development.

(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(a) any building comprised in the authorised development is to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

### Amendment of local legislation

50.—(1) The following local enactments, and any byelaws or other provisions made under any of those enactments, are hereby excluded and do not apply insofar as inconsistent with a provision of, or a power conferred by, this Order—

- ~~(a) Birmingham and Gloucester Railway Act 1836 (c. xiv) section III;~~
- ~~(b) Shrewsbury and Birmingham Railway Act 1846 (c. cccvii) sections XXV, XXXI, XLV, XLVI, XLVIII, L, LIV and LXIV;~~
- ~~(c) London and Birmingham Railway Act 1846 (c. ccclix) sections xix, xx, xxi, xxii, xxiii and xxvi;~~
- ~~(d)(a)~~ (a) Birmingham and Oxford Junction Railway Act 1846 ~~(b)~~ (b) ~~(c. ccxxxxvii)~~ sections XXIV and XXV;
- ~~(e)(b)~~ (b) London and North Western Railway (Additional Powers) Act 1879 ~~(c)~~ (c) ~~(c. cxlii)~~ sections ix, xiv, ~~xv, xvi, xxi, xxiii, xxxii~~ and xxxv;
- ~~(f)(c)~~ (c) London and North Western Railway Act 1880 ~~(d)~~ (d) ~~(c. cxlv)~~ sections ~~vi~~, xviii ~~(1)~~ and xix;
- ~~(g)(d)~~ (d) London and North Western Railway Act 1893 ~~(e)~~ (e) (c. clxvi) sections ~~xv, xvi, xvii~~ and xxv;
- ~~(h) Great Western Railway (General Powers) Act 1898 (c. clxxiv) sections 15, 43(5), 51, 52 and 96;~~
- ~~(i) Great Western Railway Act 1899 (c. clxxxvii) sections 25 and 29;~~
- ~~(j) Leicestershire and Warwickshire Electric Power Act 1902 (c. cxxxi) sections 36, 37 and 43;~~
- ~~(k) Birmingham Corporation Act 1903 (c. cxcii) sections 44 and 45;~~
- ~~(l) Birmingham District Tramways Act 1903 (c. cexv) sections 19 to 21;~~
- ~~(m) Great Western Railway (General Powers) Act 1909 (c. lxxxiv) sections 30 and 68;~~
- ~~(n) Birmingham Corporation (Rivers Improvement) Act 1929 (c. lxx) sections 3(1), 5, 6, 12 and 15(2);~~
- ~~(o)(e)~~ (e) West Midlands County Council Act 1980 ~~(f)~~ (f) ~~(c. xi)~~ sections 6, 11, ~~and 12 and 14;~~
- ~~(p)(f)~~ (f) Midland Metro Act 1992 ~~(g)~~ (g) ~~(c. vii)~~ sections 3 to 9, ~~13, 14 and 18 to 24;~~
- ~~(q) Midland Metro (No 2) Act 1992 (c. viii) sections 3, 8, 9, 11 and 13 to 17;~~
- ~~(r) Midland Metro Act 1993 (c. v) sections 3, 6, 8 to 10 and 13 to 18;~~

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(a) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.

(b) 1846 c. cccxxxvii.

(c) 1879 c. cxlii.

(d) 1880 c. cxlv.

(e) 1893 c. clxvi.

(f) 1980 c. xi.

(g) 1992 c. vii.

(g) Midland Metro (No 2) Act 1993~~(a)~~ (c. vi) sections 3, ~~to~~ 6 and ~~9 to 13~~ 12;

~~(s)~~(h) [High Speed Rail (London – West Midlands) Act 2017(b)].

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of the power;
- (b) action taken in pursuance of the power would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken;
- (c) action taken in pursuance of a power or duty under the provision would or might interfere with the exercise of any work authorised by this Order.

(3) Paragraphs (1) and (2) are subject to Schedule 10 (protective provisions).

~~(3)~~(4) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

Date

Name  
Title  
Department for Transport

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(a) 1993 c. vi.  
(b) 2017 c. 7.

# SCHEDULES

## SCHEDULE 1

Articles 2 and 3

### AUTHORISED DEVELOPMENT

#### **In the administrative areas of North Warwickshire District Council and Solihull Metropolitan Borough Council**

A nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act, and associated development as defined in section 115 of the 2008 Act, comprising:

**Work No. 1** – as shown on Sheet Nos. 1, 2, 3, 5, 6 and 7 of the ~~W~~works ~~P~~plans and being the improvement of the northbound and southbound carriageways of the M42 Motorway between Junctions 5 and 7 (approximately 8.35 kilometres in length), such works including—

- (a) the alteration of 5 no. portal gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 1 on Sheet Nos. 1, 5 and 6 of the ~~W~~works ~~P~~plans, including the installation of new signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (b) the construction of 6 no. portal gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 3 on Sheet Nos. 1, 2 and 5 of the ~~W~~works ~~P~~plans, including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (c) the construction of 8 no. cantilever gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 4 on Sheet Nos. 1, 2 and 6 of the ~~W~~works ~~P~~plans, including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (d) the demolition of 6 no. portal gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 5 on Sheet Nos. 1, 2, 5 and 6 of the ~~W~~works ~~P~~plans, including the removal of the gantry foundations, gantry structures, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable disconnections;
- (e) the demolition of 6 no. cantilever gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 6 on Sheet Nos. 1, 2 and 6 of the ~~W~~works ~~P~~plans, including the removal of the gantry foundations, gantry structures, signs, signals, sign illumination, control cabinets, power and communication cable disconnections;
- (f) the construction of 1 no. emergency refuge area on the northbound carriageway at the locations shown on Sheet No. 2 of the ~~W~~works ~~P~~plans;
- (g) the demolition of 3 no. emergency refuge areas on the northbound carriageway at the locations shown on Sheet Nos. 2 and 6 of the ~~W~~works ~~P~~plans; and
- (h) the demolition of 3 no. emergency refuge areas on the southbound carriageway at the locations shown on Sheet Nos. 2 and 6 of the ~~W~~works ~~P~~plans.

#### **In the administrative area of Solihull Metropolitan Borough Council**

**Work No. 2** – as shown on Sheet Nos. 4 and 5 of the ~~W~~works ~~P~~plans and being the improvement of the eastbound and westbound carriageway of the A45 from a point approximately 650 metres

west of Clock Interchange to a point approximately 715 metres east of the M42 Junction 6 (approximately 2.4 kilometres in length), such works including—

- (a) the alteration of 1 no. cantilever gantry above the westbound carriageway of the A45 within the gantry siting locations shown as Gantry Type 2 on Sheet No. 4 of the ~~W~~works ~~P~~plans, including the installation of new signs, signals, sign illumination, control cabinets, power and communication cable connections;
- (b) the construction of 2 no. cantilever gantries above the eastbound carriageway of the A45 within the gantry siting locations shown as Gantry Type 4 on Sheet No. 4 of the ~~W~~works ~~P~~plans, including the installation of new gantry foundations, gantry structure, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable connections; and
- (c) the demolition of 1 no. portal gantry above the eastbound carriageway of the A45 within the gantry siting locations shown as Gantry Type 5 on Sheet No. 4 of the ~~W~~works ~~P~~plans, including the removal of gantry foundations, gantry structures, signs, signals, sign illumination, control cabinets, power and communication cable disconnections.

**Work No. 3** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the demolition of the existing Solihull Road Overbridge (approximately 65 metres in length) and the construction of a new Solihull Road Overbridge, a two lane single carriageway with a widened southern verge for future footway provision (approximately 110 metres in length). New overbridge required to facilitate slip roads to Junction 5A (Works Nos. 4 and 5). New overbridge will require Solihull Road to be raised on embankment to the east and west of the new overbridge structure for a distance of approximately 225 metres (east) and 325 metres (west) respectively.

**Work No. 4** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the construction of a new M42 off-slip road (approximately 850 metres in length) both in cutting and on embankment that diverges from the M42 and connects to the new Junction 5A of the M42 (Work No. 6), including the demolition of approximately 125 metres of existing sheet pile wall to accommodate the new off slip road.

**Work No. 5** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the construction of a new M42 on-slip road (approximately 750 metres in length) both in cutting and on embankment that merges onto the M42 from the new Junction 5A of the M42 (Work No. 6).

**Work No. 6** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the construction of a new Junction 5A of the M42, approximately 120 metres north of the proposed Solihull Road Overbridge (Work No. 3). Junction 5A to consist of a two lane eastern roundabout and a two lane western roundabout, both constructed on embankment. Roundabouts to be connected via a new Junction 5A overbridge (approximately 45m in length), featuring a two lane eastbound carriageway and a single lane plus hard shoulder on the western carriageway.

**Work No. 7** – as shown on Sheet Nos. 2, 3 and 4 of the ~~W~~works ~~P~~plans and being the construction of a new 2.4 kilometre dual carriageway mainline link on both embankment and in cutting connecting Junction 5A (Work No. 6) to Clock Interchange (Work No. 20). The new mainline link to include the construction of earthwork retaining structures and to necessitate the demolition of the residential property known as “Heath End House”.

**Work No. 8** – as shown on Sheet Nos. 2 and 3 of the ~~W~~works ~~P~~plans and being the construction of a new single lane on-slip road in cutting (approximately 690 metres in length) commencing at Barber’s Coppice Roundabout (Work No. 12) and connecting to the northbound carriageway of the proposed mainline link road (Work No. 7).

**Work No. 9** – as shown on Sheet No. 3 of the ~~W~~works ~~P~~plans and being the construction of a new two lane off-slip road (approximately 510 metres in length) in cutting commencing at the southbound carriageway of the new mainline link road (Work No. 7) and connecting to the proposed Bickenhill Roundabout (Work No. 14).

**Work No. 10** – as shown on Sheet Nos. 3 and 4 of the ~~W~~works ~~P~~plans and being the construction of—



- (a) a new single lane plus hard-shoulder northbound diverge (approximately 640 metres in length) in both cutting and on embankment from the mainline link road (Work No. 7) and joining the Airport Way connector road from the A45 Westbound (Work No. 19); and
- (b) a new field access to land severed by the construction of Work Nos. 7 and 10 identified as point 4/23 on Sheet 4 of the Streets, Rights of Way and Access Plans.

**Work No. 11** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the construction of the realigned two lane single carriageway B4438 Catherine-de-Barnes Lane (approximately 240 metres in length) in both cutting and on embankment, south of Barber's Coppice Roundabout (Work No. 12).

**Work No. 12** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the construction of a new two lane roundabout on embankment, to be known as Barber's Coppice Roundabout. Roundabout positioned to the east of the Birmingham Dog's Home facility, providing connections to the realigned B4438 Catherine-de-Barnes Lane (Works Nos. 11 and 13), the new single lane northbound on-slip road to the new mainline link road at Work No. 7 (Work No. 8) and existing properties on the western arm.

**Work No.13** – as shown on Sheet Nos. 2 and 3 of the ~~W~~works ~~P~~plans and being the construction of the realigned two lane single carriageway B4438 Catherine-de-Barnes Lane (approximately 760 metres in length) in both cutting and embankment, connecting Barber's Coppice Roundabout (Work No. 12) with Bickenhill Roundabout (Work No. 14). New carriageway to include the construction of a new overbridge (approximately 82 metres in length) to be known as Catherine-de-Barnes South Overbridge, to provide a crossing of the new mainline link road (Work No. 7), south of the proposed realigned Shadowbrook Lane (Work No. 17). Construction of a new field access to land severed by Work No. 7 as shown at point 3/38 on Sheet 3 of the Streets, Rights of Way and Access Plans.

**Work No. 14** – as shown on Sheet No. 3 of the ~~W~~works ~~P~~plans and being the construction of a new two lane roundabout in both cutting and on embankment, to be known as Bickenhill Roundabout. Roundabout positioned to the west of Bickenhill, providing connections to the realigned B4438 Catherine-de-Barnes Lane (Work No.13), the realigned Catherine-de-Barnes Lane (Work No. 15), the new two lane southbound off-slip road from the mainline link road (Work No. 9) and the realigned St Peters Lane (Work No. 18).

**Work No. 15** – as shown on Sheet No. 3 of the ~~W~~works ~~P~~plans and being the construction of the realigned two lane single carriageway Catherine-de-Barnes Lane (approximately 490 metres in length) in both cutting and on embankment, connecting Bickenhill Roundabout (Work No. 14) with the T Junction of Catherine-de-Barnes Lane and St Peters Lane (Work No. 16). Construction of a new field access to land severed by Work No. 7 as shown at point 3/49 on Sheet 3 of the Streets, Rights of Way and Access Plans.

**Work No. 16** – as shown on Sheet No. 3 of the ~~W~~works ~~P~~plans and being the construction of realigned new two lane single carriageway realigned Catherine-de-Barnes Lane (approximately 290 metres in length) and associated footway to the junction with Clock Lane. To include the construction of a new overbridge, to be known as Catherine-de-Barnes North Overbridge, to provide a crossing of the new mainline link road (Work No. 7). Works to also include tie in works to the existing St Peters Lane access to the village of Bickenhill.

**Work No. 17** – as shown on Sheet No. 3 of the ~~W~~works ~~P~~plans and being the realignment of approximately 125 metres of Shadowbrook Lane to connect with the realigned B4438 Catherine-de-Barnes Lane (Work No. 13).

**Work No. 18** – as shown on Sheet No. 3 of the ~~W~~works ~~P~~plans and being the construction and realignment of approximately 50 metres of the southern section of St Peters Lane, including revised access points in order to connect to Bickenhill Roundabout (Work No. 14).

**Work No. 19** – as shown on Sheet No. 4 of the ~~W~~works ~~P~~plans and being the alteration of the existing Airport Way connector road linking the A45 Westbound to Airport Way, to accommodate

the connection with the mainline link road at Work No. 10 and the closure of the dedicated free flow link from M42 Junction 6 to the Airport (Work No. 29).

**Work No. 20** – as shown on Sheet No. 4 of the ~~W~~works ~~P~~plans and being improvements to the existing Clock Interchange, including the upgrade of the junction from a two to a three lane interchange, the installation of traffic signals and alterations to the on-slip and off-slip roads to accommodate the new three lane junction arrangement. Works to also include the removal of the existing footway (both approximately 85 metres in length) on the eastern and western structures of Clock Interchange.

**Work No. 21** – as shown on Sheet No. 4 of the ~~W~~works ~~P~~plans and being the construction of a new free flow link (approximately 762 metres in length) from the mainline link road (Work No. 7) on both embankment and in cutting to connect to the A45 Westbound carriageway, approximately 600 metres to the west of Clock Interchange. Free flow link road to diverge from the mainline link road approximately 150 metres to the south of Clock Interchange.

**Work No. 22** – as shown on Sheet No. 4 of the ~~W~~works ~~P~~plans and being the realignment of the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (the realigned section of road to be approximately 390 metres in length, constructed on embankment and in cutting) to accommodate the realignment works to Bickenhill Lane North and South (Work Nos. 23 and 24).

**Work No. 23** – as shown on Sheet No. 4 of the ~~W~~works ~~P~~plans and being the alteration of the existing Bickenhill Lane carriageway from two lanes to three lanes northbound from Clock Interchange and associated tie in works to Bickenhill Lane Roundabout.

**Work No. 24** – as shown on Sheet No. 4 of the ~~W~~works ~~P~~plans and being the alteration of the existing Bickenhill Lane carriageway from three lanes to four lanes southbound from Bickenhill Lane Roundabout to connect to Clock Interchange, including tie in works at Bickenhill Lane Roundabout and the removal of the existing segregated left turn lane onto the A45 Eastbound, with all four lanes to converge to a stop line at Clock Interchange.

**Work No. 25** – as shown on Sheet No. 5 of the ~~W~~works ~~P~~plans and being improvements to M42 Junction 6 Interchange and its associated on-slips and off-slips roads, including the upgrade of the M42 Northbound off-slip to four lanes from three lanes.

**Work No. 26** – as shown on Sheet Nos. 4, 5 and 6 of the ~~W~~works ~~P~~plans and being the construction of a new free flow single carriageway with hard shoulder link road (approximately 1610 metres in length) on both embankment and in cutting, connecting the A45 Eastbound and M42 Northbound.

**Work No. 27** – as shown on Sheet No. 5 of the ~~W~~works ~~P~~plans and being the construction of a new free flow link road (approximately 750 metres in length) with single carriageway and hard shoulder on both embankment and in cutting, connecting the M42 Southbound to the A45 Eastbound.

**Work No. 28** – as shown on Sheet Nos. 5 and 6 of the ~~W~~works ~~P~~plans and being the construction of a new two lane diverge slip road (approximately 635 metres in length) on embankment and in cutting from the M42 Southbound, connecting to the relocated East Way Roundabout (Work No. 30).

**Work No. 29** – as shown on Sheet No. 5 of the ~~W~~works ~~P~~plans and being the closure of the dedicated single lane free flow link from M42 Junction 6 Northbound to Airport Way.

**Work No. 30** – as shown on Sheet No. 5 of the ~~W~~works ~~P~~plans and being the construction of the new East Way Roundabout, such works to include—

- (a) the removal of the existing East Way Roundabout and its associated connection from the M42 Southbound Diverge; and
- (b) the construction of a new East Way Roundabout on embankment to accommodate the new southbound diverge arrangement (Work No. 28). Works to include the realignment

of, and associated tie in works for, each spur of the East Way carriageway and the private means of access to land south of East Way. East Way Roundabout to be relocated approximately 115 metres north west of the existing East Way Roundabout and 80 metres to the east of the existing East Way Overbridge.

**Work No. 31** – as shown on Sheet No. 5 of the ~~W~~works ~~P~~plans and being the alteration of Middle Bickenhill single lane one way egress to a single lane two way access and egress arrangement to maintain connectivity to Middle Bickenhill.

**Work No. 32** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the installation of drainage attenuation and treatment systems to the south east of the new Junction 5A (Work No. 6) to accommodate the undertaker's assets. Works to include the removal of an existing underground storage tank, the installation of a new underground storage tank with filter media, a pump station, swales and a reed bed system to provide attenuation and treatment. A new access track will be constructed off Solihull Road to the east of the existing properties to enable access to the proposed attenuation and treatment facilities for maintenance purposes between points 2/1 and 2/2 on Sheet 2 of the Streets, Rights of Way and Access Plans.

**Work No. 33** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the installation of drainage attenuation and treatment systems to the north west of the new Junction 5A (Work No. 6) to accommodate the undertaker's assets. Works to include the installation of an underground storage tank, pump station, reed bed and swale to provide attenuation and treatment. Access for maintenance to be constructed off the Public Right of Way M123 by approximately 385 metres between points 2/7 and 2/3 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans.

**Work No. 34** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the installation of an attenuation system adjacent to Barber's Coppice Roundabout (Work No. 12) to accommodate Solihull Metropolitan Borough Council assets. Works to include the installation of an underground storage tank to provide attenuation and treatment.

**Work No. 35** – as shown on Sheet No. 3 of the ~~W~~works ~~P~~plans and being the installation of drainage attenuation and treatment systems south of Clock Interchange and adjacent to Catherine-de-Barnes North Overbridge to accommodate Solihull Metropolitan Borough Council assets. Works to include the installation of an underground storage tank and swales to provide attenuation and treatment. Access for maintenance to be provided off the T-junction of St Peters Lane and the realigned Catherine-de-Barnes Lane (Work No. 16).

**Work No. 36** – as shown on Sheet No. 4 of the ~~W~~works ~~P~~plans and being the installation of drainage attenuation and treatment systems to the South West of Clock Interchange (Work No. 20) to accommodate the undertaker's assets. Works to include the installation of an underground storage tank with filter media, pump station and swales to provide attenuation and treatment.

**Work No. 37** – as shown on Sheet No. 5 of the ~~W~~works ~~P~~plans and being the installation of drainage attenuation and treatment systems to the North East of Junction 6 to accommodate the undertaker's assets. Works to include the installation of a reed bed and swales to provide attenuation and treatment. Access for maintenance to be provided to the east of the proposed East Way Roundabout (Work No. 30(b)).

**Work No. 38** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the construction of an accommodation bridge (approximately 30 metres in length) across the new mainline link road for the redirected public right of way (Work No.46).

**Work No. 39** – as shown on Sheet No. 4 of the ~~W~~works ~~P~~plans and being the construction of a Pedestrian Overbridge (approximately 60 metres in length) across the A45.

**Work No. 40** – as shown on Sheet No. 4 of the ~~W~~works ~~P~~plans and being the construction of a pedestrian underpass (approximately 20 metres in length) and an associated footway/cycleway ramp (approximately 230 metres in length in total) to the east of the pedestrian underpass, to maintain connectivity on the Airport Way connector road.

**Work No. 41** – as shown on Sheet No. 2 of the **W**orks **P**lans and being the construction of a pedestrian footpath (approximately 440 metres in length) commencing at Barber’s Coppice Roundabout (Work No. 12) and connecting to Public Rights of Way M122 and M123, approximately 75 metres east of the proposed Accommodation Bridge (Work No. 38).

**Work No. 42** – as shown on Sheet No. 2 of the **W**orks **P**lans and being the construction of a pedestrian footpath (approximately 25 metres in length) on the west of Barber’s Coppice Roundabout (Work No. 12) in order to connect the pedestrian footpath at Work No. 41 with the existing Catherine-de-Barnes footway adjacent to Birmingham Dogs Home.

**Work No. 43** – as shown on Sheet No. 3 of the **W**orks **P**lans and being the construction of a new footway/cycleway (approximately 500 metres in length) on the northbound carriageway of the realigned B4438 Catherine-de-Barnes Lane (Work No.13).

**Work No. 44** – as shown on Sheet No. 4 of the **W**ork **P**lans and being the construction of a footway/cycleway (approximately 350 metres in length) to provide a connection between the existing footway/cycleway at Clock Lane and Catherine-de-Barnes Lane and the proposed Pedestrian Underpass (Work No. 40) and Airport Way connector road (Work No.19).

**Work No. 45** – as shown on Sheet No. 4 of the **W**orks **P**lans and being the construction of a footway/cycleway (approximately 400 metres in length) adjacent to the proposed A45 Westbound carriageway free flow link road (Work No. 21) and connecting to the footway/cycleway routes at the Pedestrian Underpass (Work No. 40) and the Airport Way connector road (Work No. 19).

**Work No. 46** – as shown on Sheet No. 2 of the **W**orks **P**lans and being works to stop up the existing section of Public Right of Way M123 (approximately 120 metres in length) and redirected across the proposed Accommodation Bridge (Work No. 38).

**Work No. 47** – as shown on Sheet No. 2 of the **W**orks **P**lans and being works to stop up the existing section of Public Right of Way M122 (approximately 370 metres in length). East to west connectivity to be maintained via proposed footway to Barber’s Coppice Roundabout (Work No. 41).

**Work No. 48** – as shown on Sheet No. 3 of the **W**orks **P**lans and being works to stop up the existing section of Public Right of Way M113 (approximately 130 metres in length). Public Right of Way M113 to be reconnected to the realigned B4438 Catherine-de-Barnes Lane (Work No. 13) via the new Private Means of Access to the west of the new mainline link road (Work No. 54).

**Work No. 49** – as shown on Sheet No. 3 of the **W**orks **P**lans and being works to stop up the existing Public Right of Way M113a (approximately 600 metres in length). Access to the B4438 Catherine-de-Barnes Lane to be maintained via Public Right of Way M113 and the new Private Means of Access to the west of the new mainline link road (Work No. 54).

**Work No. 50** – as shown on Sheet No. 3 of the **W**orks **P**lans and being works to stop up the existing section of Public Right of Way M112 (approximately 190 metres in length). Public Right of Way M112 to be reconnected to the realigned Catherine-de-Barnes Lane (Work No. 16) via the new Private Means of Access to the west of the new mainline link road (Work No. 54).

**Work No. 51** – as shown on Sheet No. 3 of the **W**orks **P**lans and being works to stop up the existing section of Public Right of Way M109 (approximately 100 metres in length). Public Right of Way M109 to be reconnected to the realigned Catherine-de-Barnes Lane (Work No. 16) via the new Private Means of Access to the west of the new mainline link road (Work No. 54).

**Work No. 52** – as shown on Sheet No. 3 of the **W**orks **P**lans and being works to stop up the existing footway/cycleway situated on Catherine-de-Barnes Lane (approximately 560 metres in length).

**Work No. 53** – as shown on Sheet No. 4 of the **W**orks **P**lans and being works to realign the existing Public Right of Way M106 (approximately 386 metres in length) due to the construction of the new mainline link road (Work No. 7) and to connect to the existing Airport Way connector road (Work No. 19).

**Work No. 54** – as shown on Sheet Nos. 2 and 3 of the **W**orks **P**lans and being the construction of—

- (a) a new classified road off Barber’s Coppice Roundabout (Work No. 12) to maintain local access; and
- (b) a new Private Means of Access and Public Right of Way running to the west of the new mainline link road (Work No. 7) to provide access to the Warwickshire Gaelic Athletic Association facilities (Work No. 75) and adjacent land. The Private Means of Access will be split at a point just north of the existing Warwickshire Gaelic Athletic Association facilities. The Public Right of Way will be continuous in order to mitigate any severance of Public Rights of Way M109, M112 and M113.

**Work No. 55** – as shown on Sheet No. 2 of the **W**orks **P**lans and being the diversion of a local high pressure gas main due to the construction of the slip roads to the new Junction 5A of the M42 (Works Nos. 4 and 5).

**Work No. 56** – as shown on Sheet Nos. 2 and 3 of the **W**orks **P**lans and being the diversion of a local high pressure gas main (approximately 885 metres in length) due to the construction of the new mainline link road (Work No. 7) and on-slip from Barber’s Coppice Roundabout (Work No. 8).

**Work No. 57** – as shown on Sheet Nos. 4 and 5 of the **W**orks **P**lans and being the diversion of a local high pressure gas main due to the construction of the A45 Eastbound to M42 Northbound free flow link (Work No. 26).

**Work No. 58** – as shown on Sheet Nos. 4 and 5 of the **W**orks **P**lans and being the removal or relocation of a Gas Governor situated off the North West Quadrant of Junction 6 of the M42 due to the construction of the A45 Eastbound to M42 Northbound free flow link (Work No. 26).

**Work No. 59** – as shown on Sheet No. 4 of the **W**orks **P**lans and being the diversion of a medium pressure gas main due to the construction of the new free flow link road from the new mainline link road at Work No. 7 to the A45 Westbound carriageway (Work No. 21).

**Work No. 60** – as shown on Sheet No. 4 of the **W**orks **P**lans and being the diversion of a medium pressure gas main due to the construction of the A45 Pedestrian Overbridge and its associated ramps (Work No. 39).

**Work No. 61** – as shown on Sheet No. 4 of the **W**orks **P**lans and being the diversion of a medium pressure gas main due to the construction of the A45 Eastbound to M42 Northbound free flow link (Work No. 26).

**Work No. 62** – as shown on Sheet No. 2 of the **W**orks **P**lans and being the diversion of an aqueduct pipeline running east/west to the south of the A45 corridor, due to the construction of the new mainline link road (Work No. 7), the proposed pedestrian underpass (Work No. 40) and the new single lane plus hard-shoulder northbound diverge from the new mainline link road (Work No.10), connecting to the Airport Way connector road from the A45 Westbound to Airport Way (Work No.19).

**Work No. 63** – as shown on Sheet No. 4 of the **W**orks **P**lans and being the diversion of an aqueduct pipeline running east/west to the south of the A45 corridor, due to the construction of the new mainline link road (Work No. 7), the proposed pedestrian underpass (Work No. 40) and the new single lane plus hard-shoulder Northbound diverge from the new mainline link road (Work No. 10), connecting to the Airport Way connector road from the A45 Westbound to Airport Way (Work No. 19).

**Work No. 64** – as shown on Sheet Nos. 4 and 5 of the **W**orks **P**lans and being the diversion of 132kV underground electricity cables and associated infrastructure due to the construction of the proposed A45 Eastbound to M42 Northbound free flow link road (Work No.26).



**Work No. 65** – as shown on Sheet No. 4 of the ~~W~~works ~~P~~plans and being the diversion of 132kV underground electricity cables and associated infrastructure due to the construction of the proposed A45 Eastbound to M42 Northbound free flow link road (Work No. 26).

**Work No. 66** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the construction of a reinforced cover slab for the existing fuel line due to the realignment of the B4438 Catherine-de-Barnes Lane (Work No. 11).

**Work No. 67** – as shown on Sheet No. 5 of the ~~W~~works ~~P~~plans and being works to extend the existing culvert for the Hollywell Brook running underneath the M42 corridor north of Junction 6 to be extended approximately 8 metres to the west and 33 metres to the east respectively due to the works associated with the A45 Eastbound and the M42 Northbound free flow link road (Work No. 26) and the M42 Southbound to A45 Eastbound free flow link road (Work No.27) and the two lane diverge to the proposed East Way Roundabout (Work No. 28).

**Work No. 68** – as shown on Sheet Nos. 2 and 3 of the ~~W~~works ~~P~~plans and being alterations to the existing Warwickshire Gaelic Athletic Association facilities known as Páirc na hÉireann, including the provision of reconfigured sports pitches.

**Work No. 69** – as shown on Sheet Nos. 3 and 4 of the ~~W~~works ~~P~~plans and being the construction of a site compound situated on land to the south of the A45 corridor between Clock Interchange and the M42 Junction 6.

**Work No. 70** – as shown on Sheet No. 2 of the ~~W~~works ~~P~~plans and being the construction of a temporary two lane single carriageway connecting Solihull Road to the new Junction 5A of the M42 (Work No. 6), to retain connectivity during demolition works to the existing Solihull Road Overbridge (Work No. 3).

**Work No. 71** – as shown on Sheet No. 3 of the ~~W~~works ~~P~~plans and being the construction of a temporary two lane single carriageway to the east of the existing B4438 Catherine-de-Barnes Lane to retain connectivity during the construction of the realigned B4438 Catherine-de-Barnes Lane and associated structures (Work No. 13). Works shall also require a temporary realignment of access to Shadowbrook Lane.

**Work No. 72** – as shown on Sheet No. 3 of the ~~W~~works ~~P~~plans and being the construction of a temporary two lane single carriageway to the north of the proposed Catherine-de-Barnes North Overbridge (Work No. 16) to retain connectivity during the construction of the realigned Catherine-de-Barnes Lane and associated structures (Work No. 13).

**Work No. 73** – as shown on Sheet Nos. 3 and 4 of the ~~W~~works ~~P~~plans and being the construction of a temporary two lane single carriageway to the east of the existing B4438 Catherine-de-Barnes Lane to enable the construction of the new mainline line road (Work No. 7) and maintain connectivity during the construction of the realigned Catherine-de-Barnes Lane and associated structures (Work No. 13).

**Work No. 74** – as shown on Sheet No. 5 of the ~~W~~works ~~P~~plans and being the construction of a temporary realignment of the access to the National Exhibition Centre along South Way during the construction of the A45 Eastbound to M42 Northbound free flow link underpass (Work No. 26).

**Work No.75** – as shown on Sheet No. 5 of the ~~W~~works ~~P~~plans and being the construction of a temporary realignment of the egress from the National Exhibition Centre on South Way during the construction of the A45 Eastbound to M42 Northbound free flow link underpass (Work No. 26).

**Work No. 76** – as shown on Sheet No. 3 of the ~~W~~works ~~P~~plans and being the installation of a pumped system to mitigate for the loss of surface water catchment area to the Bickenhill Meadows SSSI – Shadowbrook Meadows unit. Works to feature collection drains and chambers, a pump station and a pressured pipeline to feed replacement water to an appropriate water feature in the vicinity of the SSSI.

For the purposes of or in connection with the construction of any of those works, further development within the Order limits consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by increasing or reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, repair, maintenance, or reconstruction of any street;
- (c) ramps, steps, means of access, private means of access, non-motorised user routes or links, footpaths, footways, bridleways, equestrian tracks, cycle tracks, open to all traffic, restricted byways, laybys and crossing facilities;
- (d) embankments, cuttings, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, drainage treatment areas, ponds, lagoons, outfalls, ditches, pollution control devices, pumping stations, wing walls, firefighting system water tanks and associated plant and equipment, highway lighting, fencing and culverts;
- (e) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; and tunnelling or boring under a street;
- (f) works to place, alter, divert, relocate, protect, remove or maintain the position of apparatus (including statutory undertakers' apparatus), services, plant and other equipment in, under or above a street, or in other land, including mains, sewers, drains, pipes, lights, cables, cofferdams, fencing and other boundary treatments;
- (g) works to alter the course of, or otherwise interfere with a watercourse;
- (h) landscaping, re-grading, re-profiling, contouring, noise barriers, works associated with the provision of ecological and archaeological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (i) works comprising settlement monitoring and mitigation measures for the benefit or protection of, or in relation to, any land, building or structure, including monitoring and safeguarding of existing infrastructure, utilities and services affected by the authorised development;
- (j) works to place, alter, remove or maintain road furniture;
- (k) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling);
- (l) the felling of trees and hedgerows;
- (m) establishment of site construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, processing plant, works and conveniences;
- (n) the provisions of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, street lighting, road restraints, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (o) such other works, working sites, storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development which do not give rise to any materially new or materially ~~worse~~ adversedifferent environmental effects to those assessed in the environmental statement.

## SCHEDULE 2

### REQUIREMENTS

Article 3

### PART 1

#### REQUIREMENTS

#### Interpretation

##### 1. In this Schedule—

“Airport safeguarding zone” means the [“take off flight path and take off climb surface”, the “approach surface” and the “transitional surface” as shown on the safeguarding map issued for the purposes of the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002 and certified by the Civil Aviation Authority as the safeguarding map for Birmingham Airport];

“Birmingham Airport” means the civil aerodrome licensed for use by the Civil Aviation Authority under public use aerodrome licence number P451;

“Birmingham Airport Limited” means Company No. 02078273 of Diamond House, Birmingham Airport, Birmingham B26 3QH;

“CEMP” means the construction environmental management plan;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990<sup>(a)</sup>;

“Ecological Clerk of Works” has the meaning given in the OEMP;

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017<sup>(b)</sup>;

“HEMP” means the handover environmental management plan;

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by the strategic highway authorities for England, Scotland, Wales and Northern Ireland, or any equivalent replacement published for that document;

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981<sup>(c)</sup>;

“OEMP” means the outline environmental management plan referred to in Schedule 11 (documents to be certified) certified by the Secretary of State as the outline environmental management plan for the purposes of this Order; and

“REAC” means the register of environmental actions and commitments (Appendix 3.1 of the environmental statement appendices, application document TR010027/APP/6.3.

#### Time limits

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

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(a) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 c. 37.

(b) S.I. 2017/1012.

(c) 1981 c. 69.



## Detailed design

3.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the general arrangement plans, works plans and the engineering drawings and sections ~~drawings~~ unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the general arrangement plans, works plans and the engineering drawings and sections ~~drawings~~ showing departures from the preliminary scheme design would not give rise to any materially new or materially ~~worse-adversedifferent~~ environmental effects in comparison with those reported in the environmental statement.

(2) The Secretary of State must not approve any amended details under sub-paragraph (1) that exceed the maximum vertical limits of deviation shown on the works plans and on the engineering drawings and sections within the Airport safeguarding zone, unless the Secretary of State, following consultation with Birmingham Airport Limited, certifies that a deviation in excess of those limits would not adversely affect the safety of aircraft taking off or landing at, or flying in the vicinity of, Birmingham Airport.

~~(2)~~(3) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.

## Outline Environmental Management Plan

4.—(1) The authorised development must be carried out in accordance with the OEMP.

(2) The undertaker must make the CEMP and the HEMP produced in accordance with the OEMP available in an electronic form suitable for inspection by members of the public.

(3) The CEMP must be written in accordance with ISO14001 and must—

- (a) reflect the mitigation measures set out in the REAC;
- (b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) require adherence to working hours of 07:00–18:00 on Mondays to Fridays and 08:00–13:00 on Saturday except for—
  - (i) night-time closures for bridge and gantry demolition and installation;
  - (ii) night-time lifting operations within possession times outside of the operating hours of Birmingham Airport;
  - (iii) site clearance of vegetation adjacent to live carriageways;
  - (iv) site clearance of signs, street furniture and lighting column adjacent to live carriageways;
  - (v) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
  - (vi) junction and highway tie-in works;
  - (vii) installation of temporary and permanent line markings;
  - (viii) installation of detector loops within the M42 carriageway;
  - (ix) removal of overhead power lines;
  - (x) overnight traffic management measures; ~~as otherwise agreed by the local authority in advance;~~
  - (xi) any emergency works;
  - (xii) work associated with the diversion of existing utilities; ~~and~~
  - (xiii) works associated with traffic management and signal changes; ~~and;~~
  - (xiv) as otherwise agreed by the local authority in advance;

- (d) include the following management plans—
  - (i) Dust, Noise and Nuisance Management Plan;
  - (ii) Site Waste Management Plan;
  - (iii) Environmental Control Plan: Invasive Species;
  - (iv) Environmental Control Plan: General Ecology;
  - (v) Soil Management Plan;
  - (vi) Surface Water Management Plan;
  - (vii) ~~COSHH (Control of Substances Hazardous to Health)~~ Material, Waste Storage and Refuelling Plan;
  - (viii) Energy and Resource Use Management Plan;
  - (ix) Materials Management Plan;
  - (x) Contaminated Land Management Plan;
  - (xi) Archaeological Control Plan;
  - (xii) Pollution Prevention Plan;
  - (xiii) Bird Strike Management Plan; ~~and~~
  - (xiv) Crane Management Plan; ~~and-~~
  - (xv) Biodiversity Management Plan.

(4) No part of the authorised development is to commence until a CEMP, substantially in accordance with the OEMP, has been submitted to and approved in writing by the Secretary of State, following consultation with—

- (a) the relevant planning authority to the extent that it relates to matters relevant to its functions; and
- (b) in the case of the Bird Strike Management Plan and the Crane Management Plan, Birmingham Airport Limited.

(5) The construction of the authorised development must be carried out in accordance with the approved CEMP.

(6) A HEMP must be developed and completed by the end of construction, commissioning and handover stage of the authorised development, in accordance with the process set out in the approved CEMP.

(7) The HEMP must address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development, and must contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

(8) The authorised development must be operated and maintained in accordance with the HEMP.

## Landscaping

5.—(1) No part of the authorised development is to commence until a landscaping scheme applicable to that part has been submitted to and approved in writing by the Secretary of State, following consultation with—

- (a) the relevant planning authority on matters related to its functions; and

(b) where that part of the authorised development is comprised in the Airport safeguarding zone, Birmingham Airport Limited on matters relevant to the safety of aircraft taking off or landing, or flying in the vicinity of, Birmingham Airport.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the proposed landscape planting strategy (figure 8.3) and the illustrative environmental masterplan (figure 8.83) annexed to the environmental statement (application document TR010027/APP/6.1).

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels; and
- (e) implementation timetables for all landscaping works.

(4) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards ~~or other recognised codes of good practice.~~

(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.

## **Contaminated land and groundwater**

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

(2) Where the undertaker determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.

(3) Remediation must be carried out in accordance with the approved scheme.

## **Protected species**

7.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease the relevant parts of the relevant construction works and report it immediately to the Ecological Clerk of Works (ECoW).

(2) The relevant parts of the relevant works must not recommence until a scheme of protection and mitigation measures (including their design and management) has been submitted to and approved in writing by the Secretary of State after consultation with Natural England.undertaker must prepare a

(2)(3) The written scheme must provide for the implementation of appropriate measures to avoid harm to breeding birds and their nests under the supervision of the ECoW, for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds found when carrying out the authorised development.

~~Where nesting birds are identified works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.~~

~~(3)~~(4) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

### Surface and foul water drainage

8.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the REAC and drainage strategy report including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with—

(a) the relevant planning authority on matters related to its function; and

(b) where the part of the authorised development to which the approved details relate is within the Airport safeguarding zone, Birmingham Airport Limited.

~~(3) , provided that~~ The Secretary of State may only agree to amendments to the approved details under sub-paragraph (2) if the Secretary of State is satisfied that—

(a) ~~any~~the amendments ~~to the approved details~~ would not give rise to any materially new or materially ~~worse~~ adversely different environmental effects in comparison with those reported in the environmental statement; or

(b) in a case where Birmingham Airport Limited has been consulted under sub-paragraph (2)(b), the amendments would not adversely affect the safety of aircraft taking off or landing at, or flying in the vicinity of, Birmingham Airport.

### Archaeological remains

9.—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the relevant mitigation measures set out in the REAC, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in sub-paragraph (1) must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme referred to in sub-paragraph (1).

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority as soon as reasonably practicable from the date they are identified.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date of any notice served under sub-paragraph (4) unless otherwise agreed in writing by the relevant planning authority.

(6) If the relevant planning authority determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority.

## **Traffic management**

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

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

## **Amendments to approved details**

**11.** With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing by the Secretary of State.

## **Fencing**

**12.** Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

# **PART 2**

## **PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

### **Applications made under requirements**

**13.**—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 14 (further information); or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification at the end of that period).

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report from a body required to be consulted under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially ~~worse~~different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

### **Further information**

**14.**—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within that 21 business day period the Secretary of State is 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.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 13 (applications made under requirements) and in this paragraph.

(4) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971.

### **Register of requirements**

**15.**—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

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

**16.** If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3  
CLASSIFICATION OF ROADS, ETC.

Article 15

PART 1  
SPECIAL ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
M42 Northbound	Between point 1/1 on Sheet 1 and point 7/1 on Sheet 7 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
M42 Southbound	Between point 7/2 on Sheet 7 and point 1/2 on Sheet 1 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
M42 Northbound off slip Junction 5A	Between points 2/1 and 2/6 on Sheet 2 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
M42 Southbound on slip Junction 5A	Between points 2/4 and 2/2 on Sheet 2 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
M42 Northbound off slip Junction 6	Between point 3/15 on Sheet 3 and point 5/2 on Sheet 5 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
M42 Northbound on slip Junction 6	Between points 5/19 and 5/21 on Sheet 5 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
M42 Southbound on slip Junction 6	Between point 5/3 on Sheet 5 and point 3/14 on Sheet 3 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
M42 Southbound off slip Junction 6	Between point 6/2 on Sheet 6 and point 5/14 on Sheet 5 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
A45 Eastbound to M42 Northbound Free Flow Link	Between point 5/1 on Sheet 5 and point 6/3 on Sheet 6 on the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
M42 Southbound off slip to proposed East Way Roundabout	Between point 6/1 on Sheet 6 and point 5/20 on Sheet 5 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
M42 Southbound off slip to A45 Eastbound on slip	Between points 5/15 and 5/13 on Sheet 5 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.

PART 2  
TRUNK ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
New Southern Junction 5A East Roundabout	Entire circulatory carriageway at point 2/8 on Sheet 2 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
New Southern Junction 5A West Roundabout	Entire circulatory carriageway at point 2/10 on Sheet 2 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
New Southern Junction 5A Overbridge	Overbridge at point 2/9 on Sheet 2 of the classification of road plans, providing a connection between points 2/8 and 2/10 on Sheet 2 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.
New mainline link road Northbound	Between point 2/7 on Sheet 2 and point 4/2 on Sheet 4 of the <u>c</u> lassification of <u>r</u> oad <u>p</u> lans.



(1) <i>Road</i>	(2) <i>Extent</i>
New mainline link road Southbound	Between point 4/3 on Sheet 4 and point 2/11 on Sheet 2 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
New mainline link road Northbound on slip off Barber's Coppice Roundabout	Between point 2/12 on Sheet 2 and point 3/1 on Sheet 3 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
New mainline link road Southbound off slip to Bickenhill Roundabout	Between points 3/10 and 3/8 on Sheet 3 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
New mainline link road Northbound off slip to Airport Way connector road	Between point 3/13 on Sheet 3 and point 4/26 on Sheet 4 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
M42 Junction 6 Interchange	Entire circulatory carriageway at point 5/4 on Sheet 5 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
A45 Eastbound	Between points 5/12 and 5/9 on Sheet 5 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
A45 Westbound	Between points 5/8 and 5/6 on Sheet 5 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
A45 Westbound off slip M42 Junction 6	Between points 5/7 and 5/5 on Sheet 5 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
A45 Eastbound on slip M42 Junction 6	Between points 5/23 and 5/24 on Sheet 5 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
Coventry Road	Between points 5/25 and 5/5 on Sheet 5 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.

### PART 3 CLASSIFIED ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
B4102 Solihull Road	Between points 2/3 and 2/5 on Sheet 2 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
Barber's Coppice Roundabout	Entire roundabout at point 2/14 on Sheet 2 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
B4438 Catherine-de-Barnes Lane	Between points 2/15 and 2/13 on Sheet 2 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
B4438 Catherine-de-Barnes Lane	Between point 2/16 on Sheet 2 and point 3/4 on Sheet 3 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
Bickenhill Roundabout	Entire roundabout at point 3/9 on Sheet 3 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
Clock Interchange	Entire interchange at point 4/8 on Sheet 4 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
A45 Westbound	Between point 5/6 on Sheet 5 and point 4/24 on Sheet 4 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
B4102 Solihull Road	Between points 2/17 and 2/18 on Sheet 2 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
Friday Lane	Between points 2/24 and 2/25 on Sheet 2 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
B4102 Hampton Lane	Between points 2/23 and 2/22 on Sheet 2 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.
B4438 Catherine-de-Barnes Lane	Between points 2/21 and 2/20 on Sheet 2 of the <u>C</u> lassification of <u>R</u> oad <u>P</u> plans.



(1) <i>Road</i>	(2) <i>Extent</i>
Catherine-de-Barnes Roundabout	Entire roundabout at point 2/19 on Sheet 2 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
Bickenhill Lane Roundabout	Entire roundabout at point 4/12 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
Bickenhill Lane Southbound	Between points 4/11 and 4/10 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
Bickenhill Lane Northbound	Between points 4/15 and 4/13 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
A45 Eastbound	Between point 4/22 on Sheet 4 and point 5/12 on Sheet 5 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
New mainline link road Northbound off slip to A45 Westbound Free Flow Link	Between points 4/1 and 4/23 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
A45 Westbound on slip	Between points 4/2 and 4/25 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
A45 Westbound off slip	Between points 4/5 and 4/6 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
A45 Eastbound on slip	Between points 4/9 and 4/7 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
A45 Eastbound off slip	Between points 4/18 and 4/16 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
A45 Eastbound free flow link to Bickenhill Lane	Between points 4/17 and 4/14 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
A45 Eastbound off slip	Between point 4/28 on Sheet 4 and point 5/22 on Sheet 5 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
A45 Westbound on slip	Between point 5/2 on Sheet 4 and point 4/29 on Sheet 5 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.

## PART 4

### UNCLASSIFIED ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
Shadowbrook Lane	Between points 3/2 and 3/3 on Sheet 3 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
St Peters Lane (South)	Between points 3/6 and 3/5 on Sheet 3 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
St Peters Lane (North)	Between points 3/11 and 3/16 on Sheet 3 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
Catherine-de-Barnes Lane	Between point 3/16 on Sheet 3 and point 4/27 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
A45 Westbound off slip	Between points 4/4 and 4/21 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
A45 Eastbound on slip	Between points 4/20 and 4/19 on Sheet 4 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.
Middle Bickenhill Lane	Between points 5/10 and 5/11 on Sheet 5 of the <u>€</u> classification of <u>R</u> oad <u>P</u> plans.

(1) <i>Road</i>	(2) <i>Extent</i>
East Way	Between points 5/16 and 5/17 on Sheet 5 of the <del>C</del> lassification of <del>R</del> oad <del>P</del> plans.
Access to Birmingham Dog's Home, Four Winds and Solihull Music School off Barber's Coppice Roundabout	Between points 2/27 and 2/28 on Sheet 2 of the <del>C</del> lassification of <del>R</del> oad <del>P</del> plans.
Access to Four Winds and Warwickshire Gaelic Athletic Association facility off Barber's Coppice Roundabout	Between point 2/26 on Sheet 2 and point 3/17 on Sheet 3 of the <del>C</del> lassification of <del>R</del> oad <del>P</del> plans.
East Way Roundabout	Entire roundabout at point 5/18 shown on Sheet 5 of the <del>C</del> lassification of <del>R</del> oad <del>P</del> plans.
Catherine-de-Barnes Lane	Between points 3/7 and 3/12 on Sheet 3 of the <del>C</del> lassification of <del>R</del> oad <del>P</del> plans.
Access off B4102 Solihull road	At point 2/29 on Sheet 3 of the <del>C</del> lassification of <del>R</del> oad <del>P</del> plans for access to two residential properties known as Woodside and Mayfield.

## PART 5

### SPEED LIMITS

(1) <i>Road name, number and length</i>	(2) <i>Speed limit</i>
Proposed M42 southbound merge slip road connecting to the M42 from the proposed Junction 5A, comprising a length of 750 metres, shown as a dashed magenta line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Proposed M42 northbound diverge slip road diverging from the M42 northbound carriageway and connects to the proposed Junction 5A, comprising a length of 850 metres, shown as a dashed magenta line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Proposed eastbound and westbound lanes of Solihull road, south of proposed M42 Junction 5A, comprising a length of 675 metres, shown as a dashed cyan line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	50 miles per hour
Proposed east and west dumb-bell roundabouts (including connector road between roundabouts) for the proposed Junction 5A on the M42, comprising a length of 655 metres, shown as a dashed blue line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Proposed northbound dual carriageway mainline link road, comprising a length of 2400 metres, shown as a dashed blue line on Sheets 2, 3 and 4 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour

(1) <i>Road name, number and length</i>	(2) <i>Speed limit</i>
Proposed southbound dual carriageway mainline link road, comprising a length of 2400 metres, shown as a dashed blue line on Sheets 2, 3 and 4 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Part of the proposed northbound merge from Barber's Coppice roundabout to the northbound mainline link road up to the back of nosing, comprising a length of 355 metres, shown as a dashed green line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Part of the proposed northbound merge from the back of the nosing of the northbound mainline link road to the end of the merge, comprising a length of 335 metres, shown as a dashed blue line on Sheets 2 and 3 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Proposed Barber's Coppice roundabout, comprising a length of 190 metres, shown as a dashed green line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Proposed northbound and southbound lanes of realigned B4438 Catherine-de-Barnes Lane, south west of Barber's Coppice roundabout, comprising a length of 240 metres, shown as a dashed cyan line on Sheet 2 of the Traffic Regulation Measures, Speed Limits Plans.	50 miles per hour
Proposed east and westbound lanes and north and southbound lanes of the unclassified road, west and north west of Barber's Coppice roundabout, comprising a length of 150 metres, shown as dashed brown lines on Sheets 2 and 3 of the Traffic Regulation Measures, Speed Limits Plans.	30 miles per hour
Proposed northbound and southbound lanes of the realigned B4438 Catherine-de-Barnes Lane, north of Barber's Coppice roundabout and south of Bickenhill roundabout, comprising a length of 765 metres, shown as dashed green lines on Sheets 2 and 3 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Proposed eastbound and westbound lanes of the proposed Shadowbrook Lane comprising a length of 125 metres, shown as a dashed green line on Sheet 3 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Proposed Bickenhill roundabout, comprising a length of 140 metres, shown as a dashed brown line on Sheet 3 of the Traffic Regulation Measures, Speed Limits Plans.	30 miles per hour
Proposed eastbound and westbound lanes of St Peters Lane, east of Bickenhill roundabout, comprising a length of 50 metres, shown as a	30 miles per hour

(1) <i>Road name, number and length</i>	(2) <i>Speed limit</i>
dashed brown line on Sheet 3 of the Traffic Regulation Measures, Speed Limits Plans.	
Proposed southbound diverge from the southbound dual carriageway mainline link road to Bickenhill roundabout, comprising a length of 510 metres, shown as a dashed blue line on Sheet 3 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Proposed northbound and southbound lanes of the realigned Catherine-de-Barnes Lane, north of Bickenhill roundabout up to the junction with St Peters Lane north, comprising a length of 495 metres, shown as a dashed brown line on Sheet 3 of the Traffic Regulation Measures, Speed Limits Plans.	30 miles per hour
Proposed east and westbound lanes of St Peters Lane and north and southbound lanes of the Realigned Catherine-de-Barnes Lane, comprising a length of 290 metres, shown as dashed brown lines on Sheets 3 and 4 of the Traffic Regulation Measures, Speed Limits Plans.	30 miles per hour
Part of the proposed free flow link from the mainline link road to the Airport Way connector road, comprising a length of 490 metres, shown as dashed blue lines on Sheets 3 and 4 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Part of the proposed free flow link from the mainline link road to the Airport Way connector road, comprising a length of 150 metres, shown as a dashed green line on Sheet 4 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Part of the proposed segregated left turn lane from northbound mainline link to A45 westbound, comprising a length of 145 metres, shown as a dashed blue line on Sheet 4 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Part of the proposed segregated left turn lane from northbound mainline link to A45 westbound, comprising a length of 620 metres, shown as a dashed cyan line on Sheet 4 of the Traffic Regulation Measures, Speed Limits Plans.	50 miles per hour
Proposed A45 eastbound free flow link to Bickenhill Lane westbound, comprising a length of 390 metres, shown as a dashed green line on Sheet 4 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Realigned Bickenhill Lane northbound, comprising a length of 230 metres, shown as a dashed green line on Sheet 4 of the Traffic	40 miles per hour

(1) <i>Road name, number and length</i>	(2) <i>Speed limit</i>
Regulation Measures, Speed Limits Plans.	
Realigned Bickenhill Lane southbound, comprising a length of 230 metres, shown as a dashed green line on Sheet 4 of the Traffic Regulation Measures, Speed Limits Plans.	40 miles per hour
Proposed A45 eastbound to M42 northbound free flow link diverge up to the tip of the nosing along the M42 Junction 6 northbound on slip, comprising a length of 670 metres, shown as a dashed cyan line on Sheets 4 and 5 of the Traffic Regulation Measures, Speed Limits Plans.	50 miles per hour
Proposed A45 eastbound to M42 northbound free flow link merge, comprising a length of 945 metres, shown as a dashed magenta line on Sheets 5 and 6 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Proposed M42 southbound diverge to the proposed East Way Roundabout, comprising a length of 635 metres, shown as a dashed magenta line on Sheets 5 and 6 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Part of the proposed M42 southbound to A45 eastbound free flow link (diverge), comprising a length of 1170 metres, shown as a dashed magenta line on Sheets 5 and 6 of the Traffic Regulation Measures, Speed Limits Plans.	70 miles per hour
Part of the proposed M42 southbound to A45 eastbound free flow link (merge), east of Junction 6, comprising a length of 465 metres, shown as a dashed black line on Sheet 5 of the Traffic Regulation Measures, Speed Limits Plans.	60 miles per hour
Proposed East Way Roundabout, including the eastern approaches/departures from the roundabout, comprising a length of 320 metres, shown as a dashed brown line on Sheet 5 of the Traffic Regulation Measures, Speed Limits Plans.	30 miles per hour
A realigned section of the Middle Bickenhill Lane from the proposed T-junction on the East Way to the Middle Bickenhill Lane, comprising a length of 135 metres, shown as a dashed brown line on Sheet 5 of the Traffic Regulation Measures, Speed Limits Plans.	30 miles per hour

## PART 6

### PUBLIC RIGHTS OF WAY

(1) <i>Public right of way</i>	(2) <i>Extent</i>
Public footpath	Between points 4/3 and 4/10 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Footway/cycleway	Between points 4/3 and 4/10 and points 4/11 and 4/13 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Public Right of Way and footway	Between points 3/16 and 3/21 and footway between points 3/19, 3/17 and 3/15 shown on the Streets, Rights of Way and Access Plans.
Public Right of Way and footway	Between points 3/14 and 3/21 and footway between points 3/19, 3/17 and 3/13 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way and footway/cycleway	Between points 3/5 and 3/3 and footway/cycleway between points 3/3 and 3/34 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way	Between points 3/2, 3/5 and 3/4 shown on Sheet 3 of the Streets, Right of Way and Access Plans.
Public Right of Way, footway and footway/cycleway	Between points 2/17 and 2/15 (public right of way), between points 2/15 and 2/10 (existing footway/cycleway), 2/10 and 2/5 (footway), between 2/5 and 2/6 (footway/cycleway) shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Footpath, footway/cycleway	Between points 2/4, 2/5 and 2/6 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Footway/cycleway	Between points 3/3 and 3/7, between points 3/6 and 3/8 and between points 3/9 and 3/10 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Footway	Between points 3/11 and 3/17, 3/19 and 3/21 and 3/23 and 3/25 shown on Sheets 3 and 4 of the Streets, Rights of Way and Access Plans.
Footway/cycleway	Between points 4/6, 4/26 and 4/8 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Footway/cycleway	Between points 4/4, 4/5 and 4/26 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Footway	Between points 5/7 and 5/8 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.

## SCHEDULE 4

Article 16

### STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
B4102 Solihull Road	Between points A16 and A17 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.

## SCHEDULE 5

Article 17

### PERMANENT STOPPING UP OF STREETS, PUBLIC RIGHTS OF WAY AND PRIVATE MEANS OF ACCESS

#### PART 1

#### STREETS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) <i>Street to be stopped up</i>	(2) <i>Extent of stopping up</i>	(3) <i>New street to be substituted or provided</i>
B4438 Catherine-de-Barnes Lane	Existing section of public road, to be stopped up between points A/1 and A/2 and between points A/3 and A/4 shown on Sheets 2 and 3 of the Streets, Rights of Way and Access Plans.	Realigned B4438 Catherine-de-Barnes Lane between points A/5 and A/6, between points A/7 and A/8 and between points A/8 and A/9 shown on Sheets 2 and 3 of the Streets, Rights of Way and Access Plans.
Shadowbrook Lane	Existing section of public road, to be stopped up between points A/10 and A/11 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Shadowbrook Lane between points A/12 and A/13 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
St Peters Lane Northern Junction	Existing section of public road, to be stopped up between points A/4 and A/14 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Realigned Catherine-de-Barnes Lane and St Peters Lane Northern Junction between points A/9 and A/15 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
M42 Junction 6 slip to East Way	Existing section of public road, to be stopped up between points A/23 and A/24 and between points A/25 and A/26 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.	East Way between points A/27 and A/28 and M42 Junction 6 slip to East way between points A/29 and A/30 shown on Sheets 5 and 6 of the Streets, Rights of Way and Access Plans.



## PART 2

### STREETS TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Streets to be stopped up</i>	(2) <i>Extent of stopping up</i>
B4438 Catherine-de-Barnes Lane to Clock Interchange	Existing section of public road, to be stopped up between points A/18 and A/19 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
M42 Junction 6 slip to Middle Bickenhill Lane	Existing section of public road, to be stopped up between points A/20 and A/21 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.

## PART 3

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

(1) <i>Public right of way to be stopped up</i>	(2) <i>Extent of stopping up</i>	(3) <i>New public right of way to be substituted or provided</i>
Public Right of Way M106 North of Bickenhill	Public Right of Way M106 to be stopped up between points 4/3 and 4/22 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.	Public Right of Way to be realigned via points 4/3 and 4/10 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Public Right of Way at Clock Interchange	Public Right of Way to be stopped up between points 4/22 and 4/14 on the eastern side of Clock Interchange and between points 4/24 and 4/25 on the western side of Clock Interchange shown on Sheet 4 of the Streets, <del>R</del> ights of Way and Access Plans.	Public Right of Way to be provided via points 4/3 and 4/10, with a new Public Right of Way to be provided via 4/11 and 4/13 to go to point 4/14 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Public Right of Way M109 West of the existing B4438 Catherine-de-Barnes Lane	Public Right of Way M109 to be stopped up between points 3/16 and 3/15 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Public Right of Way to be realigned via points 3/16, 3/21, 3/19, 3/17 and 3/15 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way M112 West of the exiting B4438 Catherine-de-Barnes Lane	Public Right of Way M112 to be stopped up between points 3/14 and 3/13 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Public Right of Way to be realigned via points 3/14, 3/21, 3/19, 3/17 and 3/13 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way M113 West of the existing B4438 Catherine-de-Barnes Lane	Public Right of Way M113 to be stopped up between points 3/5 and 3/34 shown on Sheet 3	Public Right of Way to be realigned via points 3/5, 3/3 and 3/34 shown on Sheet 3 of

<i>(1) Public right of way to be stopped up</i>	<i>(2) Extent of stopping up</i>	<i>(3) New public right of way to be substituted or provided</i>
	of the Streets, Rights of Way and Access Plans.	the Streets, Rights of Way and Access Plans.
Public Right of Way M113a West of the existing B4438 Catherine-de-Barnes Lane	Public Right of Way M113a to be stopped up in its entirety between points 3/2 and 3/4 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Public Right of Way to be provided via points 3/2, 3/5 and 3/4 shown on Sheet 3 of the Streets, Right of Way and Access Plans.
Public Right of Way M122 East of the existing B4438 Catherine-de-Barnes Lane	Public Right of Way M122 to be stopped up between points 2/16 and 2/6 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.	Public right of way to be aligned via points 2/17, 2/15, 2/10, 2/5 and to 2/6 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Public Right of Way M123 north east of Catherine-de-Barnes	Existing section of Public Right of Way M123 to be stopped up between points 2/4 and 2/6 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.	A new pedestrian footpath is provided between points 2/4, 2/5 and 2/6 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Public Right of Way along the existing B4438 Catherine-de-Barnes Lane	Public Right of Way along the length of the existing B4438 Catherine-de-Barnes Lane between points 2/15 and 3/1 shown on Sheets 2 and 3 of the Streets, Rights of Way and Access Plans to be stopped up.	A new public right of way to be provided via points 2/17 and 3/1 shown on Sheets 2 and 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way adjacent to realigned Catherine-de-Barnes Lane	Existing section of public right of way to be stopped up between points 3/3 and 3/8 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new public right of way is provided between points 3/3 and 3/7, between points 3/6 and 3/8 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way adjacent to Catherine-de-Barnes Lane (B4438)	Existing section of public right of way to be stopped up between points 3/11 and 3/25 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new public right of way is provided between points 3/11 and 3/17, 3/19 and 3/21 and 3/23 and 3/25 shown on Sheets 3 and 4 of the Streets, Rights of Way and Access Plans.
St Peters Lane north	Existing section of the public right of way between 3/18 and 3/24 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new public right of way is provided between points 3/18 and 3/17, 3/19 and 3/21 and 3/23 and 3/25 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Public Right of Way along Airport Way connector road	Existing section of public right of way, to be stopped up between points 4/6 and 4/8 and between points 4/7 and 4/8 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.	A new public right of way is provided between points 4/6, 4/26 and 4/8 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Public Right of Way west of Clock Interchange	Existing section of public footway, to be stopped up	East west connectivity between the A45 Coventry

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New public right of way to be substituted or provided</i>
	between points 4/4 and 4/9 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.	road and Airport way connector road to be provided between points 4/4, 4/5, 4/26, 4/8 and 4/9 shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Public Right of Way east of M42 Junction 6	Existing section of public Right of Way to be stopped up between points 5/7 and 5/8 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.	A new Public Right of Way provided between points 5/7 and 5/8 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.

## PART 4

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

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
Public Right of Way west and north west of M42 Junction 6	Existing section of public footway, to be stopped up between points 4/12 and 5/1 shown on Sheets 4 and 5 of the Streets, Rights of Way and Access Plans.
Public Right of Way east of M42 Junction 6	Existing section of public footway, to be stopped up between points 5/4 and 5/2, and between points 5/2 and 5/6 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.

## PART 5

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

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New private means of access to be substituted or provided</i>
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to land South of the residential property 'Heath End House'.	Field Access to be stopped up at point 3/56 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Access to this field to be maintained by relocated access at 3/57 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access (gate) to land associated with the Warwickshire Gaelic Athletic Association facility off the existing B4438 of Catherine-de-Barnes Lane.	Private Means of Access to Warwickshire Gaelic Athletic Association facility to be stopped up at point 3/29 shown on Sheet 3 of the Streets, Rights of Way and	Access to the Warwickshire Gaelic Athletic Association facility to be maintained via Private Means of Access points 3/54 and 3/35 shown on Sheet 3 of the Streets, Rights

<i>(1) Private means of access to be stopped up</i>	<i>(2) Extent of stopping up</i>	<i>(3) New private means of access to be substituted or provided</i>
	Access Plans.	of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane for land South of the Airport Way connector road and East of the New Link road.	Field Access gate at point 4/19 to be stopped up shown on Sheet 4 of the Streets, Rights of Way and Access Plans.	Access to the land to be provided via point 3/20 on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off Solihull Road providing access to scheduled ancient woodland.	Field Access at point 2/18 to be stopped up shown on Sheet 2 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided at point 2/19 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to the East of Birmingham Dogs Home.	Field Access at point 2/20 to be stopped up shown on Sheet 2 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided at point 2/21 shown on Sheet 2 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to land East off the residential property 'Four Winds'.	Field Access at point 2/16 to be stopped up shown on Sheet 2 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided at point 3/57 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to the residential property 'Four Winds'.	Private Means of Access at point 3/1 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Existing Private Means of Access to the residential property Four Winds to be re-provided at point 3/7 <del>1</del> off Barber's Coppice Roundabout shown on Sheet 3 of <u>the</u> Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane for access to the north of the residential property 'Four Winds'.	Field Access off B4438 Catherine-de-Barnes at point 3/2 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Access to existing field gate is to be provided at point 3/8 <del>2</del> off Barber's Coppice Roundabout shown on Sheet 3 of <u>the</u> Streets, Rights of Way and Access Plans.
Private Means of Access to residential property 'Four Winds'.	Private Means of Access to be stopped up at point 2/13 on Sheet 2 of the Streets, Rights of Way and Access Plans.	To be re-provided off the Barber's Coppice roundabout at point 2/14 shown on Sheet 2 of Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to land to the south of the Warwickshire Gaelic Athletic Association facility.	Field Access off B4438 Catherine-de-Barnes at point 3/39 to be stopped up shown on Sheet 3 of the Streets, Right of Way and Access Plans.	Access to existing field gate is to be provided at point 3/10 <del>39</del> off Barber's Coppice Roundabout shown on Sheet 3 of <u>the</u> Streets, Rights of Way and Access Plans.
Private Means of Access (No.1) off the existing B4438 Catherine-de-Barnes Lane to the Warwickshire Gaelic Athletic Association facility.	Private Means of Access off B4438 Catherine-de-Barnes at point 3/54 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Private Means of Access is to be provided at point 3/11 <del>54</del> off Barber's Coppice Roundabout shown on Sheet 3 of <u>the</u> Streets, Rights of Way and Access

<i>(1) Private means of access to be stopped up</i>	<i>(2) Extent of stopping up</i>	<i>(3) New private means of access to be substituted or provided</i>
		Plans.
Private Means of Access (No.2) off the existing B4438 Catherine-de-Barnes Lane to the Warwickshire Gaelic Athletic Association facility.	Private Means of Access off B4438 Catherine-de-Barnes at point 3/34 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Private Means of Access is to be provided at point 3/35 off Barber's Coppice Roundabout shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) (No.1) off the existing B4438 Catherine-de-Barnes Lane providing access to land opposite Bracey's Garden Centre to the west of Catherine-de-Barnes Lane.	Field Access at point 3/36 to be stopped up shown on Sheet 3 of the Streets, Right of Way and Access Plans.	A new Field Access is to be provided at point 3/37 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) (No.2) off the existing B4438 Catherine-de-Barnes Lane providing access to land opposite Bracey's Garden Centre to the west of Catherine-de-Barnes Lane.	Field Access at point 3/40 to be stopped up shown on Sheet 3 of the Streets, Right of Way and Access Plans.	A new Field Access is to be provided at point 3/41 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field access (gate) off the existing B4438 Catherine-de-Barnes Lane providing access to land West of Bickenhill Roundabout.	Field Access at point 3/45 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided at point 3/46 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access off the existing B4438 Catherine-de-Barnes Lane, south of Haven Caravan Park, providing access to land adjacent to the Bickenhill Meadows SSSI First Castle Meadow unit.	Field Access at point 3/47 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided at point 3/48 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes Lane 10m south of the access into the Haven Caravan Park to land previously used by Birmingham Exiles Rugby Union Football Club.	Private Means of Access at point 3/51 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Field Access is to be provided off new private means of access at point 3/52 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access off the existing B4438 Catherine-de-Barnes Lane providing access to 'The Haven Caravan Park'.	Private Means of Access at point 3/55 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Private Means of Access is to be provided at point 3/22 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off St Peters Lane providing access to land South of Clock Interchange and East of the mainline link road.	Field Access at point 3/53 to be stopped up shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	A new Field Access to land is to be provided at point 3/20 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the A45 Coventry road to the East	Field Access at point 4/20 to be stopped up shown on Sheet	A new Field Access is to be provided at point 4/21 shown

(1) <i>Private means of access to be stopped up</i>	(2) <i>Extent of stopping up</i>	(3) <i>New private means of access to be substituted or provided</i>
of the Arden Hotel.	4 of the Streets, Rights of Way and Access Plans.	on Sheet 4 of the Streets, Rights of Way and Access Plans.

## PART 6

### PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Private means of access to be stopped up</i>	(2) <i>Extent of stopping up</i>
Private Means of Access off the existing B4438 Catherine-de-Barnes Lane to the residential property 'Heath End House'.	Private Means of Access to Heath End House to be stopped up at point 3/28 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access (gate) off Shadowbrook Lane to the residential property 'Heath End House'.	Private Means of Access to Heath End House to be stopped up at point 3/31 shown on Sheet 3 of the Streets, Rights of Way and Access Plans. Access to land to be maintained via existing Private Means of Access at point 3/32 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access off the A45 to Cadent Gas local gas Governor.	Private Means of Access to Cadent Gas local gas Governor to be stopped up at point 5/13 shown on Sheet 5 of the Streets, Rights of Way and Access Plans. This is based on current assumption that the gas Governor can be decommissioned and no new access is required.
Private Means of Access off the M42 Junction 6 slip road to Middle Bickenhill Lane.	Private Means of Access off M42 Junction 6 slip road to Middle Bickenhill Lane at point 5/16 to be stopped up shown on Sheet 5 of the Streets, Rights of Way and Access Plans. Access to this commercial property to be maintained via existing Private Means of Access points 5/17 and 5/18 shown on Sheet 5 of the Streets, Rights of Way and Access Plans.

## PART 7

### ALTERATIONS TO PRIVATE MEANS OF ACCESS

(1) <i>Private means of access to be altered</i>	(2) <i>Extent of alteration</i>
Private Means of Access off Shadowbrook Lane to residential property 'Oak Tree Lodge'.	Private Means of Access at point 3/30 to be altered to suit the realignment of Shadowbrook Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access off the existing B4438 Catherine-de-Barnes Lane to the residential	Private Means of Access at point 3/33 to be altered to suit the realignment of the B4438

(1) <i>Private means of access to be altered</i>	(2) <i>Extent of alteration</i>
property 'The Dale'.	Catherine-de-Barnes Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access off the existing B4438 Catherine-de-Barnes Lane to Bracey's Nursery Garden Centre.	Private Means of Access at point 3/26 to be altered to suit the realignment of the B4438 Catherine-de-Barnes Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access off St Peters Lane to Bracey's Nursery Garden Centre.	Private Means of Access at point 3/42 to be altered to suit the realignment of St Peters Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off St Peters Lane to land East of Bracey's Nursery Garden Centre.	Field Access at point 3/43 to be altered to suit the realignment of St Peters Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Private Means of Access off St Peters Lane to the residential property 'Providence Cottage'.	Private Means of Access at point 3/44 to be altered to suit the realignment of St Peters Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access (gate) off the existing B4438 Catherine-de-Barnes identified at point 3/50 shown on Sheet 3 of the Streets, Rights of Way and Access Plans.	Field Access off Catherine-de-Barnes Lane at point 3/50 to be altered to suit the realignment of the Catherine-de-Barnes Lane shown on Sheet 3 of the Streets, Rights of Way and Access Plans.
Field Access to land between the Airport Way connector road and the A45 westbound slip road from Clock Interchange.	Field Access at point 4/17 to be realigned to point 4/18 due to the introduction of new free flow link from the new mainline link road to the A45 westbound shown on Sheet 4 of the Streets, Rights of Way and Access Plans.
Private Means of Access (gate) providing access to land on the North East Quadrant of the M42 Junction 6 South of East Way.	Private Means of Access at point 5/14 off East Way to be altered to suit a connection to the proposed East Way Roundabout shown on Sheet 5 of the Streets, Rights of Way and Access Plans.
Private means of access (gate) to land East of Middle Bickenhill Lane and North of the A45 Coventry road.	Private Means of Access at point 5/15 off Middle Bickenhill Lane to be altered to suit the Middle Bickenhill Lane being converted to two way traffic flow shown on Sheet 5 of the Streets, Rights of Way and Access Plans.

## SCHEDULE 6

Article 19(4)

### CLEARWAYS, PROHIBITIONS AND RESTRICTIONS

#### PART 1

##### TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

(1) <i>Road name, number and length</i>	(2) <i>Measures</i>
Proposed east and west dumbbell roundabouts (including connector road between roundabouts) for the proposed Junction 5A on the M42, comprising a length of 655 metres, shown as a dashed blue line on Sheet 2 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Proposed northbound dual carriageway mainline link road, comprising a length of 2400 metres, shown as a dashed blue line on Sheet 2, 3 and 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Proposed southbound dual carriageway mainline link road, comprising a length of 2400 metres shown as a dashed blue line on Sheet 2, 3 and 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Proposed northbound merge from Barber's Coppice roundabout to the northbound mainline link road, comprising a length of 690 metres, shown as a dashed blue line on Sheets 2 and 3 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Proposed southbound diverge from the southbound dual carriageway mainline link road to Bickenhill roundabout, comprising a length of 510 metres, shown as a dashed blue line on Sheet 3 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
The proposed Free Flow Link from the northbound dual carriageway mainline link road to the Airport Way connector road, comprising a length of 640 metres, shown as a dashed blue line on Sheet 3 and 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Part of proposed segregated left turn lane to A45 Westbound, comprising a length of 180 metres, shown as a dashed blue line on Sheet 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)
Part of proposed segregated left turn lane to A45 Westbound, comprising a length of 585	Red Route Clearway (to include verges and hard strips)



<i>(1)</i> <i>Road name, number and length</i>	<i>(2)</i> <i>Measures</i>
metres, shown as a dashed magenta line on Sheet 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	
Proposed A45 eastbound Free Flow Link to Bickenhill Lane westbound, comprising a length of 390 metres, shown as a dashed orange line on Sheet 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route
Realigned Bickenhill Lane northbound, comprising a length of 230 metres shown as a dashed orange line on Sheet 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route
Realigned Bickenhill Lane southbound, comprising a length of 230 metres shown as a dashed orange line on Sheet 4 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route
A45 Eastbound to M42 northbound Free Flow Link, comprising a length of 210 metres, shown as a dashed magenta line on Sheets 4 and 5 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	Red Route Clearway (to include verges and hard strips)

## PART 2

### TRAFFIC REGULATION MEASURES (WEIGHT RESTRICTIONS)

<i>(1)</i> <i>Road name, number and length</i>	<i>(2)</i> <i>Measures</i>
Eastern Link from Bickenhill roundabout to the existing St Peters Lane south, comprising a length of 50 metres, shown as a dashed green line on Sheet 3 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	7.5 tonne weight restriction (except for access)
A section of St Peter's Lane east of Catherine-de-Barnes Lane north Overbridge, comprising a length of 55m, shown as a dashed green line on Sheet 3 of the Traffic Regulation Measures, Clearways and Weight Limits Plans.	7.5 tonne weight restriction (except for access)

## SCHEDULE 7

Article 27(2)

### LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>
<b>Land Plans – Sheet 2</b>	
2/2c, 2/3c	To construct, operate, access and maintain a diversion to an existing local high pressure gas main (Work No. 55).
2/3o, 2/10c, 2/29, 2/30	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with Work No. 3).
2/3u, 2/3ah	To construct, operate, access and maintain diversion to an existing local high pressure gas main (Work No. 56) and an existing aqueduct pipeline (Work No. 62). To construct, operate, access and maintain a reinforced cover slab for an existing fuel pipeline (Work No. 66) and to maintain access to the pipeline.
2/3aa	To access land to be used for the construction, operation and maintenance of drainage attenuation and treatment systems (Work No. 33). To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 56) and an existing aqueduct pipeline (Work No. 62).
<b>Land Plans – Sheet 3</b>	
3/4b	To access land to be used for the construction, operation and maintenance of drainage attenuation and treatment systems (Work No. 33). To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 56) and an existing aqueduct pipeline (Work No. 62).
3/4f	To access land to be used for the construction, operation and maintenance of drainage attenuation and treatment systems (Work No. 33).
3/22a, 3/22b	To access land to be used in connection with the provision, maintenance and retention of mitigation within Bickenhill Meadows SSSI - Shadowbrook Meadows unit (Work No.76).
3/23, 3/73d, 3/73f	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
3/25	To access land to be used for the provision, maintenance and retention of mitigation in connection with Bickenhill Meadows site of special scientific interest (works associated with the authorised development). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
3/87a	To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 57) and existing electric lines, cables, equipment and apparatus (Works Nos. 64 and 65).

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>
<b>Land Plans – Sheet 4</b>	
4/1c, 4/1bf, 4/3b, 4/3c, 4/3ai, 4/3aj, 4/5a, 4/5b, 4/6n, 4/6p, 4/9, 4/10, 4/158, 4/159	To construct, operate, access and maintain a diversion to an existing medium pressure gas main (Work No. 59). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/1d, 4/25a	To access land to be used for the construction, maintenance and retention of environmental mitigation at the existing Clock Interchange (works associated with Work No. 20).
4/1f	To access to and over land to be used for the construction, operation and maintenance of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (Work No. 22). To take access to and over land to be used for the construction, operation and maintenance of alterations to the existing Bickenhill Lane carriageway (Works Nos. 23 and 24). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/1g	To take access to and over land to be used for the construction, operation and maintenance of improvements to the existing Clock Interchange (Work No. 20). To take access to and over land to be used for the construction, operation and maintenance of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (Work No. 22). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/1h, 4/1m, 4/1q, 4/1s, 4/1t, 4/1u, 4/1v, 4/1w, 4/1x, 4/1am, 4/1ap, 4/1as, 4/1bb, 4/3e, 4/3f, 4/3g, 4/3h, 4/3j, 4/3k, 4/3m, 4/3ae, 4/4g, 4/4k, 4/4n, 4/4v, 4/4x, 4/5c, 4/6b, 4/6e, 4/6f, 4/6g, 4/6h, 4/7a, 4/11a, 4/25b, 4/25d, 4/25e, 4/25g, 4/25i, , 4/25l, 4/25m, 4/25s, 4/62, 4/66, 4/69, 4/71, 4/73, 4/76, 4/80, 4/89, 4/91, 4/93, 4/94, 4/99, 4/102, 4/106, 4/109, 4/147, 4/150, 4/151, 4/152, 4/153, 4/155	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/1k	To construct, operate, access and maintain a diversion to an existing medium pressure gas main (Work No. 60).
4/25o, 4/25j, 4/25p, 4/25n	To access land to be used for the construction, operation and maintenance of a pedestrian overbridge (Work No. 39 and the installation of a new gantry (Work No. 2)).
4/1n, 4/1r, 4/82	To access land to be used for the construction, operation and maintenance of a pedestrian overbridge (Work No. 39). To construct, operate, access and maintain a diversion to an existing medium pressure gas main (Work No. 60).

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>
	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/lz	To take access to and over land to be used for the construction, operation and maintenance of improvements to the existing Clock Interchange (Work No. 20). To take access to and over land to be used for the construction, operation and maintenance of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (Work No. 22).
4/1ab, 4/1ac	To take access to and over land to be used for the construction, operation and maintenance of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (Work No. 22).
4/1aq, 4/1bc	To construct, operate, access and maintain a realignment to a private means of access due to the construction of a new free flow link road at Work No. 21 (works associated with the authorised development).
4/1az, 4/1ba	To construct, operate, access and maintain a diversion to an existing aqueduct pipeline (Work No. 63).
4/2a, 4/3af	To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 57) and existing electric lines, cables, equipment and apparatus (Works Nos. 64 and 65).
4/2f	To construct, operate, access and maintain a gantry forming part of Work No. 2a. To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 57) and existing electric lines, cables, equipment and apparatus (Works Nos. 64 and 65).
4/3d	To take access to and over land to be used for the construction, maintenance and retention of environmental mitigation at the existing Clock Interchange (works associated with Work No. 20). To take access to and over land to be used for the construction, operation and maintenance of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (Work No. 22). To take access to and over land to be used for the construction, operation and maintenance of alterations to the existing Bickenhill Lane carriageway (Works Nos. 23 and 24). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/3i, 4/3l	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with Works Nos. 2 and 20).
4/3o, 4/3p	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with Work No. 2).

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>
4/3y	To access land to be used for the construction, maintenance and retention of environmental mitigation at the existing Clock Interchange (works associated with Work No. 20). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with Work No. 21).
4/3ah, 4/4u, 4/4w, 4/25q, 4/25u, 4/149, 4/160	To construct, operate, access and maintain a diversion to an existing aqueduct pipeline (Work No. 63). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/6a, 4/156	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with Work No. 21). To construct, operate, access and maintain a diversion to an existing medium pressure gas main (Work No. 59). To construct, operate, access and maintain a diversion to an existing aqueduct pipeline (Work No. 63). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
4/6d	To access land to be used for the construction, operation and maintenance of a pedestrian overbridge (Work No. 39). To construct, operate, access and maintain a diversion to an existing medium pressure gas main (Work No. 60). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (Works Nos. 56, 64 and 65).
4/59	To construct, operate, access and maintain a realignment to a private means of access due to the construction of a new free flow link road at Work No. 21 (works associated with the authorised development). To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).
<b>Land Plans – Sheet 5</b>	
5/1b, 5/29h,	To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 57) and existing electric lines, cables, equipment and apparatus (Works Nos. 64 and 65).
5/29c, 5/2h and 5/29u	Required for access to and construction of a new free flow single carriageway (Work No.26). To construct, operate, access and maintain diversions to an existing local high pressure gas main (Work No. 57) and existing electric lines, cables, equipment and apparatus (Works Nos. 64 and 65).
5/7	To construct, operate, access and maintain diversions to existing utilities apparatus and equipment (works associated with the authorised development).

## SCHEDULE 8

Article 27(3) and (45)

### MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

#### *Compensation enactments*

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

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

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

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the M42 Junction 6 Development Consent Order 202[ ] (“the 202[ ] Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the 2018 Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

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

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

#### *Application of the 1965 Act*

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29 (modifications of Part 1 of the 1965 Act)) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27 (compulsory acquisition of rights and restrictive covenants)—

- (a) with the modifications specified in paragraph 5; and

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(a) 1973 c. 26.

- (b) with such other modifications as may be necessary.

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

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

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

(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 or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(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 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(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 or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 24), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(b) (powers of entry; further notices of entry), 11B(c) (counter-notice requiring possession to be taken on 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 or the enforcement of the restrictive covenant in question.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 29(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

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

### *Introduction*

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 30 (application of the 1981 Act) of the M42 Junction 6 Development Consent Order 202[ ](a) in respect of the land to which the notice to treat relates.

(2) But see article 31(3) (acquisition of subsoil and airspace only) of the M42 Junction 6 Development Consent Order 202[ ] which excludes the acquisition of subsoil or airspace only from this Schedule.

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

### *Counter-notice requiring purchase of land*

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

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

### *Response to counter-notice*

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

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

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

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

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

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(a) S.I. 201[ ]/[ ]\*\*\*\*.



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

*Determination by Upper Tribunal*

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

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

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

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

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

**13.** If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

## SCHEDULE 9

Article 33

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
<b>Land Plans – Sheet 2</b>		
2/3z, 2/58a, 2/58b, 2/59	Required for provision of a temporary construction compound.	Works Nos. 3 ,6 and 70
<del>2/1f</del> , 2/52	Temporary possession associated with the Solihull Road Overbridge and temporary alignments to ensure Solihull road remains open.	Work Nos. 3 and 70
2/2a	Required for the provision of temporary access to facilitate the construction works	Work Nos. 1 and 5
2/2c	Required for construction of a diversion to an existing local high pressure gas main; and to provide temporary access to land associated with the provision of environmental mitigation.	Work No. 55
2/3a	Required for construction of a new M42 off slip road and the demolition of an existing sheet pile wall.	Work No. 4
2/3c	Required for storage of earthworks and for the construction of a diversion to an existing local high pressure gas main.	Works Nos. 3 and 55
2/3d	Required for construction of a new M42 off slip road and the demolition of an existing sheet pile wall and to provide temporary access to land associated with environmental mitigation.	Work No. 4
2/3g, 2/3h, 2/3i, 2/3j, 2/3p, 2/3r, 2/22	Required to provide temporary access to land associated with the provision of environmental mitigation.	Work Nos. 3, 4 and 5
2/3o, 2/10c, 2/29, 2/30	Required for construction of diversions to existing utilities apparatus and equipment.	Work No. 3
2/3u, 2/3ah	Required for construction of diversions to an existing local high pressure gas main and an existing aqueduct pipeline; and for construction of a reinforced cover slab for an existing fuel pipeline.	Works Nos. 56, 62 and 66
2/3w	Required for construction of a temporary two lane single carriageway; and for the stockpiling of construction materials.	Work No. 70
2/3aa	Required for access to drainage attenuation and treatment systems; <del>and</del> for construction of diversions to an existing local high pressure gas main and an existing aqueduct pipeline; <u>and for the stockpiling of construction materials.</u>	Works No. 33, 56 and 62
2/3ab	Required for construction of a temporary merge onto the M42 for construction	All Works

(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
	vehicles; and for the stockpiling of construction materials.	
2/10a, 2/10b, 2/11	Required for lining and signing works.	All Works
2/62a	Required for construction of realigned B4438 Catherine- de- Barnes Lane.	Work No. 11
2/65	Required for construction of a temporary southbound diverge for construction traffic.	All Works
2/76a	Required for temporary access to land associated with alteration works to the existing Warwickshire Gaelic Athletic Association facilities.	Work No. 68
<b>Land Plans – Sheet 3</b>		
3/3d, 3/51a, 3/57, 3/58a	Required for the stockpiling of construction materials.	All Works
3/4b	Required for access to drainage attenuation and treatment systems; <del>and</del> for construction of diversions to an existing local high pressure gas main and an existing aqueduct pipeline; <u>and for the stockpiling of construction materials.</u>	Works No. 33, 56 and 62
3/4f	Required for access to drainage attenuation and treatment systems; <u>and for the stockpiling of construction materials.</u>	Work No. 33
3/15a, 3/15c, 3/15e	Required for temporary access to land associated with alteration works to the existing Warwickshire Gaelic Athletic Association facilities.	Work No. 68
3/22a, 3/22b	To access land to be used in connection with the provision, maintenance and retention of mitigation within Bickenhill Meadows SSSI – Shadowbrook Meadows unit	Work No. 76
3/32b, 3/32c	To access land in connection with the monitoring of the Bickenhill Meadows SSSI – Shadowbrook Meadows unit.	All Works
3/23, 3/73f	Required for construction of diversions to existing utilities apparatus and equipment.	All Works
3/73d	Required for construction of diversions to existing utilities apparatus and equipment. Required for the provision of a temporary construction compound.	Work No. 69 All Works
3/25	Required for access to land associated with the provision of environmental mitigation within the Bickenhill Meadows SSSI – Shadowbrook Meadows unit. For construction of diversions to existing utilities apparatus and equipment.	Work No. 76 All Works
3/30	Required for access to construct a diversion to a private means of access.	Work No. 17
3/87a, 3/87b	Required for access and construction of diversions to an existing local high pressure gas main and existing electric lines, cables,	Works Nos. 57, 64 and 65

(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
	equipment and apparatus.	
<b>Land Plans – Sheet 4</b>		
4/1a, 4/1i, 4/1ad, 4/1af, 4/1ag, 4/1ah, 4/1ai, 4/1ak, 4/1al, 4/3r, 4/146	Required for signage installation.	All Works
4/1c, 4/1bf, 4/3b, 4/3c, 4/3ai, 4/3aj, 4/5a, 4/5b, 4/6n, 4/6p, 4/10	Required for construction of a new free flow link road; and for the construction of a footway/cycleway; and for the construction of a diversion to an existing medium pressure gas main; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 21, 45 and 59
4/1d	Required for construction of improvements to the existing Clock Interchange; and for access to environmental mitigation to be constructed, maintained and retained at the existing Clock Interchange.	Work No. 20
4/1f	Required for construction of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road; and for alterations to the existing Bickenhill Lane carriageway; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 22, 23 and 24
4/1g	Required for access to and over land to be used for construction of improvements to the existing Clock Interchange; and for access to and over land to be used for the construction of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 20 and 22
4/1h, 4/5c	Required for access to construct a new free flow link road; and for construction of a diversion to an existing medium pressure gas main; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 2, 21 and 59
4/1k	Required for the realignment of Public Right of Way M106; and for access and construction of a diversion to an existing medium pressure gas main.	Works Nos. 53 and 60
4/1m, 4/1s, 4/1x, 4/1ap, 4/1bb, 4/3f, 4/3g, 4/62, 4/71, 4/147	Required for lining and signing works; and for construction of diversions to existing utilities apparatus and equipment.	Works No. 19
4/1n	Required for lining and signing works; and for access and construction of a diversion to a medium pressure gas main; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 19 and 60
4/1p, 4/25c	Required for access to monitor existing	Work No.20

(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
	drainage attenuation features.	
4/1q, 4/3h, 4/3k, 4/3m	Required for access to and over land to be used for construction of improvements to the existing Clock Interchange; and for construction of diversions to existing utilities apparatus and equipment.	Work No. 20
4/1r	Required for access to construct a pedestrian overbridge; and for construction of a diversion to a medium pressure gas main.	Works Nos. 39 and 60
4/1t, 4/1u	Required for signage installation and the construction of diversions to existing utilities apparatus and equipment.	Work No.2
4/1v, 4/1am, 4/3j, 4/3ae, 4/4n, 4/4v, 4/4x, 4/25b, 4/25d, 4/25s, 4/73, 4/76, 4/151, 4/152, 4/153	Required for access and construction of diversions to existing utilities apparatus and equipment.	All Works
4/1w, 4/3e; 4/3o, 4/3p, 4/6e, 4/6f, 4/6g, 4/6h, 4/25e, 4/25g, 4/25l, 4/25n, 4/66, 4/89, 4/91, 4/93, 4/94, 4/99, 4/102, 4/106, 4/109, 4/150, 4/155	Required for lining and signing works; and for access and construction of diversions to existing utilities apparatus and equipment.	Work No. 2
4/1z	Required for access to and over land to be used for construction of improvements to the existing Clock Interchange; and for access to and over land to be used for the construction of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road.	Works Nos. 20 and 22
4/1aa, 4/1ab, 4/1ac, 4/1ax, 4/3ad	Required for temporary access to construct a realignment of the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road.	Work No. 22
4/1ao, 4/7b	Required for temporary access to construct alterations to the existing Bickenhill Lane carriageway; and for drainage.	Work No. 24
4/1aq, 4/1bc	Required for access and construction of a realignment to an existing private means of access; and for access and construction of environmental mitigation; and for monitoring of attenuation devices.	Work No. 21
4/1as	Required for lining and signing works; and for construction of diversions to existing utilities apparatus and equipment.	Work No. 2
4/1az, 4/1ba	Required for access and construction of a diversion to an existing aqueduct pipeline.	Work No. 63
4/2a, 4/2b, 4/2c, 4/2d, 4/3af,	Required for access and construction of diversions to an existing local high pressure gas main and existing electric lines, cables,	Works Nos. 57, 64 and 65

(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
	equipment and apparatus.	
4/2f	Required for access and construction of improvements to the eastbound and westbound carriageway of the A45; and for access and construction of diversions to an existing local high pressure gas main and existing electric lines, cables, equipment and apparatus.	Works Nos. 2, 57, 64 and 65
4/3d	Required for construction of improvements to the existing Clock Interchange; and for access to environmental mitigation to be constructed, maintained and retained at the existing Clock Interchange; and for construction of a realignment to the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road; and for alterations to the existing Bickenhill Lane carriageway; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 20, 22, 23 and 24
4/3i, 4/3l	Required for access and construction of diversions to existing utilities apparatus and equipment.	Work Nos. 2 and 20
4/3n	Required for temporary access to construct improvements to the existing Clock Interchange.	Work No. 20
4/3u, 4/3v, 4/3ag	Required for access to construct a new free flow single carriageway with hard shoulder; and for access and construction of diversions to an existing local high pressure gas main and existing electric lines, cables, equipment and apparatus.	Works Nos. 26, 57, 64 and 65
4/3y	Required for access and construction of improvements to the existing Clock Interchange; and for construction of a new free flow link road; and for construction of diversions to existing utilities apparatus and equipment; and for access to environmental mitigation to be constructed, maintained and retained at the existing Clock Interchange.	Works Nos. 20 and 21
4/3ah, 4/4u, 4/25q, 4/25u, 4/160	Required for access to and construction of a diversion to an existing aqueduct pipeline; and for access to and construction of diversions to existing utilities apparatus and equipment.	Work No. 63
4/4g, 4/4k	Required for provision of a temporary construction compound, [to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste]; and for the realignment of Public Right of Way M106; and for construction of diversions to existing	Works Nos. 53 and 69

(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
	utilities apparatus and equipment.	
4/4w	Required for provision of a temporary construction compound, [to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste]; and for access and construction of a diversion to an existing aqueduct pipeline; and for the realignment of Public Right of Way M106; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 53, 63 and 69
4/6a	Required for construction of a new free flow link road; and for the construction of a footway/cycleway; and for the construction of a diversion to an existing medium pressure gas main; and for construction of a diversion to an existing aqueduct pipeline; and for construction of diversions to existing utilities apparatus and equipment.	Works Nos. 21, 45, 59 and 63
4/6b	Required for access and construction of diversions to existing electric lines, cables, equipment and apparatus; and for access and construction of an extension to an existing culvert.	Works Nos. 57, 64 and 65
4/6d	Required for construction of a pedestrian overbridge; and for access and construction of a diversion to an existing medium pressure gas main; and for access and construction of an extension to an existing culvert; and for the construction of diversions to existing electric lines, cables, equipment and apparatus.	Works Nos. 39, 57, 60, 64 and 65
4/7a	Required for alterations to the existing Bickenhill Lane carriageway; and for the construction of diversions to existing electric lines, cables, equipment and apparatus.	Works Nos. 23 and 24
4/9	Required for lining and signing works; and for access and construction of a diversion to a medium pressure gas main; and for access and construction of diversions to existing utilities apparatus and equipment.	Works Nos. 2 and 59
4/11b	Required for access to construct a pedestrian overbridge across the A45.	Work No. 39
4/25a, 4/69, 4/80	Required for access and construction of improvements to the existing Clock Interchange; and for construction of diversions to existing utilities apparatus and equipment; and for access to environmental mitigation to be constructed, maintained and retained at the existing Clock Interchange.	Work No. 20
4/11a, 4/25i, 4/25m	Required for access and construction of a	Work No. 2

(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
	cantilever gantry; and for lining and signing; and for access and construction of diversions to existing utilities apparatus and equipment.	
4/25j, 4/25o and 4/25p	Required for construction of a cantilever gantry and demolition of a portal gantry; and for access and construction of a pedestrian overbridge; and for lining and signing works; and for access and construction of diversions to existing utilities equipment and apparatus.	Works Nos. 2 and 39
4/59	Required for lining and signing; and for access to and construction of a new free flow link road; and for access to and construction of a realignment to a private means of access.	Works Nos. 2 and 21
4/82	Required for lining and signing works; and for access to and construction of a pedestrian overbridge; and for access to and construction of a diversion to an existing medium pressure gas main; and access to and construction of diversions to existing utilities apparatus and equipment.	Works Nos. 2, 39 and 60
4/149	Required for lining and signing works; and for access to and construction of a diversion to an aqueduct pipeline; and for access to and construction of diversions to existing utilities apparatus and equipment.	Works Nos. 2 and 63
4/156	Required for lining and signing works; and for access to and construction of a new free flow link; and for access to and construction of a footway/cycleway; and for access to and construction of a diversion to a medium pressure gas main; and for access to and construction of diversions to existing utilities apparatus and equipment.	Works Nos. 2, 21, 45, 59 and 63
4/158, 4/159	Required lining and signing in connection with Airport Way connector road; and for access to and construction of a free flow link road; and for access to and construction of a diversion to a medium pressure gas main; and for access to and construction of diversions to existing utilities apparatus and equipment.	Works Nos. 21 and 59
<b>Land Plans – Sheet 5</b>		
5/1a, 5/1b	Required for access to and construction of diversions to an existing local high pressure gas main and existing electric lines, cables, equipment and apparatus.	Works Nos. 57, 64 and 65
5/7	Required for lining and signing works; and for access and construction of diversions to existing utilities apparatus and equipment.	Work No. 2
5/29b, 5/29c, 5/29h,	Required for access to construct a new free	Works Nos. 26, 57, 64



(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
5/29t, 5/29u and 5/29y	flow single carriageway with hard shoulder; and for access and construction of diversions to an existing local high pressure gas main and existing electric lines, cables, equipment and apparatus.	and 65
5/29p, 5/29r	Required for removal of existing East Way Roundabout.	Work No. 30(a)
5/62	Required for lining and signing works.	Work No. 31
<b>Land Plans – Sheet 6</b>		
6/2c	Required for access to and construction of a new free flow single carriageway.	Work No. 26

## SCHEDULE 10

### PROTECTIVE PROVISIONS

Articles 35 and 4~~32~~

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at a future date) of that Act(d),

and includes a sludge main, disposal main (within the meaning of section 219 (general inspection) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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

“utility undertaker” means—

- 
- (a) 1989 c. 29.
  - (b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).
  - (c) 1991 c. 56.
  - (d) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37). Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c. 21).

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

#### *On street apparatus*

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

#### *Apparatus in stopped up streets*

4.—(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 16 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

#### *Protective works to buildings*

5. The undertaker, in the case of the powers conferred by article 22 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

#### *Acquisition of land*

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

#### *Removal of apparatus*

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to

remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

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

**8.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### *Retained apparatus*

**9.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

#### *Expenses and costs*

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

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

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,
- (c) by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### *Cooperation*

**12.** Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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

## PART 2

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

**14.** For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

**15.** 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;

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(a) 2003 c. 21.

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act<sup>(a)</sup>;

“electronic communications code network” means—

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

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 72) of that code; and

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

**16.** The exercise of the powers conferred by article 35 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

**17.—(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 48 (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.

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(a) See section 106.

## SCHEDULE 11

Article 4~~4~~3

### CERTIFICATION OF PLANS AND DOCUMENTS, ETC.

The reference to a document in the table with a numbered regulation is a reference to the regulation as numbered in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a)

(1) <i>Document</i>	(2) <i>Document Reference</i>	(3) <i>Revision</i>
Book of Reference – Regulation 5(2)(d)	TR010027/APP/4.3	<u>1</u>
Classification of Road Plans – <del>Regulation</del> <del>5(2)(o)</del>	TR010027/APP/2.7	<u>0</u>
Environmental Statement – Regulation 5(2)(a)	TR010027/APP/6.1	<u>0</u>
Outline Environmental Management Plan	TR010027/APP/6.11	<u>0</u>
Location Plan – Regulation 5(2)(o)	TR010027/APP/2.1	<u>0</u>
General Arrangement Plans – Regulation 5(2)(o)	TR010027/APP/2.4	<u>0</u>
Land Plans – Regulation 5(2)(i) and 5(4)	TR010027/APP/2.2	<u>0</u>
Works Plans – Regulation 5(2)(j) and 5(4)	TR010027/APP/2.3	<u>0</u>
Streets, Rights of Way and Access Plans – Regulation 5(2)(k) and 5(4)	TR010027/APP/2.5	<u>0</u>
Engineering Drawings and Sections – Regulations 5(2)(o), 5(4) and 6(2)	TR010027/APP/2.8	<u>0</u>
Crown Land Plans – Regulation 5(2)(n) and 5(4)	TR010027/APP/2.9	<u>0</u>

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(a) S.I. 2009/2264.



## **EXPLANATORY NOTE**

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

This Order authorises Highways England to undertake works to Junction 6 of the M42 and to carry out all associated works and to construct a new 2.4 kilometre dual carriageway connecting a new Junction 5A of the M42 with the existing Clock Interchange. Junction 6 lies on the eastern edge of Birmingham, approximately 15 kilometres from the city centre, the nearest town being Solihull in the West Midlands.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, the book of reference, the environmental statement and the OEMP mentioned in this Order and certified in accordance with article 43 (certification of plans and documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, 2 Colmore Square, Birmingham B4 6BN.

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STATUTORY INSTRUMENTS

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202[ ] No. [ ]

**INFRASTRUCTURE PLANNING**

The M42 Junction 6 Development Consent Order 202[ ]