

# **A585 Windy Harbour Skippool Improvement Scheme**

**TR010035**

## **3.1 Draft Development Consent Order**

APFP Regulation 5(2)(b)

Planning Act 2008

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

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## Infrastructure Planning

### Planning Act 2008

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

# A585 WINDY HARBOUR TO SKIPPOOL IMPROVEMENT SCHEME

## Development Consent Order 201[ ]

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### DRAFT DEVELOPMENT CONSENT ORDER

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<b>Planning Inspectorate Scheme Reference</b>	TR010035
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<b>Author:</b>	A585 Project Team & Highways England Project Team, Highways England

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**2019 No.**

**INFRASTRUCTURE PLANNING**

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

*Made* - - - -

*Coming into force* - -

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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 under section 37 of the Planning Act 2008(b) (“the 2008 Act”).

The application was examined by a [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The [single appointed person], having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the [single appointed person], has decided to make an Order granting development consent for the development described in the application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 and 122 of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 24, 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 A585 Windy Harbour to Skippool Highway Development Consent Order 201[ ] and comes into force on [ ] 201[ ].

#### Interpretation

2.—(1) In this Order—

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

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

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(a) 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 and S.I. 2013/755.

(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. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 to the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation



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

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

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

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

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

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

“the 2009 Act” means the Marine and Coastal Access Act 2009(g);

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

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) or any part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“British Telecommunications PLC” means the company registered in England and Wales, company number 01800000, whose registered address is 81 Newgate Street, London EC1A 7AJ;

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

“Cadent Gas Ltd” means the Company registered in England and Wales, company number 10080864, whose registered address is Ashbrook Court, Prologis Park, Central Boulevard, Coventry CV7 8PE;

“carriageway” has the same meaning as in the 1980 Act and includes part of a carriageway;

“CEMP” means the construction environmental management plan;

“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

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- Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) to the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections J(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) to the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 (c. 50) and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.
- (c) 1984 c. 27.
- (d) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (f) 2008 c. 29.
- (g) 2009 c. 23.

of non-intrusive investigations for the purpose of assessing ground conditions, and, where capable of being reversed and the land restored to its original condition, operations consisting of any archaeological investigations, non-intrusive pre-construction ecology surveys, pre-construction ecological mitigation and works under mitigation licences, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements and “commencement” is to be construed accordingly;

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

“cycle track” has the same meaning as in the 1980 Act and includes part of a cycle track(a);

“Electricity North West Limited” means the company registered in England and Wales, company number, 02366949, whose registered address is 304 Bridgewater Place, Birchwood Park, Warrington WA3 6XG;

“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;

“Environment Agency” means the body created by the Environment Act 1995 or any successor in function to it;

“environmental statement” means the document of that description submitted with the application for this Order and 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 and include part of a footway or footpath;

“The Gas Transportation Company Limited” means the company registered in Guernsey, company number, 29431, whose registered address is Energy House, Woolpit Business Park, Bury St Edmunds, Suffolk IP30 9UP;

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

“HEMP” means handover environmental management plan;

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

“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;

“lead local flood authority” has the same meaning as in the Flood and Water Management Act 2010;

“limits of deviation” means the limits of deviation referred to in article 6 (limits of deviation);

“maintain” in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct to the extent that is unlikely to give rise to any materially new or materially worse environmental effects from those identified in the environmental statement and any derivative of “maintain” is to be construed accordingly;

“Natural England” means the body created by the Natural Environment and Rural Communities Act 2006 or any successor in function to it;

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(a) The definition of “cycle track” (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

“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;

“the outline CEMP” means the document of that description submitted with the application for this Order and certified as the outline CEMP by the Secretary of State for the purposes of this Order;

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

“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;

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

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

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

“streets, rights of way and access plans” means the plans listed in Schedule 11 (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;

“traffic authority” has the same meaning as in the 1984 Act;

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

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

- (c) section 10 or 19(1) of the 1980 Act; or
- (d) an order or direction under section 10 of that Act; or
- (e) an order granting development consent; or
- (f) any other enactment;

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

“United Utilities Group PLC” means the Company registered in England and Wales, company number 06559020, whose registered office is Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington WA5 3LP;

“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 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) 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.

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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 1991 (c.34). There are other amendments to section 7 which are not relevant to this Order.

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

(5) 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.

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

(7) The provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup>, insofar as they relate to temporary possession of land under articles 29 and 30 of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 30(11), any maintenance of any part of the authorised development.

## 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 to be carried out within the Order limits.

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

(3) Nothing in this Order prevents the carrying out of operations pursuant to article 19 (authority to survey and investigate the land) immediately upon this Order coming into force.

#### 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<sup>(b)</sup>.

#### Limits of deviation

6. In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 1.0 metres upwards or downwards, with the exception of the following—

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(a) 2017 c. 20.

(b) 1991 c. 59

- (i) to a maximum of 0.5 metres upwards or downwards at Little Singleton Junction as defined by Work Nos.84, 85, 86, 87, 88 and 89;
- (ii) to a maximum of 0.5 metres upwards or downwards at Lodge Lane as defined by Work No.70; and
- (iii) in respect of the borrow pits, during excavation to a maximum of 10 metres downwards and to any distance upwards and, following restoration, to a maximum of 2.6 metres downwards and to any distance upwards to ground level, as defined by Work Nos.63 and 78,

except that these maximum limits of vertical deviation 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 environmental effects in comparison with 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 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 lessee”) for a period agreed between the undertaker and the lessee 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), include references to the transferee or the lessee.

(3) The exercise by a 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 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) Electricity North West Limited for the purposes of undertaking Work No.6, 8, 26, 30, 31, 42, 64, 71, 72 and 112;
- (b) United Utilities Group PLC for the purposes of undertaking Work No.3, 7, 34, 36, 37, 51, 53, 60, 61, 67, 73, 77 and 116;
- (c) British Telecommunications PLC (or a related or subsidiary company) for the purposes of undertaking Work No.15, 24, 32, 33, 65, 75, 81 121;
- (d) The Gas Transportation Company Limited (or a related or subsidiary company) for the purposes of undertaking Work No.120; and
- (e) Cadent Gas Ltd for the purposes of undertaking Work No.16, 27, 54, 69, 76 and 80

provided that any transfer or grant under this paragraph (4) shall not include the transfer or grant of any benefit of the provisions of Part 5 (powers of acquisition and possession) of this Order without the consent of the Secretary of State.

## PART 3

### STREETS

#### Application of the New Roads and Street Works Act 1991

9.—(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 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) of that Act (which defines what highway authority works are major highway works); 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(a) (dual carriageways and roundabouts) of the 1980 Act or section 184(b) (vehicle crossings over footways and verges) 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 Part 3 the 1991 Act (street works in England and Wales) do not apply in relation to any works executed under the powers of this Order—

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

(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 12 (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(h) referred to in paragraph (4) are—

- section 54 (advance notice of certain works)(i), subject to paragraph (6);
- section 55 (notice of starting date of works)(j), subject to paragraph (6);

- 
- (a) Section 64 was amended by Schedule 17 to the Local Government Act 1985 (c. 51) and Schedule 9 to the 1991 Act.
  - (b) Section 184 was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and Schedule 8 to the New Roads and Street Works Act 1991 (c. 22) and sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48).
  - (c) Section 56 was amended by sections 40 and 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 (c. 18).
  - (e) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
  - (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004 (c. 18).
  - (g) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004 (c. 18).
  - (h) 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).
  - (i) As also amended by section 49(1) of the Traffic Management Act 2004 (c. 18).
  - (j) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 (c. 18).

section 57 (notice of emergency works)(a);  
section 59 (general duty of street authority to co-ordinate works)(b);  
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)(c);  
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 10 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 of the 1991 Act (prospectively maintainable highways) and the undertaker is by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) 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**

**10.—**(1) Any street (other than 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 with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority in whose area the street lies and, unless otherwise agreed with the local street authority, 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 trunk road) over 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 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 to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street 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;

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(a) As also amended by section 52(3) of the Traffic Management Act 2004 (c. 18).

(b) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

(c) As amended by section 58(2) of the Traffic Management Act 2004 (c. 18).

- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause dangers to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street 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 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 and that the competent person had carried out those instructions.

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

**11.—**(1) On the date on which the authorised development is completed and open for traffic—

- (a) the roads described in columns (1) and (2) of Part 1 (classification of roads, etc.) of Schedule 3 will be trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads;
- (b) the road described in columns (1) and (2) of Part 2 (classification of roads, etc.) of Schedule 3 is to be classified as the A585 and is to be:
  - (i) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and
  - (ii) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads; and
  - (iii) as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act;
- (c) the road described in columns (1) and (2) of Part 3 (un-classified roads) of Schedule 3 are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads;
- (d) the public rights of way described in Part 4 (classification of roads, etc.) of Schedule 3 will be of the types described in column (1) to the extent described in column (2).

(2) Subject to paragraph (3), on such day as the undertaker may determine, the roads described in Part 5 (roads to be de-trunked) of Schedule 3 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

(3) The undertaker may only make a determination for the purposes of paragraph (2) with the consent of the Secretary of State, who must consult the local highway authority before deciding whether to give that consent.

(4) From the date on which the roads specified in Part 6 (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 Part 6 of Schedule 3 along the lengths of road identified in the corresponding row of column (2) of that Part.

(5) On such day as the undertaker may determine, the order specified in column (3) of Part 7 (revocations and variations of existing traffic regulation orders) of Schedule 3 is to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

(6) On such day as the undertaker may determine, the orders specified in column (3) of Part 8 (new traffic regulation order sought) of Schedule 3 are to be made in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.



(7) The application of paragraphs (1) to (6) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

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

**12.—**(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 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) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) 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.

(6) 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 and restriction of use of streets and private means of access**

**13.—**(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 and private means of access specified in column (1) of Parts 1, 2, 3 and 4 of Schedule 4 (permanent stopping up of streets and private means of access) to the extent specified and described in column (2) of that Schedule.

(2) No street or private means of access specified in column (1) of Parts 1 and 3 of Schedule 4 is to be wholly or partly stopped up under this article unless—

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

(3) No street or private means of access specified in column (1) of Part 4 of Schedule 4 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) 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.
- (7) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

### **Access to works**

**14.** The undertaker may, for the purposes of the authorised development, form and lay out 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**

- 15.—**(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.
- (2) Nothing in paragraph (1) may apply—
- (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 to the Communications Act 2003<sup>(a)</sup>; 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<sup>(b)</sup>; or
    - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000<sup>(c)</sup>; or

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

- (c) in relation to a vehicle waiting when the person in control of it is—
  - (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person's control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in Part 1 of Schedule 3 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.

(4) Paragraphs (1), (2) and (3) 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.

### **Traffic regulation**

**16.—**(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 its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its 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).
- (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 of 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**

- 17.—**(1) 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 of the Water Industry Act 1991 (right to communicate with public sewers).
- (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.
- (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) Save where permitted by this Order, 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.

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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.

(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 of the Environmental Permitting (England and Wales) Regulations 2016<sup>(a)</sup>.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to 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>(b)</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**

**18.**—(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.

(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

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(a) S.I. 2016/1154.

(b) 1991 c. 57.

necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (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.

(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) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) of the 2008 Act (compensation in case where no right to claim in nuisance).

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

(11) 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**

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

- (a) survey or investigate the land (including any watercourses, ground water, static water bodies or vegetation on the land);
- (b) without limitation to 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 and subsoil and groundwater and remove soil and water samples and discharge water samples on to the land;
- (c) without limitation to 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 surveyor investigation or to make the trial holes and boreholes.

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

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(a) As amended by S.I. 2009/1307

- (a) in land located within a highway boundary for which the local highway authority is the highway authority without the consent of the local highway authority; or
- (b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.

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

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

that authority will be deemed to have granted consent.

## PART 5

### POWERS OF ACQUISITION AND POSSESSION

#### **Compulsory acquisition of land**

**20.**—(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 23 (compulsory acquisition of rights and restrictive covenants), paragraph (8) of article 29 (temporary use of land for carrying out the authorised development) and paragraph (4) of article 44 (Crown rights).

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

**21.** Part 2 of Schedule 2 to the Acquisition of Land Act 1981<sup>(a)</sup> (minerals) is incorporated in this Order subject to the modification that for the “acquiring authority” substitute “the undertaker”.

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

**22.**—(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 25 of this Order; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 29 (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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<sup>(a)</sup> 1981 c. 67.

## **Compulsory acquisition of rights and restrictive covenants**

**23.**—(1) Subject to paragraphs (2) to (4) and paragraph (4) of article 44 (Crown rights), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 20 (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 5 (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) The power to impose restrictive covenants under paragraph (1) is only exercisable in respect of the plots specified in column (1) of Schedule 5.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 6 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**

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

- (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) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of 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 burden of the restrictive covenant—

- (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) of the 1965 Act (power of entry),

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.

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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).



(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 to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(a) of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (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 rights or the imposition of restrictive covenants 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.

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

**25.**—(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) (extension of time limit during challenge)(c)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[ ]”.

(3) In section 11A(d) (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 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article

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

22 (time limit for exercise of authority to acquire land compulsorily) of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[ ]”.

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

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

(b) “(2) But see article 27(3) (acquisition of subsoil or airspace only) of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[ ], which excludes the acquisition of subsoil or airspace only from this Schedule”; and

(c) 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 18 (protective work to buildings), 29 (temporary use of land for carrying out the authorised development) or 30 (temporary use of land for maintaining the authorised development) of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[ ]”.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

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

(2) The 1981 Act, as so applied, has effect with the modifications set out in this article.

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

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

(6) In section 5B(1) (extension of time limit during challenge)(c)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[ ]”.

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

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

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

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

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

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

(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 25 (modification of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

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

27.—(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 20 (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 Compulsory Purchase Act 1965 as modified by article 25 of this Order;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; 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.

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

28.—(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 of the 1991 Act (sharing cost of necessary measures) 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**

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

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(a) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2008 (c.22).

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that 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 buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings 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 7, 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 condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with 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) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(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 of the 1961 Act.

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

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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 23 (compulsory acquisition of rights and restrictive covenants) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; or
- (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 27 (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 of the 2008 Act (application of compulsory acquisition provisions).

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

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

- (a) enter 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; and
- (b) 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 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.

(5) 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 condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land.

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

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

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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).

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

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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).

(10) 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.

(11) 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**

**31.**—(1) Subject to the provisions of Schedule 10 (protective provisions), article 23 (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 32 of this Order (apparatus and rights of statutory undertakers in stopped up streets).

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

**32.**—(1) Where a street is stopped up under article 13 (permanent stopping up and restriction of use of streets 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 13 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 of that Act (sharing of cost of necessary measures) 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—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“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) of the Communications Act 2003(a).

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

**33.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (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 32, 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 32 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

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(a) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

(4) In this paragraph—

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

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

## PART 6

### OPERATIONS

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

**34.**—(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—

- (a) must do no unnecessary damage to any tree or shrub;
- (b) must not fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots if the tree or shrub is identified as being retained in the environmental statement unless the undertaker reasonably believes it to be necessary to do so for the purposes of the construction and/or operation of the authorised development provided that 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; and
- (c) 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 described in Part 1 of Schedule 9 (Hedgerows).

(5) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow which is not described in Part 1 of Schedule 9 (Hedgerows) with the prior consent of the local authority.

(6) In carrying out any activity authorised by paragraph (4) and (5), the undertaker must pay compensation to any person for any loss or damage arising from such activity.

(7) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997<sup>(b)</sup> and includes important hedgerows.

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<sup>(a)</sup> 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

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



## PART 7

### MISCELLANEOUS AND GENERAL

#### **Deemed Marine Licence**

**35.** The undertaker is deemed to have been granted the licence under Part 4 of the 2009 Act contained in Schedule 8 to this Order, to carry out works and make the deposits described in that licence and subject to the licence conditions which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

#### **Application of landlord and tenant law**

**36.—**(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) Accordingly, 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.

#### **Trees subject to tree preservation orders**

**37.—**(1) The undertaker may fell or lop any tree described in Part 2 of Schedule 9 (Trees subject to tree preservation orders) or cut back its roots or undertake such other works if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

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

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

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

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

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

**38.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act).

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

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

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

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

**41.**—(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**

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

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(a) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.  
(b) 1974 c. 40.

- (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 of the Interpretation Act 1978<sup>(a)</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.

(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) 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.

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(a) 1978 c. 30.

(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.

### **Arbitration**

43. 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.

### **Crown rights**

44.—(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 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) belonging 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 or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.

(3) 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.

(4) Nothing in this Order shall authorise the compulsory acquisition of any interest in the Order Land held by or on behalf of the Duchy of Lancaster.

Date

*Signed*  
Title  
Department

# SCHEDULES

## SCHEDULE 1

Article 2

### AUTHORISED DEVELOPMENT

#### **In the administrative areas of Lancashire County Council, Wyre Council and Fylde Borough Council**

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

**Work No.1** – The construction and alteration of the mainline A585 Amounderness Way commencing at the Scheme limit and terminating at Skippool Junction, approximately 301 metres in length, including associated features such as embankments, additional structures and roadside furniture, as shown on Sheet 1 of the Works Plans.

**Work No.2** – The construction of a non-motorised user pedestrian crossing facilities across left arm (A585 Amounderness Way) of Skippool Junction, approximately 96 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.3** – The diversion of utilities (United Utilities), approximately 176 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

**Work No.4** – The construction of the eastbound left turning lane (off-slip road), at Skippool Junction, approximately 158 metres in length from the A585 Amounderness Way onto the B5412 Skippool Road, as shown on Sheet 1 of the Works Plans.

**Work No.5** – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians), south west of Skippool Junction, approximately 57 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.6** – The diversion of utilities (Electricity North West), approximately 206 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

**Work No.7** – The diversion of utilities (United Utilities), approximately 57 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

**Work No.8** – The diversion of utilities (Electricity North West), approximately 105 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

**Work No.9** – The construction of the left turning lane from the A588 Breck Road onto the A585 (westbound), approximately 124 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.10** – The construction of pedestrian crossing facilities across the northern arm of Skippool Junction (B5412 Skippool Road), approximately 53 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.11** – The construction of pedestrian crossing facilities across the southern arm (A588 Breck Road) of Skippool Junction approximately 52 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.12** – The construction of an at-grade, signalised crossroad junction (Skippool Junction), tying in with the existing A588 Breck Road, the B5412 Skippool Road and the A585 Amounderness Way, including all associated widening works and retaining structures, approximately 186 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.13** – The construction of the left turning lane from the B5412 Skippool Road onto Breck Road, (eastbound), at Skippool Junction, approximately 128 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.14** – The construction of pedestrian crossing facilities across the eastern arm (A585 Breck Road) of Skippool Junction, approximately 90 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.15** – The diversion of utilities (British Telecommunications PLC), approximately 151 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

**Work No.16** – The diversion of utilities (Cadent), approximately 160 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

**Work No.17** – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) approximately 596 metres in length, commencing at a tie in point with the existing footway on the B5412 Skippool Road and terminating at the diverted Old Mains Lane, as shown on Sheet 1 of the Works Plans.

**Work No.18** – The construction of the westbound, left turn lane at Skippool Junction, approximately 155 metres in length, from the A585 Breck Road, continuing onto the A588 Breck Road, heading southbound, as shown on Sheet 1 of the Works Plans.

**Work No.19** – The construction and alteration of Breck Service Road, running parallel to the main A585 Breck Road, approximately 156 metres in length, including the stopping up of the east end entrance and the construction of a “hammerhead” turning area, as shown on Sheet 1 of the Works Plans.

**Work No.20** – The construction of alterations to the existing private means of access, on the north side of A585 Breck Road, approximately 36 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.21** – The construction of a new section of A585 dual carriageway between Skippool Junction and Skippool Bridge Junction, approximately 444 metres in length, including associated features such as embankments, additional structures and roadside furniture, as shown on Sheet 1 of the Works Plans.

**Work No.22** – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) commencing at the turning point into Breck Road access road and running for approximately 220 metres along the south side of Mains Lane, including pedestrian crossing facilities at Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

**Work No.23** – The construction of alterations to the existing private means of access on the north side of the A585 Breck Road, approximately 41 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.24** – The diversion of utilities (British Telecommunications PLC), approximately 90 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.25** – The construction of a new underbridge over Main Dyke, including all associated bridge foundations, widening, parapets and roadside furniture, approximately 34 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.26** – The diversion of utilities (Electricity North West), approximately 218 metres in length, running along Mains Lane and across Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

**Work No.27** - The diversion of utilities (Cadent), approximately 258 metres in length, running along Mains Lane and across Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

**Work No.28** – The construction of the eastbound A585 off-slip lane at Skippool Bridge Junction, approximately 163 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.29** – The construction of the diverted Old Mains Lane Road, approximately 225 metres in length and tying in with the existing Old Mains Lane alignment, as shown on Sheet 1 of the Works Plans.

**Work No.30** – The diversion of utilities (Electricity North West), approximately 384 metres in length, running across Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

**Work No.31** – The diversion of utilities (Electricity North West), approximately 379 metres in length, running along diverted Old Mains Lane and across the north side of A585 Breck Road, as shown on Sheet 1 of the Works Plans.

**Work No.32** – The diversion of utilities (British Telecommunications PLC), approximately 357 metres in length, running along diverted Old Mains Lane and across to the north side of the A585 Breck Road, as shown on Sheet 1 of the Works Plans.

**Work No.33** – The diversions of utilities (British Telecommunications PLC), approximately 728 metres in length, running around Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

**Work No.34** – The diversion of utilities (United Utilities), approximately 607 metres in length, running from the northern arm of the Skippool Junction along A585 Breck Road and terminating on the diverted Old Mains Lane, as shown on Sheet 1 of the Works Plans.

**Work No.35** – The construction of an at-grade, signalised junction (Skippool Bridge Junction), tying in with the existing A585 Mains Lane, and the new A585 bypass, including all associated widening works and retaining structures, approximately 111 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.36** - The diversion of utilities (United Utilities), approximately 216 metres in length, around Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

**Work No.37** – The construction of the eastbound, left turn lane at Skippool Bridge Junction, approximately 34 metres in length, from the A585 Mains Lane, as shown on Sheet 1 of the Works Plans.

**Work No.38** – The construction of an environmental bund (false cutting), approximately 369 metres in length, running along the north side of the new A585 dual carriageway, as shown on Sheet 1 of the Works Plans.

**Work No.39** – The construction of an environmental bund (false cutting), approximately 363 metres in length, running along the south side of the new A585 dual carriageway, as shown on Sheet 1 of the Works Plans.

**Work No.40** – The construction of a section of the new A585 dual carriageway, approximately 1476 metres in length, commencing at Skippool Bridge Junction and terminating at Poulton Junction, including associated features such as embankments, additional structures and roadside furniture, as shown on Sheets 1 and 2 of the Works Plans.

**Work No.41** – The construction of a culvert, approximately 144 metres in length, running at 45° to the alignment of the new A585 dual carriageway, as shown on Sheet 1 of the Works Plans.

**Work No.42** – The diversion of utilities (Electricity North West), approximately 82 metres, running perpendicular to the new A585 Dual Carriageway alignment, as shown on Sheet 1 of the Works Plans.

**Work No.43** – The construction of a drainage attenuation pond and accompanying environmental bund (banking) with a perimeter approximately 322 metres in length, adjacent to the proposed eastbound carriageway as shown on Sheets 1 and 2 of the Works Plans.

**Work No.44** – The construction of a culvert perpendicular to the new A585 Dual Carriageway of length approximately 99 metres, north west of Poulton Junction as shown on Sheet 2 of the Works Plans.

**Work No.45** – The construction of a culvert perpendicular to the new A585 Dual Carriageway of length approximately 105 metres, north west of Poulton Junction as shown on Sheet 2 of the Works Plans.

**Work No.46** – The construction of the new A585 Dual Carriageway westbound on-slip, left turning, lane at Poulton Junction, approximately 80 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.47** – The construction of an at grade crossroad junction (Poulton Junction) tying in with the existing A586 Garstang Road East and the new A585 Dual Carriageway including all associated widening works and retaining structures approximately 402 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.48** – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) along A586 Garstang Road East, approximately 169 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.49** – The construction of the new A585 Dual Carriageway eastbound off-slip, left turning, lane at Poulton Junction, approximately 87 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.50** – The construction of the new A585 Dual Carriageway eastbound on-slip, left turning, lane at Poulton Junction, approximately 28 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.51** – The diversion of utilities (United Utilities) along A586 Garstang Road East at Poulton Junction approximately 315 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.52** – The construction of an access route (path) to the drainage attenuation pond located South East of Poulton Junction approximately 45 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.53** – The diversion of utilities (United Utilities) along A586 Garstang Road East at Poulton Junction approximately 253 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.54** – The diversion of utilities (Cadent) along A586 Garstang Road East at Poulton Junction approximately 253 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.55** – The construction of an environmental bund (false cutting) along the south side of the new A585 Dual Carriageway, south of Poulton Junction, approximately 351 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.56** – The construction of the new A585 Dual Carriageway westbound off-slip left turning lane at Poulton Junction approximately 81 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.57** – The construction of a drainage attenuation pond and accompanying environmental bund (banking) with a perimeter approximately 210 metres in length, adjacent to Poulton Junction, as shown on Sheet 2 of the Works Plans.

**Work No.58** – The construction of a section of the new A585 Dual Carriageway, approximately 2609 metres in length, commencing at Poulton Junction, and terminating at Windy Harbour Junction, including all associated features such as embankments, cuttings, additional structures and roadside furniture, as shown on Sheets 2, 3 and 4 of the Works Plans.

**Work No.59** – The construction of an environmental bund along the north side of the new A585 Dual Carriageway, south of Poulton Junction, approximately 531 metres in length, as shown on Sheets 2 and 3 of the Works Plans.

**Work No.60** – The diversion of utilities (United Utilities) parallel to the new A585 Dual Carriageway, running for approximately 828 metres in length, as shown on Sheets 2 and 3 of the Works Plans.



**Work No.61** – The diversion of utilities (United Utilities) commencing in land adjacent to the new A585 Dual Carriageway and running for approximately 746 metres in length, as shown on Sheets 2 and 3 of the Works Plans.

**Work No.62** – The construction of a culvert, approximately 94 metres in length, perpendicular to the new A585 Dual Carriageway, as shown on Sheet 2 of the Works Plans.

**Work No.63** – The construction of a borrow pit including the excavation, working and restoration to win material required for the construction of the A585 Windy Harbour to Skippool Improvement Scheme, situated adjacently to the west of Lodge Lane to the north of the proposed bypass, with a perimeter approximately 1270 metres, as shown on Sheets 2 and 3 of the Works Plans.

**Work No.64** – The diversion of utilities (Electricity North West), approximately 165 metres in length, running parallel to the north of the new A585 Dual Carriageway, as shown on Sheet 3 of the Works Plans.

**Work No.65** – The diversion of utilities (British Telecommunications PLC), approximately 143 metres in length, along Lodge Lane Bridge, as shown on Sheet 3 of the Works Plans.

**Work No.66** – The stopping up of the existing private means of access road, approximately 29 metres in length, as shown on Sheet 3 of the Works Plans.

**Work No.67** – The diversion of utilities (United Utilities), approximately 59 metres in length, running along Lodge Lane Bridge, as shown on Sheet 3 of the Works Plans.

**Work No.68** The construction of alterations to the private means of access, approximately 16 metres in length, as shown on Sheet 3 of the Works Plans.

**Work No.69** – The diversion of utilities (Cadent), approximately 439 metres in length at Lodge Lane Bridge, as shown on Sheet 3 of the Works Plans.

**Work No.70** – The construction and alteration of Lodge Lane and new overbridge (Lodge Lane Bridge) including all associated bridge foundations, widening, parapets and roadside furniture, approximately 191 metres in length, as shown on Sheet 3 of the Works Plans.

**Work No.71** – The diversion of utilities (Electricity North West), approximately 204 metres in length, along private means of access to Singleton Manor and up Lodge Lane to the north, as shown on Sheet 3 of the Works Plans.

**Work No.72** – The diversion of utilities (Electricity North West), approximately 269 metres in length, along private means of access to Singleton Manor, across Lodge Lane and running along the south side of the new A585 dual carriageway, as shown on Sheet 3 of the Works Plans.

**Work No.73** – The diversion of utilities (United Utilities), approximately 203 metres in length, along private means of access to Singleton Manor, as shown on Sheet 3 of the Works Plans.

**Work No.74** – The construction of a new private means of access, approximately 117 metres in length, as shown on Sheet 3 of the Works Plans.

**Work No.75** – The diversion of utilities (British Telecommunications PLC), approximately 119 metres in length, along private means of access to Singleton Manor, as shown on Sheet 3 of the Works Plans.

**Work No.76** – The diversion of utilities (Cadent), approximately 55 metres in length, along private means of access to Singleton Manor, as shown on Sheet 3 of the Works Plans.

**Work No.77** – The diversion of utilities (United Utilities), approximately 90 metres in length, running at 45° to the alignment of the new A585 dual carriageway, as shown on Sheet 3 of the Works Plans.

**Work No.78** – The construction of a borrow pit including the excavation, working and restoration to win material required for the construction of the A585 Windy Harbour to Skippool

Improvement Scheme, situated adjacently to the west of Lodge Lane to the south of the proposed bypass, with a perimeter approximately 768 metres, as shown on Sheet 3 of the Works Plans.

**Work No.79** – The construction of a footbridge (Grange Footbridge), including accompanying bridge foundations, stairs, ramps and non-motorised user footway, approximately 394 metres in length, as shown on Sheet 3 of the Works Plans.

**Work No.80** – The diversion of utilities (Cadent), approximately 1005 metres in length, running along the north side of the new A585 dual carriageway, commencing at Garstang New Road and terminating at Windy Harbour Junction, as shown on Sheets 3 and 4 of the Works Plans.

**Work No.81** – The diversion of utilities (British Telecommunications PLC), approximately 1033 metres in length, running along the north side of the new A585 dual carriageway, commencing at Garstang New Road and terminating at Windy Harbour Junction, as shown on Sheets 3 and 4 of the Works Plans.

**Work No.82** – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) along the north side of the new A585 dual carriageway, commencing at Grange Footbridge, running for approximately 987 metres in length and terminating at Windy Harbour Junction, as shown on Sheets 3 and 4 of the Works Plans.

**Work No.83** – The detrunking of a section of Garstang New Road between Little Singleton Junction and Grange Footbridge, approximately 753 metres in length including the construction of a non-motorised user footway (including provisions for cyclists and pedestrians), as shown on Sheet 3 of the Works Plans.

**Work No.84** – The construction of the northwest arm of Little Singleton Junction, approximately 71 metres in length, as shown on Sheet 3 of the Works Plans.

**Work No.85** – The construction of the northeast arm of Little Singleton Junction, approximately 60 metres in length, as shown on Sheet 3 of the Works Plans.

**Work No.86** – The construction of the west arm of Little Singleton Junction, approximately 74 metres in length, as shown on Sheet 3 of the Works Plans.

**Work No.87** – The construction of the “Q-turn” at Little Singleton Junction, approximately 46 metres in length, as shown on Sheet 3 of the Works Plans.

**Work No.88** – The construction of the south arm of Little Singleton Junction, approximately 50 metres in length, as shown on Sheet 3 of the Works Plans.

**Work No.89** – The construction of the east arm of Little Singleton Junction, approximately 77 metres, in length, including the stopping up of Garstang New Road, as shown on Sheet 3 of the Works Plans.

**Work No.90** – The construction of a drainage attenuation pond and accompanying environmental bund, with a perimeter of approximately 203 metres, located on the south side of the new A585 dual carriageway, as shown on Sheet 4 of the Works Plans.

**Work No.91** – The construction of a culvert, perpendicular to the new A585 dual carriageway, approximately 55 metres in length, as shown on Sheet 4 of the Works Plans.

**Work No.92** – The construction of a culvert, perpendicular to the new A585 dual carriageway, approximately 53 metres in length, as shown on Sheet 4 of the Works Plans.

**Work No.93** – The construction of a drainage attenuation pond and accompanying environmental bund, with a perimeter of approximately 176 metres, located on the south side of the new A585 dual carriageway, as shown on Sheet 4 of the Works Plans.

**Work No.94** – The construction of pedestrian crossing facilities and footpath at the termination of the new A585 dual carriageway at Windy Harbour Junction, tying in with existing crossing facilities at the junction, approximately 62 metres in length, as shown on Sheet 4 of the Works Plans.

**Work No.95** – The improvements associated with the de-trunking of the existing A585 between Skippool Bridge Junction and Little Singleton Junction, approximately 1947 metres in length as shown on Sheets 1, 2 and 3 of the Works Plans, including the construction of a non-motorised user footway (including provisions for cyclists and pedestrians).

**Work No.96** – The construction of a culvert, perpendicular to the new A585 dual carriageway, approximately 57 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.97** – The construction and alteration of Shard Road Junction, approximately 55 metres in length, including associated features such as embankments, additional structures and roadside furniture, as shown on Sheet 1 of the Works Plans.

**Work No.98** – The construction of flood mitigation area (1) with a perimeter of approximately 367 metres, including associated embankments, as shown on Sheet 1 of the Works Plans.

**Work No.99** – The construction of a non-motorised user footway (including provision for cyclists and pedestrians) between Skippool Bridge Junction and Old Mains Lane, approximately 36 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.100** – The construction of pedestrian crossing facilities across the new A585 Dual Carriageway at Poulton Junction, approximately 93 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.101** – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) along A586 Garstang Road East, approximately 168 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.102** – The construction of pedestrian crossing facilities across the new A585 Dual Carriageway westbound at Skippool Bridge Junction, approximately 38 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.103** – The construction of pedestrian crossing facilities across the new A585 Dual Carriageway eastbound at Skippool Bridge Junction, approximately 21 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.104** – The construction of pedestrian crossing facilities across the new Skippool Bridge Junction left turning lane, approximately 24 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.105** – The construction of pedestrian crossing facilities across the new Skippool Bridge Junction left turning lane, approximately 47 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.106** – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) along the A585 Mains Lane, approximately 111 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.107** – The construction of an environmental bund (false cutting), approximately 667 metres in length, running along the north side of the new A585 dual carriageway, as shown on Sheet 2 of the Works Plans.

**Work No.108** – The construction of an environmental bund (false cutting), approximately 298 metres in length, running along the south side of the new A585 dual carriageway, as shown on Sheet 1 of the Works Plans.

**Work No.109** – The construction of flood mitigation area (4) with a perimeter of approximately 288 metres, including associated embankments, as shown on Sheet 2 of the Works Plans.

**Work No.110** – The construction of flood mitigation area (3) with a perimeter of approximately 491 metres, including associated embankments, as shown on Sheet 2 of the Works Plans.

**Work No.111** – The construction of flood mitigation area (2) with a perimeter of approximately 619 metres, including associated embankments, as shown on Sheets 1 and 2 of the Works Plans.

**Work No.112** – The diversion of utilities (Electricity North West) running perpendicular to the A585 approximately 42 metres in length, as shown on Sheet 1 of the Works Plans.

**Work No.113** – The construction of a new private means of access to the west of Poulton Junction on the A586, approximately 516 metres in length, as shown on Sheets 1 and 2 of the Works Plans.

**Work No.114** – The construction of a new private means of access to the south of Grange footbridge, approximately 758 metres in length, as shown on Sheet 3 of the Works Plans.

**Work No.115** – The construction of a culvert (Skippool Clough), approximately 104 metres in length, running directly beneath Skippool Junction, including the abandoning of the existing Skippool Clough culvert, as shown on Sheet 1 of the Works Plans.

**Work No.116** – The diversion of utilities (United Utilities), approximately 27 metres in length, running perpendicular to the new A585 Dual Carriageway, as shown on Sheet 1 of the Works Plans.

**Work No.117** – The construction of a farm access track and accommodation fencing on the north side of the track, approximately 84 metres in length, running parallel to the north side of the new A585 Dual carriageway towards Rycroft Farm, as shown on Sheet 1 of the Works Plans.

**Work No.118** – The construction of an altered connection, approximately 21 metres in length, from the footway to the section of Wyre Way west of Horsebridge Dyke, as shown on Sheet 1 of the Works Plans.

**Work No.119** – The construction of an altered connection, approximately 12 metres in length, from the footway to the section of Wyre Way west of Horsebridge Dyke, as shown on Sheet 1 of the Works Plans.

**Work No.120** – The diversion of utilities (The Gas Transportation Company Limited), approximately 69 metres in length, along private means of access to Singleton Manor, as shown on Sheet 3 of the Works Plans.

**Work No.121** – The diversion of utilities (British Telecommunications PLC) along A586 Garstang Road East at Poulton Junction, approximately 344 metres in length, as shown on Sheet 2 of the Works Plans.

**Work No.122** – The construction of a dwarf wall, approximately 135 metres in length, along the northern footway at Skippool Junction from Throstles Nest to a point east of Skippool Junction, as shown on Sheet 1 of the Works Plans.

**Work No.123** – The construction of an accommodation culvert, perpendicular to a new access track, approximately 13 metres in length, as shown on Sheet 1 of the Works Plans.

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 the width of the carriageway of the street by 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, maintenance, or reconstruction of any street;
- (c) works for the strengthening, alteration or demolition of any building;
- (d) ramps, means of access, non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;
- (e) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, pollution control devices, wing walls, highway lighting, fencing and culverts;

- (f) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (g) works to place, alter, divert, relocate, remove or maintain the position of apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, lights and cables;
- (h) works to alter the course of, or otherwise interfere with, a watercourse;
- (i) landscaping, noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (j) works for the benefit or protection of land affected by the authorised development;
- (k) works to place, alter, remove or maintain road furniture;
- (l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping and storage, site levelling);
- (m) the felling of trees and hedgerows;
- (n) establishment of site construction compounds, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences;
- (o) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (p) 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 different environmental effects to those assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Article 3

### PART 1 REQUIREMENTS

#### *Interpretation*

**1.** In this Schedule—

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

“European protected species” has the same meaning as in regulation 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>;

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authority for England 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>; and

“REAC” means the record of environmental actions and commitments at Volume 7 of the environmental statement (Application Document TR010035/APP/7.3).

#### *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.

#### *Detailed design*

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

(2) 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 and engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

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(a) 1990 c. 43 as amended by section 86(2) of the Water Act 2003 c. 37.

(b) S.I. 2017/1012.

(c) 1981 c. 69.

*Construction and handover environmental management plans*

4.—(1) No part of the authorised development is to commence until a CEMP, substantially in accordance with the outline CEMP, for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and Natural England to the extent that it relates to matters relevant to their function.

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

- (a) be in accordance with 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 07:30–18:00 Mondays to Fridays and 08:00–14:00 on Saturday except for—
  - (i) deliveries, movements to work, maintenance and general preparation works but not including running plant and machinery for a period of one hour either side of the above times;
  - (ii) night-time closures including for road crossings and final surfacing tie ins;
  - (iii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
  - (iv) junction tie-in works;
  - (v) repair or maintenance of construction equipment;
  - (vi) removal of overhead power lines;
  - (vii) overnight traffic management measures;
  - (viii) cases of emergency;
  - (ix) night-time working which shall be limited to the duration set out in the REAC; and
  - (x) as otherwise agreed by the local authority in advance;
- (d) include the following management plans which must be in accordance with the REAC—
  - (i) Bird Mitigation Strategy;
  - (ii) Biodiversity Enhancement Strategy;
  - (iii) Soil Management Plan;
  - (iv) Soil Resource Plan;
  - (v) Noise and Vibration Management Plan;
  - (vi) Pollution Control Plan;
  - (vii) Emergency Spillage Response Plan;
  - (viii) Emergency Flood Response Plan;
  - (ix) Dewatering Management Plan;
  - (x) Construction Water Management Plan;
  - (xi) Site Waste Management Plan;
  - (xii) Materials Management Plan;
  - (xiii) Borrow Pit – Restoration Aftercare Plan;
  - (xiv) Asbestos Management Plan;
  - (xv) Flood Warning Evacuation Plan.

(3) The construction of the authorised development must be carried out in accordance with the approved CEMP and any mitigation, monitoring and adaptive management measures contained in the approved CEMP must be implemented.

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

(5) 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.

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

### *Landscaping*

5.—(1) The authorised development must be landscaped in accordance with a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which 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 landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan within the environmental statement (Application Document TR010035/APP/6.19).

(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 at least the same species and size as that originally planted, or where significant loss occurs a size and species which accords with the provisions for replacement planting identified in the approved HEMP, 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 are 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 construction works and report it immediately to the Ecological Clerk of Works.

(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds 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) 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.

(4) Prior to demolition of Skippool Bridge the undertaker must carry out an endoscope survey of the features on the bridge which have the potential to be used by bats. If the results of the survey show that bats are present and a protected species licence is required, no further work shall be undertaken to the bridge until a written scheme of investigation and mitigation has been prepared.

(5) The undertaker must implement the written scheme prepared under sub-paragraph (4) 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.

(6) The undertaker must implement the Bird Mitigation Strategy prepared under requirement 4(2)(d)(i) at all times during construction of the authorised development unless otherwise agreed in writing by the Secretary of State following consultation with Natural England.

#### *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 including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the lead local flood 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 the lead local flood authority on matters related to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

#### *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 Archaeology Mitigation Strategy and draft Written Scheme of Investigation, 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 local highway 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 or plans approved under this Schedule, the approved details or schemes or plans are taken to include any amendments that may subsequently be approved in writing.

#### *Fencing*

**12.** Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Volume 1, Series 0300 of 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.

#### *Details of consultation*

**13.—**(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the undertaker must provide such other party with not less than 14 days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is

appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.

(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

#### *Temporary compensatory flood storage scheme*

**14.**—(1) Development shall not be commenced within the 1% plus 30% for climate change flood extent of the Main Dyke, illustrated in Figure D8 of the Flood Risk Assessment (document reference TR010035/APP/5.2 – v1) until details of a temporary compensatory flood storage scheme is submitted to and approved in writing by the Secretary of State. The scheme shall include details of the design, function, construction and, as appropriate, decommissioning of the temporary compensatory flood storage area, to ensure that a suitably engineered solution is provided that will not impede access to Main Dyke (Skippool Creek) for maintenance purposes and will allow for the storage and subsequent drain down of flood waters that would be displaced by the development.

(2) The scheme shall be fully implemented as approved and subsequently maintained in accordance with the approved details until it is decommissioned.

#### *Soil survey and mitigation plan*

**15.**—(1) No part of the authorised development is to commence until an agricultural land classification and soil survey has been undertaken and a soil mitigation plan has been prepared and has been submitted and approved in writing by the Secretary of State following consultation with Natural England.

(2) The undertaker must implement the soil mitigation plan prepared under sub-paragraph (1) during construction of the authorised development.

## **PART 2**

### **PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

#### *Applications made under requirements*

**16.**—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval requirement 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 17; 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 by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially worse 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*

**17.—**(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 16 (applications made under requirements) and in this paragraph.

#### *Register of requirements*

**18.—**(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*

**19.** 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.

Articles 11 and 15

PART 1  
TRUNK ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
A585 at Skippool Junction cross roads	Entire junction within Point 1 of the Streets, Rights of Way and Access Plans (Sheet 1)
A585(T) between Skippool Junction and Skippool Bridge Junction	Shown within Point 1 of the Streets, Rights of Way and Access Plans (Sheet 1)
A585 at Skippool Bridge Junction	Entire junction within Point 1 of the Streets, Rights of Way and Access Plans (Sheet 1)
A585(T) between Skippool Bridge Junction and Poulton Junction	Shown by Point 7 of the Streets, Rights of Way and Access Plans (Sheets 1 and 2)
A585 at Poulton Junction cross roads	Cross roads shown by Point 8 of the Streets, Rights of Way and Access Plans (Sheet 2)
A585(T) between Poulton Junction and intersect with de-classified Garstang New Road	Shown by Point 9 of the Streets, Rights of Way and Access Plans (Sheets 2 and 3)
A585(T) between intersect with de-classified Garstang New Road and Windy Harbour Junction	Shown by Point 14 of the Streets, Rights of Way and Access Plans (Sheet 4)

PART 2  
CLASSIFIED ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
A586 Garstang Road East (west of proposed Poulton Junction)	Shown by Point 10 of the Streets, Rights of Way and Access Plans (Sheet 2)
B5260 Lodge Lane Bridge	Shown by Point 12 of the Streets, Rights of Way and Access Plans (Sheet 3)
Garstang Road East (to be re-classified as the B5260)	Shown by Point 11 of the Streets, Rights of Way and Access Plans (Sheets 2 and 3)
Mains Lane between Skippool Bridge Junction and Shard Road Junction (to be re-classified as the A588)	Shown by Point 19 and 18 of the Streets, Rights of Way and Access Plans (Sheet 1)

## PART 3

### UN-CLASSIFIED ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
Mains Lane between Shard Road Junction and Little Singleton Junction	Shown by Point 17 of the Streets, Rights of Way and Access Plans (Sheets 1, 2 and 3)
De-classified Garstang New Road between Little Singleton Junction and Garstang footbridge	Shown by Point 15 of the Streets, Rights of Way and Access Plans (Sheet 3)

## PART 4

### OTHER PUBLIC RIGHTS OF WAY

(1) <i>Public right of way</i>	(2) <i>Extent</i>
Non-segregated footway/cycle track (including crossing facilities over Skippool Junction, Skippool Bridge Junction, Poulton Junction and Little Singleton Junction)	Shown with Points 1, 8, 10, 11, 18, 17, 16, 15 and 14 of the Streets, Rights of Way and Access Plans

## PART 5

### ROADS TO BE DE-TRUNKED

**In the administration areas of Lancashire County Council, Wyre Council and Fylde Borough Council**

The section of highway between Point A on Sheet 1 of the Traffic Regulation Measures and De-Trunking Plans, being a point 488 metres west of Shard Road Junction and Point C on Sheet 3 of the Traffic Regulation Measures and De-Trunking Plans, being a point 678 metres east of Little Singleton Junction for a distance of approximately 2700 metres in a south easterly direction.

## PART 6

### SPEED LIMITS

(1) <i>Parish(es)</i>	(2) <i>Road name, number and length</i>	(3) <i>Speed Limit</i>
Poulton-le-Fylde	A585 (eastbound) From where the A585 Amounderness Way meets Skippool Junction heading east along its length to a point 135 metres south of Skippool Bridge Junction for a total distance of 920 metres As shown on Sheet 1 of the	40 miles per hour

	Traffic Regulation Measures and De-trunking Plans	
Poulton-le-Fylde	A585 (westbound) From a point 373 metres south of Skippool Bridge Junction heading west along its length to where the A585 Amounderness Way meets Skippool Junction for a total distance of 1112 metres As shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour
Poulton-le-Fylde	A588 Breck Road From Skippool Junction to a point 41 metres south from Skippool Junction for a total distance of 41 metres As shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour
Poulton-le-Fylde	B5412 Skippool Road From Skippool Junction to a point 37 metres north from Skippool Junction for a total distance of 37 metres A shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour
Singleton	Old Mains Lane From Skippool Bridge Junction along its length to a point 213 metres north west from Skippool Bridge Junction for a total distance of 213 metres As shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	30 miles per hour
Singleton	Skippool Bridge Junction eastbound between A585 and the re-classified A588 Mains Lane for a total distance of 217 metres As shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour
Singleton	Skippool Bridge Junction westbound between the re-classified A588 Mains Lane and A585 for a total distance of 110 metres As shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour
Singleton	A585 (eastbound)	National de-restricted speed

	From a point 135 metres south of Skippool Bridge heading east along its length to a point 306 metres north west from Poulton Junction for a total distance of 995 metres As shown on Sheet 1 and 2 of the Traffic Regulation Measures and De-trunking Plans	limit (70 miles per hour)
Singleton	A585 (westbound) From a point 306 metres north west from Poulton Junction heading west along its length to a point 373 metres south of Skippool Bridge Junction for a total distance of 801 metres As shown on Sheet 1 and 2 of the Traffic Regulation Measures and De-trunking Plans	National de-restricted speed limit (70 miles per hour)
Singleton	A585 (eastbound) From a point 306 metres north from Poulton Junction heading east along its length to a point 280 metres south east of Poulton Junction for a total distance of 589 metres As shown on Sheet 2 of the Traffic Regulation Measures and De-trunking Plans	50 miles per hour
Singleton	A585 (westbound) From a point 280 metres south east from Poulton Junction heading west along its length to a point 306 metres north west of Poulton Junction for a total distance of 589 metres As shown on sheet 2 of the Traffic Regulation Measures and De-trunking Plans	50 miles per hour
Singleton	A585 (eastbound) From a point 280 metres south east of Poulton Junction heading east along its length to a point 238 metres west from Windy Harbour Junction for a total distance of 2094 metres As shown on Sheet 2, 3 and 4 of the Traffic Regulation Measures and De-trunking Plans	National de-restricted speed limit (70 miles per hour)
Singleton	A585 (westbound) From a point 240 metres west from Windy Harbour Junction heading west along its length	National de-restricted speed limit (70 miles per hour)



	to a point 280 metres south east of Poulton Junction for a total distance of 2094 metres As shown on Sheet 2,3 and 4 of the Traffic Regulation Measures and De-trunking Plans	
Singleton	Mains Lane For the whole length of Mains Lane between Shard Road Junction and Little Singleton Junction, a length of 1515 metres As shown on Sheet 1, 2, and 3 of the Traffic Regulation Measures and De-trunking Plans	30 miles per hour
Singleton	(Re-classified B5260) Garstang Road East From a point 66 metres east of Poulton Junction along its length to Little Singleton Junction for a total distance of 719 metres As shown on Sheet 2 and 3 of the Traffic Regulation Measures and De-trunking Plans	30 miles per hour
Singleton	De-classified Garstang New Road For the whole length of the de-classified Garstang New Road between Little Singleton Junction and Grange Footbridge, a length of 631 metres As shown on Sheet 3 of the Traffic Regulation Measures and De-trunking Plans	30 miles per hour
Singleton	B5260 Lodge Lane From Little Singleton Junction along its length for a total distance of 532 metres As shown on Sheet 3 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour

## PART 7

### REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

(1)	(2)	(3)	(4)
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<i>Parishes</i>	<i>Road name, number and length</i>	<i>Title of Order</i>	<i>Revocations or Variations</i>
Singleton	Mains Lane, A585, 2904 yards	Order 1973 (No.2)	Revocation

**PART 8**  
**NEW TRAFFIC REGULATION ORDERS SOUGHT**

<i>(1) Parish(es)</i>	<i>(2) Road name and number</i>	<i>(3) Traffic Regulation Sought</i>
Poulton-le-Fylde	A585 Breck Road	No entry on westbound carriageway at Skippool Junction for traffic travelling east, as shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Poulton-le-Fylde	A585 Breck Road	No entry on eastbound carriageway at Skippool Junction for traffic travelling west, as shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Poulton-le-Fylde	Breck Service Road	No through road for traffic entering Breck Service Road from A588 Breck Road, as shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Poulton-le-Fylde	A585 Breck Road	Prohibition of right turn movements for all traffic entering on to the A585 westbound carriageway from accesses to the south of the A585 Breck Road between Skippool Junction and proposed Skippool Bridge Junction, as show on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Poulton-le-Fylde	A585 Breck Road	Prohibition of right turn movements for all traffic entering on to the A585 eastbound carriageway from accesses to the south of the A585 Breck Road between Skippool Junction and proposed Skippool Bridge Junction, as show on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans

Singleton	A585	No entry on westbound carriageway at proposed Skippool Bridge Junction for traffic travelling east, as shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Singleton	A585	No entry on eastbound carriageway at proposed Skippool Bridge Junction for traffic travelling west, as shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Singleton	A585	No entry on westbound carriageway at proposed Poulton Junction for traffic travelling east, as shown on Sheet 2 of the Traffic Regulation Measures and De-trunking Plans
Singleton	A585	No entry on eastbound carriageway at proposed Poulton Junction for traffic travelling west, as shown on Sheet 2 of the Traffic Regulation Measures and De-trunking Plans
Singleton	Mains Lane	One way road for traffic using the proposed “U” turn facility at Little Singleton Junction, as shown on Sheet 3 of the Traffic Regulation Measures and De-trunking Plans
Singleton	Garstang New Road	No through road for traffic entering Garstang New Road from Little Singleton Junction, as shown on Sheet 3 of the Traffic Regulation Measures and De-trunking Plans

## SCHEDULE 4

Article 13

### PERMANENT STOPPING UP OF STREETS AND PRIVATE MEANS OF ACCESS

#### PART 1

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

(1) <i>Public right of way or highway to be stopped up</i>	(2) <i>Extent of stopping up</i>	(3) <i>New highway to be substituted</i>
The stopping up of public right of way FP 8 (Singleton)	At Point E as shown on Sheet 1 of the Streets, Rights of Way and Access Plans	At Point 5 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
The stopping up of highway known as Old Mains Lane	At Point F as shown on Sheet 1 of the Streets, Rights of Way and Access Plans	At Point 6 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
The stopping up of public right of way FP 2 (Singleton)	At Point U as shown on Sheet 3 of the Streets, Rights of Way and Access Plans	At Point 13 as shown on Sheet 3 of the Streets, Rights of Way and Access Plans

#### PART 2

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

(1) <i>Public right of way or highway to be stopped up</i>	(2) <i>Extent of stopping up</i>
The stopping up of highway at Old Breck Road Service Road	At Point B as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
The stopping up of highway at Old Breck Road Service Road	At Point C as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
The stopping up of highway at Old Breck Road Service Road	At Point D as shown on Sheet 1 of the Streets, Rights of Way and Access Plans

#### PART 3

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

(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</i>
Private means of access adjacent to the south of the	At Point J as shown on Sheet 1 of the Streets, Rights of Way	At Point h as shown on Sheet 1 of the Streets, Rights of Way

A585	and Access Plans	and Access Plans
Private means of access adjacent to the north of the A585	At Point K as shown on Sheet 1 of the Streets, Rights of Way and Access Plans	At Point k as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the east of the A588	At Point M as shown on Sheet 1 of the Streets, Rights of Way and Access Plans	At Point p as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the north of the A586	At Point N as shown on Sheet 2 of the Streets, Rights of Way and Access Plans	At Point m as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the north of the A586	At Point Q as shown on Sheet 2 of the Streets, Rights of Way and Access Plans	At Point m as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the south of the A586	At Point P as shown on Sheet 2 of the Streets, Rights of Way and Access Plans	At Point P as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the east of the B5260	At Point R as shown on Sheet 3 of the Streets, Rights of Way and Access Plans	At Point w as shown on Sheet 3 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the east of the B5260	At Point S as shown on Sheet 3 of the Streets, Rights of Way and Access Plans	At Point w as shown on Sheet 3 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the south of the A585	At Point T as shown on Sheet 3 of the Streets, Rights of Way and Access Plans	At Point z as shown on Sheet 3 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the east of Pool Foot Lane	At Point V as shown on Sheet 3 of the Streets, Rights of Way and Access Plans	At Point y as shown on Sheet 3 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the south of the A585	At Point W as shown on Sheet 4 of the Streets, Rights of Way and Access Plans	At Point z as shown on Sheet 3 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the north of the A585	At Point Z as shown on Sheet 1 of the Streets, Rights of Way and Access Plans	At Point ac as shown on Sheet 3 of the Streets, Rights of Way and Access Plans

## PART 4

### 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 (gate) adjacent to the south of Old Mains Lane	At Point G as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Private means of access (gate) adjacent to the south of the A585	At Point H as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Private means of access (gate) adjacent to the south of the A585	At Point X as shown on Sheet 4 of the Streets, Rights of Way and Access Plans
Private means of access (gate) adjacent to the south of the A585	At Point Y as shown on Sheet 4 of the Streets, Rights of Way and Access Plans

## SCHEDULE 5

Article 23(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 1</b>	
1/34c	To construct, operate, access and maintain Skippool bridge (Work No.25)
<b>Land Plans – Sheet 4</b>	
4/02e, 4/06i	To construct, operate, access and maintain a culvert/ditch outfall (Work No.41)
4/06j, 4/08h	To construct, operate, access and maintain a culvert/ditch outfall (Work No.96)
4/08i	To construct, operate, access and maintain a culvert/ditch outfall (Work No.44)
4/08j	To construct, operate, access and maintain a culvert/ditch outfall (Work No.45)
4/08k	To operate, access and maintain a bridge
<b>Land Plans – Sheet 5</b>	
5/01m	To operate, access and maintain a bridge
5/01n, 5/02a, 5/02, 5/01d, 5/03, 5/04, 5/05a, 5/06f	To operate, access and maintain a drainage outfall (Work No.62)
5/14a, 5/13c, 5/09g, 5/13b	To construct, operate, access and maintain Lodge Lane Bridge (Work No.70)
<b>Land Plans – Sheet 7</b>	
7/10, 7/04e, 7/04d	To construct, operate, access and maintain a culvert/ditch outfall (Work No.92)

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

### *Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or 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, after “if” substitute—

“(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 6 of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[ ]);

(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 6 to the A585 Windy Harbour to Skippool Highway Development Consent Order 201[ ]) 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 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”; 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.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1865 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 25 (modification of the 1965 Act)) to the acquisition of land under article 20 (compulsory acquisition of land) applies to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 23(1) (compulsory acquisition of rights and restrictive covenants)—

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

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

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(a) 1973 (c.26)

5.—(1) The modifications 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
- (b) the land over which the right is or is to be exercisable.

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

(4) 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 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

(5) 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.

(6) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 20), 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.

(7) Section 20(f) (protection for interests of 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.

(8) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(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, subject to compliance with that section as respects compensation.

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and S.I. 2009/1307.
  - (b) Section 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.



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

**“SCHEDULE 2A**  
**COUNTER-NOTICE REQUIRING PURCHASE OF LAND**  
Introduction

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a 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<sup>(a)</sup> as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of this Order in respect of the land to which the notice to treat relates (but see article 27(3) (acquisition of subsoil and airspace only) of this Order 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 its 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.

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—

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<sup>(a)</sup> 1981 c. 66, as amended by Part 7 of the Housing and Planning Act 2016 (c. 22).

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

12. If the Upper Tribunal determines that the acquisition of the right 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 7

Article 29

### 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 1</b>		
1/07a, 1/07f, 1/07l	Required to provide construction working area for replacement culvert and for the diversion of electric cables and associated auxiliary cables	Work No.6 Work No.115
1/05a, 1/05b	Required to provide construction working area for replacement culvert and dwarf wall and for the diversion of a water pipeline	Work No.34 Work No.115 Work No.122
1/05c	Required for the provision of the main site 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	All Works
1/05d	Required to provide construction working area for the combined footway/cycleway and for the diversion of a water pipeline	Work No.17 Work No.34
1/30a, 1/34a	Required to provide an improved private means of access and for the diversion of a water pipeline and for the diversion of electric cables and associated auxiliary cables	Work No.23 Work No.24 Work No.30 Work No.31
1/30b, 1/34b, 1/34f, 1/34g	Required for the diversion of a water pipeline and for the diversion of electric cables and associated auxiliary cables	Work No.24 Work No.30 Work No.31
<b>Land Plans – Sheet 3</b>		
3/01a	Required to provide a construction working area and improved private means of access	Work No.97
<b>Land Plans – Sheet 4</b>		
4/02c	Required to provide a construction working area for highway boundary fencing and for the diversion of electric cables and associated auxiliary cables	Work No.36 Work No.40
4/02b, 4/02c, 4/03a, 4/02d, 4/06c, 4/06d, 4/06h, 4/06e, 4/06g, 4/08b, 4/08e, 4/08g	Required to provide a construction working area for highway boundary fencing	Work No.40
4/06d, 4/06h, 4/06g	Required to provide a construction working area for highway boundary fencing and for the diversion of electric cables and associated auxiliary cables	Work No.40 Work No.42
4/06f	Required to provide a flood mitigation area	Work No.98
4/08a	Required to provide a flood mitigation area	Work No.111
4/08d	Required to provide a flood mitigation area	Work No.110
4/08f	Required to provide a flood mitigation area	Work No.109

4/08l	Required to provide a construction working area and for drainage works	Work No.113
4/10a, 4/12	Required for the provision of the main site 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	All Works
<b>Land Plans – Sheet 5</b>		
5/01a	Required to provide a construction working area (including for construction material storage, construction access and storage of plant) and for the diversion of water pipelines	All Works
5/01c	Required to provide a construction working area for highway boundary fencing and for the diversion of a water pipeline	Work No.48 Work No.53 Work No.55 Work No.58
5/01e	Required to provide a temporary access for main construction compound	All Works
5/01f, 5/01k, 5/01i	Required to provide a construction working area for highway boundary fencing	Work No.57 Work No.58 Work No.59
5/01h, 5/06j	Required for the diversion of a water pipeline and construction working area for culvert	Work No.61 Work No.62
5/05b	Required for the diversion of a water pipeline	Work No.60
5/06a	Required to provide a borrow pit area and for the diversion of electric cables and associated auxiliary cables and water pipeline	Work No.63 Work No.61 Work No.64
5/06c	Required to provide a construction working area for highway boundary fencing and for the diversion of water pipelines and electric cables and associated auxiliary cables	Work No.58 Work No.59 Work No.61
5/06i	Required to provide a construction working area for the bridge and for the diversion of electric cables and associated auxiliary cables	Work No.58 Work No.70 Work No.64
5/06d	Required to provide a construction working area for highway boundary fencing and for the diversions of water pipelines and electric cables and associated auxiliary cables	Work No.58 Work No.60 Work No.61 Work No.72
5/06b	Required to provide a borrow pit area and for the diversion of electric cables and associated auxiliary cables and for diversion of a gas pipeline and for the diversion of water pipelines	Work No.60 Work No.61 Work No.69 Work No.72 Work No.78
5/06h	Required to provide a construction working area for the bridge and for the diversion of electric cables and associated auxiliary cables and gas pipeline	Work No. 69 Work No.70 Work No.72
5/07c, 5/15a	Required for the diversion of a water pipeline	Work No.61
5/12	Required to provide an improved private means of access and for the diversion of a gas pipeline	Work No.67 Work No.68
5/15, 5/07b, 5/07d	Required for the diversion of a water pipeline	Work No.60
5/09e, 5/09c, 5/09d,	Required to provide an improved private	Work No.71

5/09b	means of access and for the diversion of electric cables and associated auxiliary works and for the diversion of a gas pipeline and for the diversion for telecommunications cables	Work No.72 Work No.73 Work No.74 Work No.75 Work No.76 Work No.120
<b>Land Plans – Sheet 6</b>		
6/43a	Required to provide a construction working area for highway boundary fencing	Work No.87
<b>Land Plans – Sheet 7</b>		
7/01a	Required to provide a construction working area for highway boundary fencing	Work No.58
7/02d	Required to provide a construction working area for highway boundary fencing and for the diversion of a water pipeline	Work No.58 Work No.77
7/06b, 7/06c, 7/08a, 7/07a	Required to provide a construction working area for highway boundary fencing	Work No.58 Work No.90 Work No.93
7/07b, 7/07c	Required to provide a construction working area for highway boundary fencing and pavement widening	Work No.58
7/04a	Required to provide a construction working area for highway boundary fencing and culvert	Work No.58 Work No.91
<b>Land Plans – Sheet 8</b>		
8/02d	Required to provide a construction working area for highway boundary fencing	Work No.29
8/02e, 8/04	Required to provide a habitat mitigation area	All Works

SCHEDULE 8  
DEEMED MARINE LICENCE

Article 35

PART 1  
INTRODUCTORY

**Interpretation**

1.—(1) In this licence—

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

“the 2009 Act” means the Marine and Coastal Access Act 2009(b);

“authorised development” has the meaning given in paragraph 4;

“licence holder” means the undertaker and any agent, contractor or sub-contractor acting on its behalf;

“licensed activity” means any activity described in Part 2 of this licence;

“Local Office” means MMO Office, Lutra House, Dodd Way, Walton Summit, Lancashire PR5 8BX;

“MMO” means the Marine Management Organisation;

“the Order” means The A585 Windy Harbour to Skippool Highway Development Consent Order [ ];

“the undertaker” means Highways England Company Limited (registered company number 09346363);

“Works Plans” means the plans certified as the Works Plans by the Secretary of State under article 41 of the Order, references to a particular Works Plan must be construed accordingly.

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to two decimal places.

**Addresses**

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this licence is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH, telephone 0300 123 1032.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is [marine.consents@marinemanagement.org.uk](mailto:marine.consents@marinemanagement.org.uk) and the address for electronic communication with the Local Office for the purposes of this licence is [preston@marinemanagement.org.uk](mailto:preston@marinemanagement.org.uk).

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(a) 2008 c.29.  
(b) 2009 c.23.

## PART 2

### LICENSED ACTIVITIES

3. Subject to the licence conditions in Part 4 of this licence, this licence authorises the licence holder to carry out any licensable marine activities under section 66(1) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

4. In this licence, “authorised development” means—

- (a) The construction of a culvert (Skippool Clough), approximately 104 metres in length, running directly beneath Skippool Junction, including the abandoning of the existing Skippool Clough culvert comprising—
  - (i) Works to Horsebridge Dyke.
  - (ii) The works include alterations of the headwall and apron including re-provision of the Environment Agency’s flap valve and alterations to highway drainage outfall through the headwall.
  - (iii) Any works ancillary to these works.
- (b) The works described above are located at—
  - (i) Point reference 1 – Easting 335495E, Northing 440629N, 10km Tile SD3549540629;
  - (ii) Point reference 2 – Easting 335485E, Northing 440609N, 10km Tile SD3548540609;
  - (iii) Point reference 3 – Easting 335485E, Northing 440610N, 10km Tile SD3548240610; and
  - (iv) Point reference 4 – Easting 335491E, Northing 440630N, 10km Tile SD3549140630.

## PART 3

### ENFORCEMENT

5. Any breach of this licence does not constitute a breach of the Order but is subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act as a licence deemed to have been granted under section 149A of the 2008 Act.

## PART 4

### CONDITIONS

6. The licence holder must inform the MMO and the Local Office in writing of the intended start date and the likely duration of licensed activities on a site at least 10 business days prior to the commencement of the first licensed marine activity.

**7.** Should the licence holder become aware that any of the information on which the granting of this licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity. Failure to do so may render this licence invalid and may lead to enforcement action.

**8.** The licence holder must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with Environment Agency Pollution Prevention Guidelines.

**9.** The licence holder must ensure that the MMO and the Local Office is notified in writing of the completion of the works within 10 business days following the completion of any of the works.

**10.** The licence holder must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within 6 weeks of completion of any of the works.

**11.** The licence holder must notify the MMO in writing of any agents, contractors or sub-contractors that will carry on any licensed activity listed in this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will carry on the licensed activity on behalf of the licence holder.

**12.—(1)** Any oil fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team within 12 hours

- (a) Within office hours: 0300 200 2024
- (b) Outside office hours: 07770 977 825
- (c) At all times if other numbers are unavailable 0345 0518486. [dispersants@marinemanagement.org.uk](mailto:dispersants@marinemanagement.org.uk)

**13.** Bunding and/or storage facilities must be installed to contain and prevent the release of fuel, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment. Secondary containment must be used with a capacity of no less than 110% of the container's storage capacity.

**14.** The licence holder must submit a method statement to the MMO at least 10 weeks prior to the proposed commencement of the licensed activities. Once approved the method statement and any mitigation measures contained therein must be strictly adhered to. Licensed activities must not commence until written approval is used by the MMO.

**15.** The licence holder must not discharge waste concrete slurry or wash water from concrete or cement into the river. The licence holder must site concrete and cement mixing and washing areas at least 10 metres from the river or surface water drain to minimise the risk of run off entering the river.

**16.—(1)** Vibro-piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth. If percussive piling is necessary soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved.

- (a) The sort-start duration must be a period of not less than twenty minutes.
- (b) Should piling cease for a period greater than ten minutes, then the soft start procedure must be repeated.

**17.** If concrete is to be sprayed suitable protective sheeting must be provided to prevent rebounded or windblown concrete from entering the water environment. Rebound material must be cleared away before the sheeting is removed.



**18.** During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

SCHEDULE 9  
HEDGEROWS AND TREES

Article 34 and 37

PART 1  
HEDGEROWS

<i>(1) Hedgerow</i>	<i>(2) Work to be carried out</i>	<i>(3) Relevant part of the authorised development</i>	<i>(4) Important Hedgerow</i>
H1	Removal	Work Nos.13, 15, 16, 17, 21 and 34	No
H2	Removal	Work Nos.17, 21, 34 and 122	No
H3	Removal	Work Nos.21, 22, 26, 27 and 36	No
H4	Removal	Work Nos.28, 29, 30, 31, 32, 33 and 34	No
H5	Removal	Work Nos.38, 39 and 40	No
H6	Removal	Work No.41	Yes
H7	Removal	Work Nos.38 and 41	Yes
H8	Removal	Work Nos.40, 96 and 108	Yes
H9	Removal	Work Nos.40, 44 and 107	Yes
H10	Removal	Work No.107	Yes
H11	Removal	Work Nos.58, 60 and 62	Yes
H12	Removal	Work Nos.58, 64, 65, 67, 69, 70, 71, 72, 73, 74, 75 and 76	Yes
H13	Removal	Work Nos.58, 64, 65, 67, 69, 70, 71, 72, 73, 74, 75 and 76	No
H14	Removal	Work Nos.85, 87 and 89	No
H15	Removal	Work Nos. 58, 79 and 114	Yes
H16	Removal	Work Nos.58, 80, 81, 82, 91 and 92	No
H17	Removal	Work Nos.58 and 90	Yes
H18	Removal	Work Nos.58 and 93	Yes
H19	Removal	Work Nos.58, 80, 81, 82, 91 and 92	No
H20	Removal	Work No.58	No
H21	Removal	Work Nos.58, 80, 81, 82, 91 and 92	No
H22	Removal	Work No.97	No
H23	Removal	Work No.115	No

## PART 2

### TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>	<i>(4)</i> <i>TPO reference</i>
Multiple species (group TPO)	Felling/Removal	Work Nos.58, 64, 65, 69, 70, 71 and 73	FYLDE TPO 1- 1974

# SCHEDULE 10

## PROTECTIVE PROVISIONS

Article 31 and 40

### 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 (excluding Cadent Gas Ltd to whom the provisions of Part 3 of this Schedule shall apply) 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) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 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—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

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(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.

- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
  - (g) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (h) 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 undertaker to whom it belongs or by whom it is maintained.

#### *On street apparatus*

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

#### *Apparatus in stopped up streets*

4.—(1) Where any street is stopped up under article 13 (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 12 (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 18 (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 an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility

undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (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 43, 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 43 (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 43 (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 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);

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(a) 2003 c. 21.



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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act<sup>(a)</sup>;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) 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 7(2) of that code; and

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

**16.** The exercise of the powers conferred by article 31 (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 43 (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.

## PART 3

### FOR THE PROTECTION OF CADENT GAS LTD AS GAS UNDERTAKER

#### **Application**

18. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

#### **Interpretation**

19. In this Part of this Schedule—

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

“acceptable insurance” means a third party public & products liability insurance maintained by the undertaker or their contractors with a limit of fifty million pounds (£50,000,000) in respect of any one occurrence without limit to the number of occurrences in any annual policy period, but fifty million pounds (£50,000,000) for any one occurrence and in the aggregate per annum in respect of liability arising out of products and pollution or contamination liability;

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“Cadent” means Cadent Gas Ltd and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“commence” has the same meaning as in article 2(1) of the Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include operations consisting of archaeological investigations, non-intrusive investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

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

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under subparagraph 24(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under subparagraph 24(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties GD/SP/SSW/22”); and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

### **On Street Apparatus**

**20.**—(1) Except for paragraphs 21 (apparatus in stopped up streets), 26 (retained apparatus : protection of Cadent), 27 (expenses) and 28 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) Paragraph 24 and 25 of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway.

### **Apparatus of Cadent in stopped up streets**

**21.**—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 13 (*permanent stopping up and restriction of use of streets and private means of access*), if Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 24.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (*temporary stopping up and restriction of use of streets*), Cadent will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway

(3) The Protective Provisions in this Part of this Schedule apply and take precedence over article 32(2) to (7) to the Order which shall not apply to Cadent.

### **Protective works to buildings**

**22.**—(1) The undertaker, in the case of the powers conferred by article 18 (*protective work to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to Cadent for any loss sustained by it; and
- (b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement, admission of liability or compromise thereof shall be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

**23.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph 23(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments

relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by Cadent under paragraph 26 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 23(1).

(5) As a condition of an agreement between the parties in sub-paragraph 23(1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such de-commissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 24 do not apply, the undertaker must:

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

### **Removal of apparatus**

**24.—**(1) If, in the exercise of the agreement reached in accordance with paragraph 23 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be de-commissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and, the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 25(1) below) the necessary facilities and rights:

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

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

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

**25.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph 25(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 33 (*arbitration*) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of Cadent**

**26.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of

securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement

(8) If Cadent, 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 18 to 20 and 23 to 25 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 24(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties SPGD/SP /SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains, the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 27.

## **Expenses**

27.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 7(3) if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;

- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 9(6).

(2) There will 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 and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

- (a) apparatus of better type, 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 paragraph 33 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

## **Indemnity**

**28.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or



authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

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

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (*consent to transfer benefit of order*) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 28; and
- (c) any indirect or consequential loss of any third party arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) The undertaker confirms that:

- (a) it is a self-insuring body, bound by the guidance set out in the HM Treasury Handbook "Managing Public Money";,
- (b) it holds a certificate of exemption under which the Secretary of State exempts it from any obligation to maintain Employers Liability Insurance but it shall be under an obligation to effect and maintain any insurance it is required to hold by statute or law unless an appropriate certificate of exemption is held;
- (c) if, at any time, it ceases to comply with (a) or (b) above it will immediately notify Cadent in writing, shall forthwith put into place the acceptable insurance and shall then maintain that acceptable insurance for the construction period of the authorised works; and
- (d) its response to any indemnity provided under this Part of this Schedule will not be reduced in anyway and any claim shall not be prejudiced because of the undertaker's self-insuring strategy.

(6) In the event that the undertaker fails to comply with paragraph 28(5) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction Cadent must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably

requested to do so by the undertaker Cadent must provide an explanation of how the claim has been minimised.

### **Enactments and agreements**

**29.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**30.—**(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 24(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 26, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent shall use its best endeavours to co-operate with the undertaker for that purpose.

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

### **Access**

**31.** If in consequence of the agreement reached in accordance with sub-paragraph 23(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**32.** Save for differences or disputes arising under sub-paragraphs 24(2) 24(4) and 26(11) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 43 (*arbitration*).

### **Notices**

**33.** The plans submitted to Cadent by the undertaker pursuant to sub-paragraph 26(1) must be sent to Cadent Gas Limited Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

## **SCHEDULE 11**

Article 41

### **DOCUMENTS TO BE CERTIFIED**

(1) <i>Document</i>	(2) <i>Document Reference</i>	(3) <i>Revision</i>
Book of Reference	TR010035/APP/4.3	[ ]

Flood Risk Assessment	TR010035/APP/5.2	[ ]
Habitat Regulation Assessment	TR010035/APP/5.4	[ ]
Environmental Statement	TR010035/APP/6.1 – 6.20	[ ]
Outline CEMP	TR010035/APP/7.2	[ ]
Location Plan	TR010035/APP/2.1	[ ]
Land Plans	TR010035/APP/2.2	[ ]
Works Plans	TR010035/APP/2.3	[ ]
Streets, Rights of Way and Access Plans	TR010035/APP/2.4	[ ]
Traffic Regulation Measures and De-trunking Plans	TR010035/APP/2.8	
Classification of Road Plans	TR010035/APP/2.7	[ ]
Engineering Drawings and Sections	TR010035/APP/2.6	[ ]
Hedgerow and Protected Trees Plans	TR010035/APP/2.10	[ ]
Crown land plans	TR010035/APP/2.11	[ ]
Record of Environmental Actions and Commitments	TR010035/APP/7.3	[ ]

## **EXPLANATORY NOTE**

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

This Order authorises Highways England to undertake works to alter and improve the A585 Windy Harbour to Skippool Highway and carry out all associated works.

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 outline CEMP mentioned in this Order and certified in accordance with article 41 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, Piccadilly Gate, Store Street, Manchester, M1 2WD.

**2019 No. [     ]**

**INFRASTRUCTURE PLANNING**

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

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