

A585 Windy Harbour to Skippool Improvement Scheme

TR010035

3.2 Explanatory Memorandum

APFP Regulation 5(2)(c)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009

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Infrastructure Planning

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(Applications: Prescribed Forms and
Procedure) Regulations 2009

**A585 Windy Harbour to Skippool
Improvement Scheme**
Development Consent Order 201[]

EXPLANATORY MEMORANDUM

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Highways England

A585 Windy Harbour to Skippool Improvement Scheme

The A585 Windy Harbour to Skippool Highway Development Consent Order 201[]

Explanatory Memorandum

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1 Summary

- 1.1 This memorandum explains the purpose and effect of each article of, and the Schedules to, the draft Development Consent Order ("the Order"), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹.

2 Purpose of the Order

Nationally Significant Infrastructure Project - alteration of a highway

- 2.1 The general arrangement of the Scheme is shown on document 2.5 (document reference TR010035/APP/2.5). The A585 Windy Harbour to Skippool Improvement Scheme ("the Scheme") consists of:

- A 4.85km (3 miles) long dual 2-lane carriageway bypass from Windy Harbour Junction to the Skippool Junction.
- Four new junctions including: conversion of Skippool Junction to a traffic signal-controlled crossroads with A588 Breck Road and B5412 Skippool Road; Skippool Bridge Junction in the form of a three-arm traffic signal-controlled junction with the existing Mains Lane; Poulton Junction in the form of a signal-controlled crossroads connecting the new bypass to A586 Garstang Road East and modification to Little Singleton Junction (also known as Five Lane Ends) to accommodate U-turning traffic including buses. Between Skippool Bridge Junction and Poulton Junction the bypass is on embankment. East of Poulton Junction through to east of Lodge Lane the bypass is mostly in cutting.
- Three new major structures including: replacement of Skippool Bridge; Lodge Lane Bridge and Grange Footbridge.
- Alterations to the existing road network on completion of the bypass include: detrunking the A585 between Skippool Bridge Junction and the end of Garstang New Road east of Little Singleton; applying a reduction in speed limit to 30mph and providing a combined footway/cycleway along Mains Lane between Shard Road Junction and Little Singleton; altering Garstang New Road east of Little Singleton to allow restricted access to farmers' fields and provide a shared footway/cycleway route between Windy Harbour Junction and Little Singleton; applying a reduced speed limit of 30mph along Garstang Road East between the proposed Poulton Junction and Little Singleton and upgrading the lighting along Mains Lane and Garstang Road East.

- 2.2 The Scheme will:

- a) Reduce congestion on the existing A585 through Little Singleton Junction, Shard Junction and Skippool Junction;
- b) Reduce severance and improve access across the A585 between Little Singleton and Skippool Junctions;
- c) Improve connectivity and community cohesion;

¹ S.I. 2009/2264

- d) Making the A585 route safer by reducing conflicts between users;
- e) Improve journey time reliability by reducing congestion;
- f) Deliver capacity enhancements to the SRN whilst supporting the use of sustainable modes;
- g) Support employment and residential/commercial development and growth opportunities;
- h) Support the removal of obstacles to economic growth potential in both Wyre and Fylde;
- i) Reduce/minimise the impact on the wider environment particularly for air quality and noise; and
- j) Complement and realise the full benefits of the earlier pinch point scheme at Windy Harbour junction.

2.3 The Scheme is a nationally significant infrastructure project ("NSIP") within Sections 14(1)(h) and 22(1) of the Planning Act 2008 ("2008 Act"). Under Section 22 an NSIP must fall within one of the three categories specified, which are expressly stated to be alternatives. This Scheme is construction of a highway in a case within the meaning of Section 22(1)(a). Whilst the Scheme includes some alteration and improvement of the existing A585, the new carriageway will follow a different alignment requiring construction of sections of new highway with a speed limit in excess of 50 miles per hour on an area in excess of 12.5 hectares. The Scheme is wholly located in England and Highways England Company Ltd, being a strategic highways authority, will be the highway authority for the highway to be constructed as part of the Scheme. The Scheme therefore complies with the requirements of Section 22(2) and 22(4) of the 2008 Act.

2.4 As the proposed authorised development is an NSIP, consent under the 2008 Act is required (section 31 of the 2008 Act). Under section 37 of the 2008 Act, an order granting development consent may only be made if application for it is made (through the Planning Inspectorate) to the Secretary of State.

3 Associated development

3.1 The Order also seeks consent for works which would constitute associated development, and which is included in the "authorised development" listed in Schedule 1 of the Order.

3.2 Guidance² on associated development has been issued by the Secretary of State for Housing, Communities and Local Government ("the Guidance"). In the Guidance, associated development is described as being *"typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project"* (paragraph 6) and *"requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development"* (paragraph 5).

² Guidance on associated development applications for major infrastructure projects

- 3.3 Annex B of the Guidance listed the following as examples of associated development for highway NSIP schemes:
- a) replacement roadside facilities where this becomes necessary due to the elimination of an existing facility by highway improvement infrastructure associated with cycle/pedestrian access;
 - b) off-site landscaping, habitat creation and other environmental works;
 - c) off-site drainage works;
 - d) alteration/diversion/stopping up of local roads, accesses and other rights of way; and
 - e) off-site diversion of statutory undertakers' equipment.
- 3.4 However, in some cases it should be recognised that there may be some overlap, or the absence of the clear boundary, between associated development and works which form part of the NSIP. For instance, there may be some on-highway, and some off-highway, diversion of the same piece of statutory undertaker equipment.
- 3.5 For this reason, and noting that there is no requirement for a development consent order to distinguish between these two categories, Highways England, has chosen not to differentiate the NSIP and associated development works in Schedule 1 to the Order. Ultimately, all elements of the authorised development either constitute part of the NSIP or are "associated development" within the meaning of section 115(2) of the 2008 Act, and so can properly be authorised by the Order.
- 3.6 For the avoidance of doubt, the diversions of statutory undertaker equipment and apparatus required for the Scheme do not constitute an NSIP in their own right.
- 3.7 In order to ensure that the development and the associated development (once authorised) are constructed efficiently and without impediment, the Order contains the powers to carry out the works listed (a) to (p) in Schedule 1. The use of such measures was explicitly approved in the A19/A1058 Coast Road (Junction Improvement) Order 2016 and extensive provisions were used in both the A14 Cambridge to Huntingdon Improvement Order 2016 and the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016.

4 Ancillary Matters

- 4.1 The Order also contains several ancillary matters, i.e. provisions not consisting of development.
- 4.2 The main ancillary matter is a power to acquire land or rights over land compulsorily or by agreement, in accordance with section 120(4) of the 2008 Act, required for the authorised development, or to facilitate, or that are incidental to the authorised development under section 122 of the 2008 Act. A justification for these powers is set out in the Statement of Reasons that accompanies the application.
- 4.3 Further to providing these powers, the Order seeks to apply and modify statutory provisions that relate to the compulsory acquisition of land. Under sections 117 and 120(5) of the 2008 Act, an order containing provisions of this nature must be made by Statutory Instrument. The Order is therefore presented in that form.
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- 4.4 Other ancillary matters include the stopping up of existing highways and private means of access in the vicinity of the route, and the classification of highways, including the de-trunking of sections of highway.

5 Draft Order

- 5.1 The purpose and effect of the provisions of the Order are now explained in sequence. While the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265) has been repealed, the Order draws on the model provisions (general and highway), as well as precedent set by development consent orders that have been made to date.

Part 1 – Preliminary

Article 1 – Citation and commencement

- 5.2 Article 1 sets out the name of the Order, establishing how it may be cited in subsequent legislation. It also states the date on which the Order comes into force.

Article 2 – Interpretation

- 5.3 The purpose of article 2(1) is to define terms used in the remainder of the Order.
- 5.4 The following definitions are used in articles in the remainder of the Order that are typical of highway schemes:
- a) "the 1984 Act";
 - b) "carriageway";
 - c) "cycle track": this term is used interchangeably with "cycle way" in the application documents and both are intended to have the meaning defined in this article. Note that the definition is modified to make it clear that all cycle tracks authorised by the Order provide a right of way on foot;
 - d) "footway" and "footpath";
 - e) "street";
 - f) "street authority"; and
 - g) "trunk road".
- 5.5 Other definitions to note include:
- a) "the Order land", which comprises all of the land to be acquired or used permanently or temporarily as shown on the land plans;
 - b) "the Order limits", which references the extent of the area within which the authorised development may be carried out.
- 5.6 Article 2(2) provides that a broad definition of 'rights over land' applies to the Order.

- 5.7 Article 2(3) provides that measurements are approximate. The purpose of this is to ensure that if, upon construction of the authorised development, it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the authorised development is permitted by the Order. Thus this provision allows for a small tolerance with respect to any distances and points although works will take place within the limits of deviation. It is common-place to include such provision in an act or instrument authorising linear infrastructure.
- 5.8 Article 2(4) provides that areas given in the book of reference are approximate as these are not covered by article 2(3). This is intended to clarify the position of the areas in the book of reference, the purpose and effect is the same as set out in the previous paragraph.
- 5.9 Articles 2(5) and 2(6) tie references to lettered/numbered points and numbered works in the Order to the rights of way and plans.
- 5.10 Article 2(7) provides that the provisions of the Neighbourhood Planning Act 2017 insofar as they relate to temporary possession of land do not apply in relation to the carrying out or maintenance of the authorised development. This is because, until the secondary legislation has been brought into force, it is not possible to draft the Order to comply with these provisions.

Part 2 – Principal Powers

Article 3 - Development consent etc. granted by the Order

- 5.11 Article 3(1) grants the development consent by giving Highways England the power to construct the authorised development, which is described in Schedule 1. This article makes the consent subject to the requirements that are listed in Schedule 2.
- 5.12 Article 3(2) states that any enactment applying to land within the order limits has effect subject to the provisions of the Order. This provision ensures that the modifications made in the Order apply to any enactments that may affect the authorised development and further ensures consistency with legislation more generally. There is precedent for such a provision, for example the Secretary of State approved the same wording in the A14 Cambridge to Huntingdon Improvement Order 2016 (see article 5(2)) and in the A19/A184 Testo's Junction Improvement Order 2018 (see article 3(2)). Article 3(3) states that nothing in the Order prevents the carrying out of operations to survey and investigate the land pursuant to article 19 of the Order immediately upon the Order coming into force.

Article 4 - Maintenance of authorised development

- 5.13 This article empowers Highways England to maintain the development. "Maintain" is defined in article 2(1) as including "inspect, repair, adjust, alter, remove or reconstruct", with these terms bearing their common-sense meanings. This definition is broader than the equivalent in section 329 of the Highways Act 1980, which simply states that maintenance "includes repair" – there is no explicit mention of inspect, adjust, alter, remove or reconstruct. Article 4 therefore supplements the maintenance powers under the Highways Act 1980 and ensures that Highways England has the necessary powers to maintain the Scheme. It is considered necessary and appropriate to adopt the broader definition.
- 5.14 It should be noted that powers of maintenance are subject to other provisions in the Order, in particular article 10, which makes provision in relation to maintenance by highway authorities.

Article 5 - Maintenance of drainage works

- 5.15 The purpose of this article is to make it clear that any realignment of drains or other works to them that are carried out as part of the Scheme do not affect the existing allocation of responsibility for maintenance of those drains, unless this is agreed between Highways England and the responsible party. The provision is well precedented (see, for example, article 4 of the A14 Cambridge to Huntingdon Improvement Order 2016 and article 5 of the A19/A184 Testo's Junction Improvement Order 2018).

Article 6 - Limits of deviation

- 5.16 Since the authorised development involves linear works, article 6 provides for limits of deviation to allow for a lateral deviation from the lines and situations of the authorised development within the limits of deviation shown on the works plans, and vertical deviation of the linear works subject to certain maximums.
- 5.17 The vertical limits can be exceeded where it is demonstrated to the Secretary of State's satisfaction (and the Secretary of State has certified accordingly following consultation with the relevant planning authority) that such deviation would not give rise to any materially new or materially worse adverse environmental effects from those reported in the Environmental Statement.
- 5.18 The purpose of this provision is to provide Highways England with a proportionate degree of flexibility when constructing the Scheme, reducing the risk that the Scheme as approved cannot later be implemented for unforeseen reasons but at the same time ensuring that any flexibility will not give rise to any materially new or materially worse adverse environmental effects.

Article 7 - Benefit of Order

- 5.19 Article 7 overrides section 156(1) of the 2008 Act (as permitted by section 156(2)) to give the benefit of the Order to Highways England rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the Order in an uncoordinated manner, which might be the case if section 156(1) were to remain.
- 5.20 The purpose of article 7(2) is to clarify the exceptions where the Order will self-evidently benefit others, e.g. rights for statutory undertakers. Absent this provision, there would be a contradiction since strictly speaking only Highways England could benefit from these works. The same wording was accepted and approved by the Secretary of State in the A14 Cambridge to Huntingdon Improvement Order 2016 (see article 8(2)), the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 (see article 7(2)) and in A19/A184 Testo's Junction Improvement Order 2018 (see article 7(2)).

Article 8 - Consent to transfer benefit of Order

- 5.21 This article allows powers under the Order to be transferred to others by Highways England. The consent of the Secretary of State is required for a transfer or grant, except where it is made to specified companies in relation to certain utility diversion works.

Part 3 – Streets

Article 9 - Application of the New Roads and Street Works Act 1991

- 5.22 Article 9 modifies the application of the New Roads and Street Works Act 1991⁴ ("the 1991 Act") to works carried out under the powers of the Order.
- 5.23 Article 9(1) provides that works carried out under the powers of the Order which match the description of "major highway works" in the 1991 Act will be treated as major highway works for the purposes of the 1991 Act. The effect of this is to clarify that the provisions for sharing the burden of dealing with apparatus in the street (under sections 84 and 85 of the 1991 Act), which would normally apply only to major works carried out by the highway authority, will apply in respect of the works authorised by the Order irrespective of who in fact carries them out.
- 5.24 "Major Highways Works" are defined at section 86 of the 1991 Act. The definition includes, at sub-sections 86(3)(b) and (f), works undertaken under powers conferred by sections 64 and 184 the Highways Act 1980. As that would not be relevant in this context (where the works will be undertaken under the powers of the Order), these sub-sections are omitted from article 9(1)(a). Works equivalent to works undertaken under those sections of the Highways Act 1980, but carried out under powers conferred by the Order, are included through article 91(b). The effect is that any works which would be "major highway works" under the 1991 Act if carried out by a highway authority in relation to one of its streets are also "major highway works" if carried out under the powers of the Order regardless of who carries them out.
- 5.25 Article 9(3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order (particularly article 3 and Schedule 1), and the provisions in the Order (including the requirements) which would regulate the carrying out of the Order works.
- 5.26 Articles 9(4) to 9(6) apply certain provisions of the 1991 Act (listed in article 9(5)) to any streets which are temporarily stopped up under the Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporarily stopped up street are "street works" for the purposes of the 1991 Act and, secondly, it simplifies the implementation of the works by providing for a single process in respect of streets which are stopped up and those which are not.
- 5.27 Article 9(7)(a) provides that nothing in article 10 shall affect the ability of the local highway authority (under s.87 of the 1991 Act) to declare a street in its area a maintainable highway, which would make maintenance of the street (once completed) the responsibility of the local highway authority, and would mean that the 1991 Act would apply to street works carried out in that street. Further, it provides that Highways England will not be under the duties that apply to a "street authority" for the purposes of the 1991 Act by virtue of being responsible for the maintenance of a street under article 10.
- 5.28 Article 9(7)(b) makes it clear that the maintenance obligations imposed by article 10 do not override the provisions of the 1991 Act that govern procedures for street works, i.e. works in streets involving the placing of or alteration to apparatus in the street. After the implementation of the Order it is appropriate that the 1991 Act should govern such works as it is specifically designed to ensure a fair and efficient procedure for the various parties affected by such works.
- 5.29 These modifications reflect those made in other highway DCOs, for example the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016, the A19/A1058 Coast Road (Junction Improvement) Order 2016 and in A19/A184 Testo's Junction Improvement Order 2018.

Article 10 - Construction and maintenance of new, altered or diverted streets

- 5.30 The standard position in respect of maintenance of streets is that Highways England is responsible for maintaining trunk roads. Other streets are to be maintained by the local highway authority in respect of highways maintainable at the public expense, or whichever body is responsible for the maintenance of the street in respect of streets which are not maintainable at the public expense. This is reflected in articles 10(1) and (2). These provisions are subject to any agreement to the contrary between Highways England and the relevant street or highway authority.
- 5.31 Article 10(3) makes specific maintenance provision in relation any new bridges carrying public rights of way over a trunk road. For these, Highways England is responsible for the maintenance of the bridge structure while the local highway authority is responsible for the maintenance of the highway surface.
- 5.32 The effect of articles 10(4) and 10(5) are that in any action for damages against Highways England alleging failure to maintain a street, Highways England will have the defence that it had taken such care as was reasonably required in the circumstances to secure that the street was not dangerous for traffic. This extends the provision in section 58 of the Highways Act 1980 to Highways England and draws on the approach taken in article 21 of the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and repeated in in article 9 of the A19/A1058 Coast Road (Junction Improvement) Order 2016 and article 12 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016.
- 5.33 While Highways England would benefit from the equivalent defence in the Highways Act 1980 in respect of trunk roads, for which it is the highway authority, the proposed development includes roads which are not trunk roads and so this article is needed to ensure Highways England is covered by this defence in respect of all the roads that comprise the authorised development.

Article 11 - Classification of roads etc.

- 5.34 The designation of highways and the specification of the classes of traffic authorised to use a highway, are ancillary matters which may be included in a development consent order. These matters are addressed by this article, which is integral to the implementation of the Scheme, and therefore are considered appropriate to be included in the Order as an ancillary matter under section 120(3) of the 2008 Act.
- 5.35 In particular:
- a) Article 11(1)(a) provides that the roads etc. described in Part 1 of Schedule 3 are trunk roads when the Scheme is open for traffic;
 - b) Article 11(1)(b) provides that the roads described in Part 2 of Schedule 3 are classified roads from the date that they are complete and open to traffic;
 - c) Article 11(1)(c) provides that the roads described in Part 3 of Schedule 3 are unclassified roads from the date that the Scheme is open for traffic;
 - d) Article 11(1)(c) and Part 4 of Schedule 3 describes the status of other rights of way provided or altered as part of the Scheme;

- e) Articles 11(2) and (3) and Part 5 of Schedule 3 describes the existing highway which is to be de-trunked as part of the Scheme subject to the consent of the Secretary of State who must consult the local highway authority before giving consent;
- f) Article 11(4) and Part 6 of Schedule 3 provide for the speed limits which will apply to the identified roads;
- g) Article 11(5) and Part 7 of Schedule 3 provides for the revocation and variation of certain existing traffic regulation orders;
- h) Article 11(6) and Part 8 of Schedule 3 provides for new traffic regulation orders to be made in respect of the Scheme.

5.36 The purpose of article 11(7) is to confirm that the matters covered in articles 11(1) to 11(6) could be varied or revoked in the future using existing enactments for such matters, without the need to apply under the 2008 Act for an amendment to the Order.

Article 12 - Temporary stopping up and restriction of use of streets

- 5.37 This article allows for the temporary stopping up, alteration, diversion or restriction of streets for the purposes of the Scheme.
- 5.38 Access for pedestrians must be provided, and where Highways England is not the street authority, consent to any such stopping up or restriction must be sought from the street authority.
- 5.39 Article 12(2) confers a power on Highways England where the use of a street has been temporarily stopped up under this article to use it as a temporary working site.
- 5.40 Article 11(6) states that where a street authority fails to notify Highways England of its decision in respect of an application for consent within 28 days of the application being made it is deemed to have given its consent. It is considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by Highways England in a timely fashion. The article is a standard provision in highways development consent orders (see for example, article 11 of the A19/A1058 Coast Road (Junction Improvement) Order 2016 and article 12 of the A19/A184 Testo's Junction Improvement Order 2018).

Article 13 - Permanent stopping up and restriction of use of streets and private means of access

- 5.41 This article allows streets and private means of access named in Parts 1, 2, 3 and 4 of Schedule 4 to be stopped up (i.e. the legal right of way along them to be extinguished). In the case of Parts 1 and 3 a substitute is to be provided and is described. In the case of Parts 2 and 4, no substitute is to be provided. In the case of Part 4, the street or private means of access may not be stopped up unless one of the conditions referred to in paragraph (4) is met.
- 5.42 Since the definition of a "street" in section 48 of the 1991 Act includes highways and footways the stopping up and diversion of footpaths and footways are also dealt with in this article and Schedule 4. The wording is based on numerous highways DCOs (see for example article 12

of the A19/A1058 Coast Road (Junction Improvement) Order 2016 and article 13 of the A19/A184 Testo's Junction Improvement Order 2018.

Article 14 - Access to works

- 5.43 This article allows works accesses to public highways to be created. It provides Highways England with a general power to form means of access rather than accesses set out in a schedule, to provide an appropriate degree of flexibility in case the need for an access only becomes apparent at a later stage in the implementation of the proposed development. These powers are equivalent to those available to Highways England when implementing schemes under the Highways Act 1980.

Article 15 - Clearways

- 5.44 This article makes it unlawful for road users to stop on the road except upon the direction of or with the permission of a constable or a traffic officer in uniform, or for emergency and other unavoidable reasons. The purpose is to ensure safe and proper operation of the authorised development, and to ensure the Scheme delivers its intended benefits. It is therefore considered appropriate to be included in the Order as an ancillary matter under section 120(3) of the 2008 Act.
- 5.45 Such traffic regulation measures are normally made by order under the Road Traffic Regulation Act 1984 ("1984 Act"), with such orders subject to consultation and publicity requirements. Inclusion within the Order is appropriate as the consultation, publicity and examination processes within the Order procedure provide a more than adequate substitute for the consultation and publicity requirements of traffic regulation orders.
- 5.46 The proposed restrictions sought under article 15 are similar to those which would apply to a clearway established under section 2 of the 1984 Act. This provides that a traffic regulation order may make provision prohibiting, restricting or regulating the use of a road, or any part of the width of a road, by vehicular traffic, or by vehicular traffic of any class specified in the order either generally or subject to exceptions specified in the order or determined in a manner provided for it or with reference to periods of time.
- 5.47 Article 15(4) also clarifies that paragraphs (1), (2) and (3) have effect as if made by an order under the 1984 Act, and can be varied or revoked by an order made under that Act or other enactment which provides for the variation or revocation of such orders, without the need to apply under the 1984 Act for an amendment to the Order.
- 5.48 The wording in this article has been approved and the principle of inclusion of traffic regulation measures accepted in the A19/A1058 Coast Road (Junction Improvement) Order 2016 (see article 14) and in the A19/A184 Testo's Junction Improvement Order 2018 (see article 15).

Article 16 - Traffic regulation

- 5.49 The purpose of this article is to provide Highways England with powers to make traffic regulation orders in relation to roads for which it is not the highway authority, so that it can implement traffic management measures (e.g. restrictions on the use of roads) necessary to construct the authorised development. This draws on the approach taken in article 37 of the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and article 43 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 and in the A19/A184 Testo's Junction Improvement Order 2018 (see article 16).

- 5.50 This article would, at any time prior to 12 months following the opening of the authorised development for public use, allow Highways England, in so far as it is necessary or expedient for the purposes of the construction, maintenance or operation of the authorised development, to:
- a) revoke, amend or suspend in whole or in part any order 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; and
 - e) permit or prohibit vehicular access to any road.
- 5.51 Implementation of any of the measures is subject to the prior approval of the traffic authority in whose area the roads are situated. Provision is also made for the chief officer of police and the relevant traffic authority to be notified in advance. This complies with the consultation and publicity requirements for Traffic Regulation Orders under the Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990/1656.

Part 4 – Supplemental powers

Article 17 - Discharge of water

- 5.52 This article establishes statutory authority for Highways England to discharge water into a sewer, watercourse or drain in connection with the carrying out or maintenance of the authorised development.
- 5.53 This statutory authority is subject to Highways England obtaining the consent of the owner of the sewer, watercourse or drain, but that consent cannot be withheld unreasonably.

Article 18 - Protective work to buildings

- 5.54 The purpose of this article is to allow Highways England to undertake protective works to buildings affected by the authorised development. The wording has broad precedent (see article 16 of the A19/A1058 Coast Road (Junction Improvement) Order 2016 and article 18 of the A14 Cambridge to Huntingdon Improvement Order 2016) and in the A19/A184 Testo's Junction Improvement Order 2018 (see article 18).

Article 19 - Authority to survey and investigate the land

- 5.55 This article gives Highways England the power to enter certain land for the purpose of surveying and investigating. The article provides that Highways England must give 14 days' notice before exercising the powers of entry, and that compensation is payable for any loss or damage. This, again, is a standard provision with broad precedent (see article 20 of the M20 Junction 10a Development Consent Order 2017 and article 19 of the A19/A184 Testo's Junction Improvement Order 2018).

Part 5 – Powers of acquisition and possession

Article 20 - Compulsory acquisition of land

- 5.56 This article authorises the acquisition of land by compulsory purchase. It grants the power to acquire such of that land as is required for the project. The power of acquisition over the Order Land is qualified and restricted by sub-article (2), in the case of parcels of land specified in the Order where only rights are required (article 23 (2)-(3)), or where possession of land parcels as specified in the Order may be taken temporarily only (article 29(9)).

Article 21 - Compulsory acquisition of land - incorporation of the mineral code

- 5.57 This article incorporates Part 2 of Schedule 2 of the Acquisition of Land Act 1981. This means that where Highways England acquires land under the powers of the Order, it will not acquire any mineral deposits present in the land (other than those necessarily extracted or used in constructing the authorised development) unless they are expressly included in the conveyance.

Article 22 - Time limit for exercise of authority to acquire land compulsorily

- 5.58 This article gives Highways England five years to issue 'notices to treat' or to execute a 'general vesting declaration' to acquire the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should this Order be made.
- 5.59 The article also sets a 5 year time limit on the power of Highways England to take temporary possession of land, although it does not prevent Highways England from remaining in possession of land after that time if it took possession within the 5 year limit (this has consistently been approved by the Secretary of State, see for example article 22 of the A14 Cambridge to Huntingdon Improvement Order 2016).

Article 23 - Compulsory acquisition of rights and restrictive covenants

- 5.60 This article allows for rights in land to be acquired as well as the land itself, and also for new rights to be created over land.
- 5.61 This article provides for such rights as may be required to be acquired by Highways England over land which it is authorised to acquire under article 20. The public benefit of this is that it would allow Highways England, if possible, to reduce the area of outright acquisition and rely on rights instead. A provision of this kind is usual in Transport and Works Act orders and Hybrid Bills, and has been followed in a number of DCOs for example article 23 of the A14 Cambridge to Huntingdon Improvement Order 2016 and in A19/A184 Testo's Junction Improvement Order 2018 (see article 23).
- 5.62 Article 23(2) provides that for the land described in Schedule 5, Highways England's powers of compulsory acquisition are limited to the acquisition of such rights as may be required for the purposes set out in the Schedule.
- 5.63 Article 23(3) provides that the power to impose restrictive covenants under sub article (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.

- 5.64 Article 23(4) provides that where Highways England needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 5.65 Article 23(5) and Schedule 6 impose modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order - the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired). For the purpose of section 126(2) of the 2008 Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled. Furthermore, the provisions have been amended so that the time limits are consistent with the Order (five years as opposed to three years) and the appropriate references to the 2008 Act.
- 5.66 The modifications are based on changes made consistently in most schemes granted under the 2008 Act (see, for example, Schedule 6 of the A14 Cambridge to Huntingdon Improvement Order 2016 and Schedule 6 to the A19/A184 Testo's Junction Improvement Order 2018). As a result of changes contained in the Housing and Planning Act 2016, the Order has been updated to ensure that the correct provisions are modified. These changes are based on the amendments contained in High Speed Rail (London - West Midlands) Act 2017.

Article 24 - Private rights over land

- 5.67 In order for it to be possible to implement the authorised development, provision is needed for the extinguishment of private rights in the Order land that would otherwise be incompatible. Article 24 supplies that provision.
- 5.68 Article 24(1) provides for the extinguishment of private rights over the Order land subject to compulsory acquisition under the Order, from the moment of acquisition or occupation of that land.
- 5.69 Article 24(2) provides for the extinguishment of existing private rights over land that is subject to the compulsory acquisition of new rights (but where the underlying land is not subject to powers of compulsory acquisition), if the exercise of those existing rights is inconsistent with the implementation of the scheme, from the date of acquisition of the right or occupation of the underlying land.
- 5.70 Article 24(3) provides that rights over Order land that is already owned by Highways England are also extinguished, at the point that any activity authorised by the Order interferes with or breaches those rights.
- 5.71 Article 24(4) provides for the temporary suspension of private rights over Order land that is not acquired but is occupied temporarily by Highways England in order to construct the proposed development. The suspension is for the duration of the occupation.
- 5.72 Articles 24(5) to 24(8) make provision for compensation and for circumstances where rights are preserved.
- 5.73 Article 24(9) sets out a list of matters deemed to be private rights to provide certainty as to the scope of the article. The list of deemed private rights is broad in order to ensure that any right

which could potentially interfere with the implementation of the proposed development can be extinguished. A similar list appears in the equivalent article in the A14 Cambridge to Huntingdon Improvement Order 2016 (see article 25) and the A19/A1058 Coast Road (Junction Improvement) Order 2016 (see article 24) and in the A19/A184 Testo's Junction Improvement Order 2018 (see article 24).

Article 25 - Modification of Part 1 of the Compulsory Purchase Act 1965

- 5.74 The purpose of this article is to ensure consistency between the standard terms of highways development consent orders and the Compulsory Purchase Act 1965 (as amended by the Housing and Planning Act 2016) as applied by section 125 of the 2008 Act. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London - West Midlands) Act 2017.

Article 26 - Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 5.75 This article applies (with minor modifications to make the provisions appropriate to the context of acquisition under powers in a development consent order) the provisions of the 1981 Act to compulsory acquisition under the Order so that Highways England has the option of acquiring Order land that is subject to the powers of compulsory acquisition by vesting declaration.
- 5.76 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase. The other method involves serving a notice to treat on the land owner to commence the process of establishing the acquisition price, after which title in the land is transferred. The date on which title will transfer is uncertain under the notice to treat method.
- 5.77 A vesting declaration, in contrast, sets the date on which title in the land is transferred to the acquiring authority. Compensation is negotiated or determined and paid later. Vesting declarations, therefore, allow title in the land to pass to the acquirer more quickly than using the notice to treat method, and also allow several parcels to be acquired at once. Their use is subject to serving notices and observing time limits as required by the 1981 Act (as amended by the Housing and Planning Act 2016).
- 5.78 The modifications ensure consistency with the standard five year period sought under the Order for acquisition rights. It further ensures that the appropriate references are made to the Act. The modifications are based in large part on previous highways NSIPs, and following amendments to the 1981 Act in the Housing and Planning Act 2016 and the High Speed Rail (London - West Midlands) Act 2017.

Article 27 - Acquisition of subsoil or airspace only

- 5.79 This article allows Highways England to acquire land below the surface or above the surface, rather than having to acquire all of the land.
- 5.80 The purpose of this article is to give Highways England the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on affected landowners, and lower payments of compensation which is in the public interest. This too is a standard provision used in many highways development consent orders (see for example article 27 of the A14 Cambridge to Huntingdon Improvement Order 2016).

Article 28 - Rights under or over streets

- 5.81 The purpose of this article is to allow Highways England to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without full acquisition, is prohibited in the circumstances set out in article 28(3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

Article 29 - Temporary use of land for carrying out the authorised development

- 5.82 The purpose of this article is to allow the land set out in Schedule 7 to be occupied temporarily while the works are carried out. This is land which is required during construction of the scheme but is not required permanently. This article also allows for the temporary occupation of any of the land for permanent acquisition that has not yet been taken possession of. In particular:
- a) Article 29(1)(a)(i) allows the land set out in Schedule 7 to be occupied temporarily while the works are carried out. This is land which is required during construction of the scheme but which is not required outright permanently, and includes land which will be occupied temporarily and then subject to permanent rights (e.g. diversion of utilities apparatus). Article 29(9) prevents this land from being acquired permanently, although confirms that acquisition of rights over this land, or of subsoil /airspace only, is not prevented and is required in respect of certain parcels. Likewise some land taken temporarily will have permanent works undertaken to it, e.g. accommodation works (see further sub article (4)(b), and Schedule 7).
 - b) Article 29(1)(a)(ii) allows for the temporary occupation of any of the land that is subject to the powers of permanent acquisition, but in respect of which no process for acquisition has yet been commenced. The rationale for this is that it reduces the amount of land that is required to be subject to outright acquisition. Thus article 20 with article 29(1)(a)(ii) makes it possible for Highways England to occupy land temporarily initially and only proceed to acquire permanently that part which is necessary for the scheme as constructed. The benefits of this are lesser impacts on landowners and lower costs to Highways England, which is in the public interest. In line with this, article 29(1)(d) confirms that the authorised development as listed in Schedule 1 can be undertaken on land that has been temporarily occupied.
 - c) Article 29(4) provides that, prior to giving up possession of land taken temporarily, Highways England will remove all temporary works and restore the land to the original surveyed condition at the time of entry (unless otherwise agreed with the owner of the land) so as to provide certainty as to the extent and standard of restoration required. The same approach has been adopted in article 30(5) where possession of land has been taken temporarily for maintaining the authorised development.

Article 30 – Temporary use of land for maintaining the authorised development

- 5.83 This article provides that Highways England may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first used. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied. Both the A19/A1058 Coast Road (Junction

Improvement) Order 2016 (see article 28) and the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 (see article 29) reflect the wording used in this article.

Article 31 - Statutory undertakers

- 5.84 This article provides Highways England with clear statutory authority to acquire rights over land owned by statutory undertakers (i.e. utilities such as electricity and gas companies).
- 5.85 It also allows Highways England to extinguish rights that statutory undertakers have over the Order land, and to remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plans and described in the book of reference. In practice it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any Order land is required.
- 5.86 Article 31(2) restricts Highways England's power to extinguish rights or move apparatus by excluding apparatus in streets. It applies alternative provisions more appropriate to balancing the interests of the various affected parties where the apparatus in question is in a street.
- 5.87 This article is subject to Schedule 10 which contains provisions for the protection of certain statutory undertakers to ensure their continued ability to carry out their functions despite the interference with their rights/apparatus required to facilitate the proposed development.
- 5.88 This too is an article with broad precedent (see the A14 Cambridge to Huntingdon Improvement Order 2016 (see article 32), the A19/A1058 Coast Road (Junction Improvement) Order 2016 (see article 29) and the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 (see article 30) and in A19/A184 Test's Junction Improvement Order 2018 (see article 31).

Article 32 - Apparatus and rights of statutory undertakers in stopped up streets

- 5.89 This article governs what happens to statutory undertakers' apparatus under streets that are stopped up by the Order. Without the article, the statutory undertaker will not have access to the apparatus, since there will no longer be a right of way along the street. The statutory undertaker may remove, relocate or replace any affected apparatus of its own volition, or must do so if it is reasonably requested by the Secretary of State.
- 5.90 The statutory undertaker will receive compensation from Highways England for any relocation works and associated costs. Sub articles (4)-(5) discount from this compensation the cost associated with a higher specification in the replacement apparatus. Article 32(6) discounts from this compensation the increase in value to the statutory undertaker for having new rather than old (i.e. older than 7¹/₂ years) apparatus.
- 5.91 Article 29(7) provides that where statutory undertakers are affected by a stopping up in relation to those parts of the project that constitute "major bridge works", "major transport works" or "major highways works", as defined in the New Roads and Street Works Act 1991, the cost sharing provisions under that Act will apply instead of the compensation provision in this article.
- 5.92 This article is standard for highways development consent orders (see, for example, article 30 of the A19/A1058 Coast Road (Junction Improvement) Order 2016) and article 34 of the M20 Junction 10a Development Consent Order 2017.

Article 33 - Recovery of costs of new connections

- 5.93 This article provides that if any statutory undertaker's apparatus is removed and this cuts a service to anyone, then the cost of establishing a new service can be claimed from Highways England.

Part 6 – Operations

Article 34 – Felling or lopping of trees and removal of hedgerows

- 5.94 Article 34(1) allows any tree or shrub that is near the project to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the project or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 5.95 Highways England considers that, in addition to the conditions imposed on the carrying out of the activities included within the precedents set out above, a further condition should be included (see paragraph 34(2)(b)) to ensure that trees or shrubs shall not be felled, lopped or have their roots cut back if they are identified as retained trees or shrubs (as the case may be) in the Environmental Statement save where the Secretary of State is satisfied that the removal, felling, lopping or cutting back of roots would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the Environmental Statement. This is to ensure that this article does not permit Highways England to act contrary to the assumptions relied upon in the Environmental Statement unless, in doing so, no materially new or materially worse adverse environmental effects would result. For the same reasons, a similar approach has been adopted to article 37 (Trees subject to tree preservation orders), as to which see below.
- 5.96 Article 34(4) allows any hedgerow listed in Part 1 of Schedule of the Order to be removed. Article 34(5) allows any other hedgerow to be removed with the prior consent of the local authority. Compensation is payable for any loss or damage caused.

Part 7 – Miscellaneous and General

Article 35 – Deemed Marine Licence

- 5.97 This article makes provision for a marine licence to be deemed to be granted on the terms set out in Schedule 8 pursuant to Part 4 of the Marine and Coastal Access Act 2009.

Article 36 - Application of landlord and tenant law

- 5.98 This article governs the leasing of land by Highways England to any other person. Essentially it allows the terms of the lease to override any statutory provisions relating to landlord and tenant law.

Article 37 - Trees subject to tree preservation orders

- 5.99 This article allows Highways England to fell or lop any trees subject to tree preservation orders described in Schedule 9. This is a model provision which has been used in numerous orders (see for example article 36 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016) and article 36 of the M20 Junction 10a Development Consent Order 2017.

Article 38 - Operational land for the purposes of the Town and Country Planning Act 1990

- 5.100 This article means that the land within the Order limits in which Highways England holds an interest shall be treated as “operational land of a statutory undertaker” for the purposes of the Town and Country Planning Act 1990.
- 5.101 The effect of that Order land being treated as operational land is that the person responsible for operating and maintaining the proposed development (Highways England or any transferee of its powers) will benefit from certain permitted development rights on that land in connection with the operation of the road.

Article 39 - Defence to proceedings in respect of statutory nuisance

- 5.102 Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in statutory nuisance generally, subject to any contrary provision made by a particular order. This article is such a contrary provision, amending the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by s158).
- 5.103 The defence is available if the noise relates to:
- a) the construction or maintenance of the project, and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974, or cannot reasonably be avoided; or
 - b) the use of the project and cannot reasonably be avoided.

- 5.104 This is an article which has precedent in recent highway orders made, for example article 38 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 and article 42 of the M20 Junction 10a Development Consent Order 2017 and in the A19/A184 Testo's Junction Improvement Order 2018 (see article 38).

Article 40 - Protection of interests

- 5.105 This article simply gives effect to Schedule 10, which contains provisions protecting the interests of third parties. This schedule is based on the standard protective provisions approved by the Secretary of State in the A14 Cambridge to Huntingdon Improvement Order 2016 and the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016. Highways England has sought the views of the undertakers who have interests affected by the authorised development and continues to negotiate with the undertakers to ensure any concerns are dealt with appropriately. Highways England will provide a full update of the status of the negotiations throughout the examination.

Article 41 - Certification of documents, etc.

- 5.106 This article provides for various plans and other documents (including those listed in Schedule 11) to be certified by the Secretary of State.

Article 42- Service of notices

- 5.107 This article governs how any notices that may be served under the Order shall be deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner.

- 5.108 It is common to have such an article in an order authorising development such as this. The article has precedent in a number of orders including the A14 Cambridge to Huntingdon Improvement Order 2016 (see article 42) and the M20 Junction 10a Development Consent Order 2017 (article 45).
- 5.109 The provision is useful because it provides clarity on the issue. It is noted that the service of notice provisions under sections 229 and 230 of the 2008 Act apply to notices served under that Act rather than notices served under a development consent order made under that Act.

Article 43 - Arbitration

- 5.110 This article governs what happens when two parties disagree in the implementation of any provision of the order. The matter is to be settled by arbitration, and if the parties cannot agree on who the arbitrator should be, this is decided by the President of the Institution of Civil Engineers.

6 Schedule 2 - Requirements

- 6.1 The requirements in Schedule 2 are the equivalents of planning conditions. They reflect the processes and procedures usually employed by Highways England when implementing a scheme such as this. Approvals are to be sought from the Secretary of State for Transport, following consultation with the local planning authority and/or other relevant third party. Again, this is consistent with the processes and procedures employed by Highways England when implementing a scheme such as this.
- 6.2 The requirements in Schedule 2 provide that the various schemes, details and plans to be approved must reflect the mitigation measures set out in the Record of Environmental Actions and Commitments ("REAC") which contains all of the mitigation commitments made in the Environmental Statement. This is the mechanism to ensure that environmental mitigation is secured by the Order, and the approach here is consistent with other orders which have been made. Further, the requirements provide that the approved schemes, details and plans must be implemented as approved, unless the Secretary of State approves further amendments to them.
- 6.3 Turning to the purpose and effect of requirements 1 to 13:
- a) Requirement 1 contains a number of definitions used in Part 1 of Schedule 2.
 - b) Requirement 2 provides that the authorised development must not commence later than 5 years from the date of the Order coming into force.
 - c) Requirement 3 states that the authorised development must be carried out in accordance with the scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State.
 - d) Requirement 4 requires the preparation of a construction environmental management plan ("CEMP") in consultation with the relevant planning authority and for its approval by the Secretary of State. The CEMP will be based substantially on the outline CEMP prepared as part of the scheme application. The CEMP will fulfil the construction-related objectives and measures as outlined in the REAC. Following the construction of the authorised development, the CEMP will be replaced by a Handover

Environmental Management Plan (“HEMP”) which will contain measures primarily related to mitigating operational impacts.

- e) Requirement 5 requires the preparation of a landscaping scheme covering all hard and soft landscaping works for approval by the Secretary of State. There is a requirement that the proposed landscaping scheme must reflect the relevant mitigation measures in the REAC.
- f) Requirement 6 makes provision for dealing with any contaminated land and groundwater discovered during construction of the works, in consultation with the relevant planning authority and the Environment Agency.
- g) Requirement 7 states Highways England must carry out a final pre-construction survey work to establish whether European or nationally protected species are present on any of the land. Where a likely significant effect on a protected species which was not previously identified in the environmental statement is identified during construction of the scheme, the relevant parts of the relevant works must not begin until a scheme of protection and mitigation measures (unless already in place) has been submitted to and approved in writing by the Secretary of State. Consultation with Natural England is required unless a qualified ecologist determines that the works in question do not require a protected species licence.
- h) Requirement 8 provides that no part of the authorised development can commence until written details of a surface and foul water drainage system, reflecting the mitigation measures in the REAC and including means of pollution control, have been prepared in consultation with the relevant planning authority and approved in writing by the Secretary of State.
- i) Requirement 9 states no part of the authorised development is to commence until for that part of the authorized development a written scheme for the investigation of areas of archaeological interest, reflecting the mitigation measures included in the REAC, has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority. The requirement puts further limitations on construction activity within 10 metres of any archaeological remains which were not previously identified but are revealed when carrying out the authorised development.
- j) Requirement 10 provides that no authorised development can commence until a traffic management plan has been prepared and approved by the Secretary of State following consultation with the relevant planning authority.
- k) Requirement 11 makes clear that where the authorised development must be carried out in accordance with approved details, those details include any subsequent amendments that are approved or agreed in writing by the Secretary of State.
- l) Requirement 12 provides that permanent and temporary fencing must be constructed and installed in accordance with the Applicant's Manual of Contract Documents for Highway Works.
- m) Requirement 13 provides that, when seeking approval from the Secretary of State to any details required under the Order, a summary report setting out any consultation undertaken by the undertaker shall be provided to the Secretary of State.

- 6.4 Part 2 of Schedule 2 (Requirements 14 - 17) provides a clear procedure for the discharge of requirements by the Secretary of State. It sets out clear time limits for decisions to be made and makes provision for circumstances where the Secretary of State requires further information to be provided in relation to an application for the discharge of a requirement. Part 2 as drafted reflects the discharge of requirements provisions approved in the A14 Cambridge to Huntingdon Improvement Order 2016 and in A19/A184 Testo's Junction Improvement Order 2018.
- 6.5 Any steps Highways England takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps.