

A47 Wansford to Sutton Dualling

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3.2 Explanatory Memorandum

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A47 Wansford to Sutton Development Consent Order 202[x]

3.2 EXPLANATORY MEMORANDUM

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1. SUMMARY

- 1.1 This memorandum explains the purpose and effect of each article of, and the requirements of, the draft A47 Wansford to Sutton Development Consent Order (**TR010039/APP/3.1**) (the **Order**), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

2. PURPOSE OF THE ORDER

- 2.1 National Highways Company Limited (National **Highways**) is applying to the Secretary of State for a development consent order to carry out the scheme to make the A47 between Wansford and Sutton a dual carriageway (**Scheme**).
- 2.2 National Highways is the strategic highway company responsible for operating, maintaining and improving the Strategic Road Network (**SRN**) in England. National Highways (formerly Highways England) became a Government owned company in April 2015, succeeding to the functions of the Highways Agency.
- 2.3 The SRN is made up of the motorway and major A roads network. The A47 is part of the SRN.
- 2.4 In summary the Scheme consists of approximately 2.6km of new dual carriageway constructed on the existing A47, including the construction of two new underpasses.
- 2.5 The Scheme comprises:
- approximately 2.6km of new dual carriageway constructed largely offline of the existing A47, including the construction of two new underpasses
 - a new free-flow link road connecting the existing A1 southbound carriageway to the new A47 eastbound carriageway
 - a new link road from the Wansford eastern roundabout to provide access to Sacrewell Farm, the petrol filling station and the Anglian Water pumping station
 - closure of the existing access to Sacrewell Farm with a new underpass connecting to the farm from the link road provided
 - a new slip road from the new A47 westbound carriageway also providing access to the petrol filling station
 - a link road from the new A47 Sutton Heath roundabout, linking into Sutton Heath Road and Langley Bush Road
 - new junction arrangements for access to Sutton Heath Road and Langley Bush Road
 - closure of the existing accesses to the A47 from Sutton Heath Road, Sutton Drift and Upton Road
 - improvements to the existing Upton Drift (also referenced as Main Road), including new passing places, straightening of the S-bend and sight lines, and widening to 3.5m
 - new walking and cycling routes, including a new underpass at the disused railway
 - new safer access to the properties on the A1, north of Windgate Way
 - installation of boundary fencing, safety barriers and signage
 - new drainage systems including:
 - two new outfalls to the River Nene and new outfall to Wittering Brook

- extension of the A1 culvert at the Mill Stream
 - realignment and extension of the Wansford Sluice
 - drainage ditch interceptors
 - new attenuation basins, with pollution control devices, to control discharges to local watercourses
 - River Nene compensatory flood storage area
 - works to alter or divert utilities infrastructure such as electricity lines, water pipelines and telecommunications lines
 - temporary compounds, material storage areas and vehicle parking required during construction
 - environmental mitigation measures
- 2.6 A detailed description of the Scheme is included in Chapter 2 of the Environmental Statement (TR010039/APP/6.1).

The objectives of the Scheme are:

- (a) **Supporting economic growth:** The scheme will improve journey times and journey time reliability. This will help contribute to sustainable economic growth by providing benefits such as effectively bringing businesses closer together and encouraging more people to join the labour market as a result of reduced commuting costs.
- (b) **Making a safer network:** Improving road safety for all road users by designing to modern highway standards appropriate for a major A road.
- (c) **Providing a more free-flowing network:** Increasing the resilience of the A1 / A47 junction to cope with incidents such as collisions, breakdowns, maintenance and extreme weather. The improved A47 section from Wansford to Sutton will be more reliable, reducing journey times and providing capacity for future traffic growth.
- (d) **Creating an accessible and integrated network:** Ensuring the proposals take into account the local communities access to the road network, and provide a safer route between communities for walking, cycling, horse riding and other road users.

2.7 Nationally Significant Infrastructure Project — construction of a highway

- 2.8 The Scheme is a nationally significant infrastructure project (**NSIP**) within sections 14(1)(h) and 22(1) of the Planning Act 2008 (**2008 Act**). Under section 22 an NSIP must fall within one of the three categories specified, which are expressly stated to be alternatives. This Scheme is the “alteration” of a highway within the meaning of section 22(1)(b).

- 2.9 The Scheme satisfies section 22(3) in that:

- 2.9.1 the highway is wholly in England;
- 2.9.2 National Highways as strategic highways company will be the highway authority for the highway; and
- 2.9.3 the area of the land on which the part of the highway to be altered is situated and any adjoining land expected to be used in connection with its alteration is greater than the

relevant limit set out in subsection (4), which in this case is 12.5 hectares, as speed limits on the Scheme will be in excess of 50mph.

- 2.10 As the Scheme is a NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Planning Inspectorate (**PINS**), under section 37 of the 2008 Act.
- 2.11 Schedule 1 (authorised development) to the Order contains a list of numbered works comprising the Scheme.

Associated development

- 2.12 The draft Order specifically authorises development which is associated with the NSIP. The Secretary of State may, under the provisions of section 115 of the 2008 Act, grant consent for development that is associated with the NSIP (**associated development**).
- 2.13 Guidance on associated development was issued by the Secretary of State for Communities and Local Government (now Secretary of State for Housing, Communities and Local Government). In this guidance associated development is described as being "*typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project*" (paragraph 6) and "*requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development*" (paragraph 5).
- 2.14 The draft Order seeks consent for the redevelopment of the A47 between Wansford and Sutton and constitutes an NSIP for the purposes of the 2008 Act. In addition consent is sought for works which would constitute associated development. Together the NSIP and associated development form the works described in Schedule 1 to the Order.
- 2.15 In some cases there may be some overlap between associated development and works which form part of the NSIP. All elements of the proposed development either constitute part of the NSIP or are associated development within the meaning of section 115(2) of the 2008 Act, and so can properly be authorised by the Order.

3. ANCILLARY MATTERS

- 3.1 The draft Order also contains several ancillary matters, i.e. provisions not consisting of development.
- 3.2 The draft Order seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. It is for this reason that under sections 117 and 120(5) of the 2008 Act the Order must be made by way of Statutory Instrument. The draft Order is therefore in that form.
- 3.3 Other ancillary matters include the temporary and permanent stopping up of lengths of existing highway and private means of access in the vicinity of the Scheme, the classification of highways, the imposition of traffic regulation measures (including the application of speed limits), the creation of new private means of access, and the application and disapplication of legislation.

4. THE DRAFT ORDER

- 4.1 The purpose and effect of the provisions of the draft Order are now explained in sequence. Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265) has been repealed, the draft Order is based on the model provisions (general and railway), as well as other development consent orders that have been made to date.

Part 1 — Preliminary

Article 1 - Citation and commencement

- 4.2 Article 1 sets out the name of the Order and the date on which it comes into force.
- 4.3 This article did not appear in the model provisions. However, it is a standard article that is included in all development consent orders.

Article 2 - Interpretation

- 4.4 The purpose of article 2(1) is to define terms used in the remainder of the Order. It is a standard article and was included in the model provisions as article 1.

- 4.5 The following definitions in particular have been included due to the nature of the Scheme:

- (a) "the 1984 Act";
- (b) "bridleway";
- (c) "carriageway";
- (d) "cycle track";
- (e) "footpath" and "footway";
- (f) "street";
- (g) "street authority";
- (h) "traffic authority"; and
- (i) "trunk road".

- 4.6 Other definitions to note include:

- (a) "commence" which specifies that the carrying out of certain works that would constitute a "material operation" under the Town and Country Planning Act 1990 section 56(4) are not to be taken to mean that the development has "commenced". The list of excluded works is as follows: operations consisting of archaeological investigations and mitigation works, ecological surveys and pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant, equipment, welfare facilities and temporary buildings, diversion and laying of underground apparatus and site clearance, and the temporary display of site notices or advertisements. This enables National Highways to undertake certain preparatory works prior to the submission of relevant details for approval under the Requirements. National Highways considers that this approach is reasonable and proportionate. The works that are excluded from the definition have minimal potential for adverse effects, in line with the Inspectorate's Advice Note 15. Further, the surveys and investigations which are excluded from the definition are required as they will inform the plans, schemes and strategies to be submitted for approval under the Requirements. National Highways should be permitted to carry out low impact preparatory works following the grant of the Order, while it is working to discharge the pre-commencement Requirements, thereby helping to minimise the construction timetable. This is a widely precedented approach in other made DCOs (see for example the M42 Junction 6 Order 2020 and The Silvertown Tunnel Order 2018). Moreover, satisfactory controls are in place for carrying out these preliminary works either because certain approvals are required before the terms of requirements can be met or by environmental licensing requirements. The list of preliminary works are also found in the emerging M54/M6 Link Road draft DCO save for welfare facilities and temporary buildings.
- (b) "maintain" which includes inspect, repair, adjust, alter, remove, replace or reconstruct (see paragraph 4.18 below); This definition has been approved by the Secretary of State in the making of previous highway development consent orders, for example the M20 Order (article

6).

(c) "Order land" which comprises all of the land to be acquired or used permanently or temporarily as shown on the land plans. This definition has precedent in the A1 Birtley DCO

(d) "Order limits" which references the extent of the area within which the authorised development may be carried out. This definition has precedent in the A1 Birtley DCO.

4.7 Article 2(2) provides that a broad definition of "rights over land" applies to the Order .

4.8 Article 2(3) defines measurements as approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the works are permitted by the Order. Thus this provision allows for a small tolerance with respect to any distances and points, although all works will take place within the limits of deviation. It is common practice to include such provision in legislation authorising linear infrastructure - see, for example, the M20 Junction 10a Development Consent Order 2017 at article 2(3), and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 at article 2(3).

4.9 Article 2(4) provides that areas given in the Book of Reference (**TR010039/APP/4.3**) are approximate, since these are not covered by article 2(3). This is intended to clarify the position of the areas in the Book of Reference, and the purpose and effect is the same as set out in the previous paragraph.

4.10 Articles 2(5)-(6) tie references to lettered/numbered points and numbered works in the Order to the relevant plans.

Article 3 - Disapplication of legislative provisions

4.11 This article is based on article 3 of the A303 Sparkford to Ilchester DCO and provides (in reliance on section 120(5)(a) of the 2008 Act) for the disapplication in relation to the construction of the authorised development of certain requirements which would otherwise apply under general legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.

4.12 Paragraph (1) of Article 3 disapplies provisions of the Neighbourhood Planning Act 2017 (**NPA 2017**). This disapplication makes it clear that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. National Highways notes that the provisions relating to temporary possession in the NPA 2017 have not yet come into force and that regulations required to provide more detail on the operation of the regime have not yet been made. Due to the uncertainty in relation to the detail around that regime, National Highways has consulted on the long-standing process available under the 2008 Act. National Highways additionally considers that if Parliament wished to apply the NPA 2017 temporary possession regime to DCO projects, it could have done so by effecting amendments to PART VII of the Planning Act 2008. It has not done so, and in the absence of the clarity this would provide, National Highways proposes to proceed under the existing 2008 Act procedure.

4.13 Paragraph (2) disapplies section 32 of the Land Drainage Act 1991 (variation of awards), which allows the relevant drainage authority to make a variation to awards made under public or local Act which may affect or relate to the drainage of land.

4.14 National Highways has produced a Consents and Agreements Position Statement (**TR010039/APP/3.3**) as part of this application. This sets out in greater detail National Highways' proposed approach to obtaining the other consents required for the Scheme.

Article 4 - Maintenance of Drainage Works

4.15 This article is based on the now repealed model provisions and the purpose of this article is to make it clear that any realignment of drainage works or other works to them that are carried out as part of the authorised development do not affect the existing allocation of responsibility for

maintenance of those drainage works, unless this is agreed between National Highways and the responsible party. Responsibility for maintenance of drainage works may sit with the Environment Agency, a lead local flood authority or a landowner. Precedent exists in article 4 of the A14 Cambridge to Huntingdon Improvement Order 2016 (**A14 Order**) and article 5 of The A19/A184 Testo's Junction Alteration Order 2018. National Highways considers that it is a sensible inclusion to clarify who has responsibility for drainage works.

Part 2 — Principal Powers

Article 5 - Development consent etc. granted by the Order

- 4.16 Article 5 provides the principal power to construct and operate the authorised development within the Order limits. Schedule 1 describes the authorised development.
- 4.17 Development consent is subject to the provisions of the Order, including the requirements listed in Schedule 2. This is based on article 2 of the model provisions.
- 4.18 Article 5(2) was not included in the model provisions, but has been included in previous orders such as the M20 Order (article 5(2)) and the A14 Order (article 4(2)). It provides that any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of the Order. As the Order amends and disapplies various enactments that apply to and affect the authorised development, or would otherwise do so, this ensures that the legislative position is consistent.

Article 6 – Construction and maintenance of authorised development

- 4.19 This article sets out the scope within which National Highways may maintain the development. The definition of "maintain" is contained in article 2(1) and matches that which has been approved by the Secretary of State in the making of previous highway development consent orders, for example the M20 Order (article 6). It is therefore considered to be appropriate and acceptable to adopt the same definition for this Scheme. The various elements of the definition ("inspect, repair, adjust, alter, remove, replace or reconstruct") would bear their common sense meanings and would allow National Highways to undertake all types of works reasonably associated with maintenance, as the definition in the Highways Act 1980 is limited to "repair".
- 4.20 Article 6 was included in the model provisions as article 3.

Article 7 - Planning permission

- 4.21 This article permits certain development authorised by a planning permission granted under the Town and Country Planning Act 1990 that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This provision is not a model provision, but ensures that National Highways does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission, provided that development is not of itself an NSIP or part of one, or required to complete or enable the use or operation of any part of the authorised development. This article is based on article 7 of The A30 Chiverton to Carland Cross Development Consent Order 2020.

Article 8 - Limits of deviation

- 4.22 Since the authorised development involves linear works, article 8 provides for limits of deviation to allow for a lateral deviation of 3m from the centre lines shown on the Works Plans (**TR010039/APP/2.3**) for the highway works and within the limits of deviation shown on the Works Plans for the non-highway works, and a vertical deviation subject to a maximum deviation of 1.0 metre upwards or 1.0 metre downwards.
- 4.23 The ability to deviate within the prescribed limits of deviation is important to ensure that, if the precise 'as built' alignments or elevations are slightly different to those indicatively shown on the application plans, no question arises as to whether the works are permitted by the Order. The limits of deviation ensure that National Highways and its contractor have sufficient flexibility to design and construct the authorised development post consent.

- 4.24 The limits of deviation set out in article 8 have been developed through the design and Environmental Impact Assessment (EIA) process for the Scheme, as such the article is an adaption of the article set out in the model provisions and in terms of principle, it accords with the majority of DCOs made to date (for example, article 6 of the A19/A184 Testo's Junction Alteration Order and article 7 of the A1 Birtley DCO)

Article 9 - Benefit of Order

- 4.25 This article overrides section 156(1) of the 2008 Act (as permitted by section 156(2)) to give the benefit of the Order to National Highways rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the Order in an uncoordinated manner, which might be the case if section 156(1) were to apply.
- 4.26 The purpose of paragraph (2) is to clarify the exceptions where the Order will self-evidently benefit others, such as rights for statutory undertakers to undertake works to their own apparatus, and mitigation works outlined in the Schedule 1 description of the works. Without this provision, there would be a contradiction since strictly speaking only National Highways could benefit from these works. The same wording was accepted and approved by the Secretary of State in the A14 Cambridge to Huntingdon Improvement Scheme DCO (see article 8(2)), the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO (see article 7(2)), the A19/A184 Testo's Junction Alteration DCO (see article 7(2)) and in the A1 Birtley DCO.

Article 10 - Consent to transfer benefit of Order

- 4.27 This article allows the benefit of the Order to be transferred to others by National Highways. The exercise of any transferred benefit or rights is subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were exercised by National Highways. If the benefit of compulsory acquisition powers is transferred, National Highways remains liable for any compensation payable as a consequence of the exercise of those powers by the transferee. The consent of the Secretary of State is required for a transfer or grant, except where it is made to a specified company in respect of a particular work (for example for a particular utility diversion work).
- 4.28 This article is based on article 5 of the model provisions. It differs in that it allows a transfer or grant to a specified company to take place without the Secretary of State's consent in relation to specific works, on the basis that it is appropriate for those companies to be able to carry out those particular works. This article has precedent in the A1 Birtley DCO article 9.

Part 3 — Streets

Article 11 - Application of 1991 Act

- 4.29 This article provides for the application of the New Roads and Street Works Act 1991 (**1991 Act**). Although not included in the model provisions, there is precedent for these provisions in respect of the development consent orders granted for other major highways schemes, for example the M20 Order (article 9(2)), the M4 Order (article 7(2)) and the A14 Order (article 8(2)).
- 4.30 Paragraphs (1) and (2) provide that certain works carried out under the authority of the Order are to be "major highway works" for the purposes of the 1991 Act. The effect of this is to clarify that the cost-sharing provisions relevant to the diversion of utility apparatus (which would apply to such works under the 1991 Act if carried out by the highway authority) will apply in respect of the works authorised by the Order, irrespective of who carries them out.
- 4.31 Paragraph (3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order, and the specific provisions in the Order which regulate the carrying out of the Order works.
- 4.32 Paragraphs (4) to (6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to streets

which are to be temporarily restricted for use, altered or diverted under the Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporarily affected street are 'street works' for the purposes of the 1991 Act; and secondly, it simplifies the implementation of the works by providing for a single process in respect of streets which are stopped up and those which are not.

- 4.33 Paragraph (7)(a) provides that nothing in article 12 of the Order (which provides that any highway other than a special road or a trunk road that is constructed, altered or diverted under the Order must be maintained by the local highway authority) affects the operation of section 87 of the 1991 Act, which allows a local highway authority to declare that a street in its area is likely to become a maintainable highway and consequently that Part 3 of the 1991 Act applies to that street. National Highways will not be under the duties that apply to a street authority under the 1991 Act by virtue of being responsible for the maintenance of a street under article 11.
- 4.34 Paragraph (7)(b) clarifies that the provisions relating to responsibility for maintenance of streets in article 11 do not affect the application of Part 3 of the 1991 Act to maintenance works which are street works for the purposes of the 1991 Act. 'Street works' is defined in section 48(3) of the 1991 Act as including works for the maintenance of apparatus (but excluding works for road purposes) that are executed in pursuance of a statutory right or a street works licence.
- 4.35 Paragraph (8) provides that any order made under the 1991 Act for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012 will not have effect in relation to construction or maintenance of the authorised development.

Article 12 - Construction and maintenance of new, altered or diverted streets and other structures

- 4.36 The purpose and effect of the article are as follows:
- (a) Under the Highways Act 1980 and the Appointment of a Strategic Highways Company Order 2015, National Highways is the highway authority for, and therefore is responsible for maintaining, trunk roads, including those to be provided as part of the Scheme. For any other highways and streets, this article determines the body that will be liable for maintenance. Liability for maintenance would transfer to the local highway authority or to the street authority as appropriate on completion of the works. Paragraphs (1) to (6) allow National Highways to make contrary agreements with the local highway authority concerned.
 - (b) Paragraphs (1) to (3) are subject to paragraph (4), which makes specific maintenance provision in relation to new bridges carrying public rights of way.
 - (c) The effect of paragraphs (7) and (8) is that in any action for damages against National Highways alleging failure to maintain a street, National Highways will have the defence that it had taken such care as was reasonably required in the circumstances to secure that the street was not dangerous for traffic. This ensures that the provision in section 58 of the Highways Act 1980 applies to National Highways not only in respect of trunk roads for which it is the highway authority but also other roads and is consistent with the approach taken in previous development consent orders.
- 4.37 This article was not drawn from the model provisions, but has been included in all National Highways orders made to date, including most recently the A38 Derby Junctions DCO 2021 (article 14) the M42 Junction 6 DCO 2020 (article 13) and A1 Birtley DCO 2021 (article 11).

Article 13 - Classification of roads, etc.

- 4.38 The designation of highways, the specification of the classes of traffic authorised to use a highway and speed limits are ancillary matters, which may be included in a development consent order. These and other related matters are addressed by this article. These matters are integral to the implementation of the Scheme and it is therefore appropriate to include them in the Order as ancillary matters.
- 4.39 Article 13(1) provides for the roads described in Part 1 of Schedule 3 to become trunk roads. Under paragraph (1) they will be classified as trunk roads from the date that they are complete and open to traffic.

- 4.40 Paragraph (2) provides for the roads described in Part 2 of Schedule 3 to become classified roads from the date that they are complete and open to traffic.
- 4.41 Paragraph (3) provides for the roads described in Part 3 of Schedule 3 to become unclassified roads from the date that they are complete and open to traffic.
- 4.42 Paragraph (4) imposes speed limits on certain sections of the Scheme as described in Part 4 of Schedule 3.
- 4.43 Paragraph (5) provides that the orders specified in Part 5 of Schedule 3 are to be varied or revoked as specified in that Part on such day as National Highways may determine. Again, in practice the relevant date(s) will be agreed with or notified to the local highway authority.
- 4.44 Paragraph (6) confirms that the cycle tracks, footways and bridleways in Part 4 of Schedule 6 will be provided unless otherwise agreed with the relevant planning authority.
- 4.45 Paragraph (7) provides for the trunk roads described in Part 7 of Schedule 3 to cease to be trunk roads on such day as National Highways may determine. In practice this will be a date that has been agreed with or notified to the local highway authority.
- 4.46 The purpose of paragraph (8) is to confirm that the matters covered in paragraphs (1) to (7) could be varied or revoked in the future without the need to apply under the 2008 Act for an amendment to the Order.
- 4.47 Article 13 was not included in the model provisions, but has been included – with minor, scheme-specific adjustments – in many National Highways orders made to date, such as the A30 Chiverton (article 14), the A303 Sparkford (article 14) and the M20 (article 13) DCOs,

Article 14 - Power to alter layout etc. of streets

- 4.48 This Article allows National Highways to alter the layout of existing streets within the Order limits for the purpose of constructing and maintaining the authorised development. This is subject to the consent of the street authority who must be given the specified period of notice in advance of exercising the powers. This consent is deemed given if the street authority does not respond to National Highways' consent request within 6 weeks.
- 4.49 Paragraph (2) requires National Highways to restore any street that has been temporarily altered to the reasonable satisfaction of the street authority.
- 4.50 Paragraph (5) provides that paragraphs (2), (3) and (4) do not apply where National Highways is the street authority for the street in which the works are being carried out.
- 4.51 It is considered appropriate to provide a power for National Highways as a strategic highways company to enter and carry out works to side roads that would otherwise be within the purview of the local highway authorities. It is unnecessary to list the affected roads, since their location and extent is self-evident from the works, land and rights of way plans.
- 4.52 This Article is necessary under section 120(5)(c) of the 2008 Act to give full effect to Articles 5 (Development consent etc granted by the Order) and 6 (Construction and maintenance of authorised development).

Article 14 is based on Article 11 of the National Grid (North London Reinforcement Project) Order 2014 and Article 11 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and Article 11 of the A1 Birtley DCO (2021).

Article 15 - Street Works

- 4.53 Article 15 allows National Highways to break up or open, tunnel or bore under, remove or use earth and materials in or under and place and maintain apparatus in or under the streets in the Order Limits for the purposes of the authorised development. The authority given by this article is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991.

- 4.54 This article is based on article 8 of the model provisions. There is precedent for this article in article 11 of the M4 DCO and article 12 of the A1 Birtley DCO (2021) with scheme specific amendments.

Article 16 – Temporary alteration, diversion, prohibition and restriction of use of streets

- 4.55 This article allows for the temporary alteration, diversion, prohibition or restriction of streets for the purposes of the Scheme, whilst ensuring that essential pedestrian access to and from premises along that street is maintained if necessary (paragraph (3)).
- 4.56 Paragraph (2) confers a power on National Highways, where a street has been temporarily prohibited or restricted for use under this article, to use it as a temporary working site.
- 4.57 Under paragraph (4) the consent of the street authority is required where National Highways is not the street authority. The street authority may attach reasonable conditions to any consent, but must not unreasonably withhold or delay consent.
- 4.58 Paragraph (5) provides a right to compensation for any person suffering loss due to the suspension of a private right of way under this article.
- 4.59 Paragraph (6) has been included in previous development consent orders for highway schemes, for example on the M20 Order (article 14(6)), the A14 Order (article 14(6)) and the A47 Blofield to North Burlingham Order (article 16(6)).

Article 17 - Permanent stopping up and restriction of use of streets and private means of access

- 4.60 This article allows the streets and private means of access identified in Schedule 4 to be stopped up (i.e. the legal right of way along them to be extinguished). Since the definition of a 'street' in section 48 of the New Roads and Street Works Act 1991 includes highways and footways such ways can be stopped up under this article as well as vehicular accesses.
- 4.61 Paragraph (2) relates to the highways and private means of access to be stopped up as specified in Parts 2 and 3 of Schedule 4, for which a substitute is to be provided. It requires the substitute to be completed and open for use, or a temporary alternative route to be available, before the highway or private means of access in question is stopped up.
- 4.62 For the streets and private means of access to be stopped up as specified in Parts 1 and 4 of Schedule 4, no substitute street or private means of access is to be provided. Such a street or private means of access may not be stopped up unless the conditions referred to in paragraph (4) of article 17 are met.
- 4.63 Paragraph (6) provides a right to compensation for any person suffering loss due to the suspension or extinguishment of a private right of way under this article.

This article was included in the model provisions as article 9. The provision has been included in previous development consent orders for highway schemes, for example on the A1 Birtley DCO (article 16) and the A303 Sparkford to Ilchester Dualling DCO (article 16). *Article 18 - Access to works*

- 4.64 This article allows accesses to be created within the Order limits. It is anticipated that this article will be relied on by National Highways to provide temporary accesses as required during the construction period, with all permanent means of access (including private means of access) forming part of the authorised development. This article departs from the model provisions (article 12) to provide National Highways with a general power to provide means of access, the intention being to provide similar powers to those available under the Highways Act 1980. There is precedent for this article in the A1 Birtley DCO at article 17 and the M20 Junction 10a Order at article 16.
- 4.65 The provisions of this article confer slightly broader powers than those contained in the Act, which allows a highway authority to provide “a new means of access to any premises” where it considers it “necessary or expedient in connection with the construction, improvement or alteration of a highway” to do so. The inclusion of this article is considered to be appropriate as it will help to

ensure that the authorised development can be carried out expeditiously by allowing National Highways to create new temporary accesses as and where required, particularly in response to requests from landowners, occupiers and other affected parties.

Article 19 - Clearways, prohibitions and restrictions

- 4.66 This article is necessary to ensure safe and proper operation of the authorised development, and to ensure that the Scheme delivers its intended benefits. It is therefore appropriate to include it in the Order as an ancillary matter under section 120(3) of the 2008 Act.
- 4.67 Paragraph (1) prohibits waiting on any part of a road specified as a clearway in Part 7 of Schedule 3 except upon the direction of or with a permission of a uniformed constable or traffic officer.
- 4.68 Paragraph 2 set out a list of circumstances in which it would be lawful for a vehicle to contravene the restrictions and prohibitions set out in paragraph (1).
- 4.69 Paragraph (3) imposes a prohibition on waiting on any part of the highway to be constructed for the purposes of selling or dispensing goods from a vehicle. This provision is intended to prevent unauthorised trading on the highway, particularly in the laybys which are not designed to accommodate such a use.
- 4.70 Paragraph (4) confirms that the provisions of this article can be varied or revoked in the future without the need to apply under the 2008 Act for an amendment to the Order.
- 4.71 This article was not included in the model provisions but has been included in all National Highways orders made to date except the M4 Smart Motorway Order 2016.

Article 20 - Traffic regulation

- 4.72 The purpose of this article is to provide National Highways with powers to make traffic regulation orders in relation to roads for which it is not the highway authority, so that it can implement traffic management measures (e.g. restrictions on the use of roads) necessary to construct the authorised development.
- 4.73 This article would, at any time up to 12 months from the opening of the authorised development for public use, allow National Highways, in so far as it is necessary or expedient for the purposes of the construction, maintenance or operation of the authorised development, to:
- (a) revoke, amend or suspend in whole or in part any order made under the Road Traffic Regulation Act 1984;
 - (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; make provision as to the direction or priority of vehicular traffic; and
 - (d) permit or prohibit vehicular access to any road.
- 4.74 Under paragraph (3) any restriction etc. made before the end of the 12 month period may continue to have effect after that period has expired.
- 4.75 Implementation of any of the measures is subject to the prior approval of the traffic authority in whose area the roads are situated. Requirement is made in paragraphs (4) and (5) for the chief officer of police and the relevant traffic authority to be consulted and notified in advance. The notification period varies depending on what is being proposed.
- 4.76 Any restrictions etc. may be suspended, varied or revoked by National Highways within a period of 24 months from the opening of the authorised development (paragraph (7)).
- 4.77 This article was not included in the model provisions but has been included in all previous National

Highways orders (for example article 47 of the M20 order, article 43 of the M4 Order, article 45 of the A14 Order and article 19 of the A1 Birtley Order). It is anticipated that this article will be used inter alia to allow National Highways to amend the speed limits on small sections of the public highways adjacent to and connecting to the Order Land for which Peterborough City Council is the Highway Authority and traffic authority. These amendments are required to align the existing speed limits with those to be imposed on the altered stretches of highway within the Scheme to which they connect.

Part 4 — Supplemental powers

Article 21 - Discharge of water

- 4.78 This article sets out the circumstances in which National Highways is entitled to discharge water into a sewer, watercourse or drain, and its purpose is to establish statutory authority for doing so.
- 4.79 The effect of paragraph (3) is that this can only be done with the consent of the owner. Consent can be given subject to reasonable terms and conditions, but cannot be unreasonably withheld.
- 4.80 Paragraph (5) requires National Highways to take reasonably practicable steps to ensure that any water that is discharged is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- 4.81 This provision has been included in previous National Highways orders, for example the M20 Order (article 18(7)) and the A14 Order (article 17(8)).

Article 22 – Protective works to buildings

- 4.82 The purpose of this article is to allow National Highways to undertake protective works to buildings affected by the authorised development. It was included in the model provisions as article 15 and has broad precedent, for example article 16 of the A19/A1058 Coast Road (Junction Improvement) Order 2016, article 18 of the A19/184 Testo's Junction Alteration Order and article 21 of the A1 Birtley Order.

Article 23 - Authority to survey and investigate the land

This article gives National Highways the power to enter certain land for the purpose of surveying and investigating. It provides that National Highways must give 14 days' notice before exercising the powers of entry. Compensation is payable for any loss or damage caused. Paragraphs (1) to (5) were included in the model provisions as article 16, save for the modification that notice served under article 22(2) must in addition specify the nature of the survey or investigation that is proposed by National Highways. This article has precedent in the M20 Junction 10a Order (article 20) and the A1 Birtley Order.

Part 5 — Powers of Acquisition

Article 24 - Compulsory acquisition of land

- 4.83 This article authorises the acquisition of land by compulsory purchase. It grants the power to acquire the land that is required for the Scheme. This is subject to articles 27 (compulsory acquisition of rights and restrictive covenants) and 34 (temporary use of land for carrying out the authorised development) and 52 (crown rights), which are explained below. This article is based on article 18 of the model provisions. There is precedent for this form of article (see for example article 23 of the A1 Birtley Order and article 20 of the A19/A184 Testo's Junction Alteration Order).

Article 25 - Compulsory acquisition of land - incorporation of the mineral code

- 4.84 This article incorporates Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981, exempting existing rights in minerals from the scope of compulsory acquisition unless they are expressly named and conveyed. It also makes provision for a situation where the owner of mines or minerals wishes to work such mines and minerals. This means that where National Highways acquires land under the powers of the Order, it will not acquire any mineral deposits present in the

land (other than those necessarily extracted or used in constructing the authorised development) unless they are expressly included in the conveyance. The article is based on article 19 of the Model Provisions and has broad precedent in a number of made development consent orders (see for example the A1 Birtley Order and the A303 Sparkford to Ilchester Order).

Article 26 - Time limit for exercise of authority to acquire land compulsorily

- 4.85 This article gives National Highways five years to issue notices to treat or to execute a general vesting declaration to acquire the land that may be compulsorily acquired under the Order. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made.
- 4.86 The article also sets a 5 year time limit on the power of National Highways to take temporary possession of land under article 34 (temporary use of land for carrying out the authorised development), although it does not prevent National Highways from remaining in possession of land after that time if it took possession within the 5 year limit. This has consistently been approved by the Secretary of State, see for example article 22 of the A14 Order.
- 4.87 This article has broad precedent in article 20 of the model provisions and the previous development consent orders such as the A1 Birtley Order (article 25), the M20 J10A (article 23) and the A19/A184 Testo's Junction Order (article 22).

Article 27 - Compulsory acquisition of rights and imposition of restrictive covenants

- 4.88 This article allows for rights over land to be acquired as well as the land itself, and also for new rights to be created over land. This includes the power to impose restrictive covenants.
- 4.89 It provides for such rights as may be required by National Highways over land which it is authorised to acquire under article 24 (compulsory acquisition of land). The public benefit of this is that it would allow National Highways, if possible, to reduce the area of outright acquisition and rely on rights instead.
- 4.90 Paragraph (2) provides that for the land described in Schedule 5, National Highways' powers of compulsory acquisition are limited to the acquisition of such rights and the imposition of such restrictive covenants in relation to each plot as may be required for the specified purposes set out in column 2 of that Schedule.
- 4.91 The power to impose restrictive covenants will allow for the possibility of reducing the area of outright acquisition and thus enable a more proportionate exercise of compulsory powers. It is therefore in the public interest and has precedent in other highway development consent orders, such as article 23 of the A14 Order. It is required specifically to protect the diverted apparatus of statutory utilities
- 4.92 Paragraph (3) provides that where National Highways only needs to acquire rights over land, it is not obliged to acquire any greater interest in that land.
- 4.93 Paragraph (4) applies Schedule 6, which imposes modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation code applies to the additional categories of acquisition covered by the Order and the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired).
- 4.94 For the purpose of section 126(2) of the 2008 Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.
- 4.95 The article is based on article 21 of the model provisions and has been followed in a number of DCOs for example A1 Birtley Order (article 26), M20 Order (article 24) and the M4 Order (article 22).

Article 28 - Public rights of way

4.96 Article 28(1) provides for the public rights of way specified in Parts 1 and 2 of Schedule 4 and shown on the Rights of Way and Access Plans to be extinguished. The rights of way are extinguished following the expiry of a site notice which must be erected at either end of the way to be extinguished no less than 28 days prior to the extinguishment.

4.97 The article has broad precedent from article 10 of the model provisions and follows the M20 Order (article 25) and the A14 Order (article 24).

Article 29 - Private rights over land

4.98 In order for it to be possible to implement the proposed development, provision is needed for the extinguishment of private rights in the Order land that would be incompatible with that implementation. Article 29 supplies that provision

4.99 Article 29 (1) provides for the extinguishment of private rights over Order land that is subject to compulsory acquisition under the Order from the moment of acquisition or occupation of that land.

4.100 Article 29 (2) provides for the extinguishment of existing private rights over land that is subject to the compulsory acquisition of new rights (but where the underlying land is not subject to powers of compulsory acquisition), if the exercise of those existing rights is inconsistent with the implementation of the Scheme, from the date of acquisition of the right or occupation of the underlying land.

4.101 Article 29(3) provides that rights over Order land that is already owned by National Highways are extinguished on commencement of any activity authorised by the Order which interferes with or breaches those rights.

Article 29 (4) provides for the temporary suspension of private rights over Order land that is not acquired but is occupied temporarily by National Highways in order to construct the proposed development. The suspension is for the duration of the occupation.

4.102 Paragraphs (5) to (8) make provision for compensation and for circumstances where rights are preserved. Paragraph (5) provides that any right holders who suffer loss caused by the extinguishment or suspension of rights will be entitled to compensation.

4.103 Paragraph (9) sets out a list of matters deemed to be private rights. The list of deemed private rights is broad in order to ensure that any right which could potentially interfere with the implementation of the proposed development can be extinguished. At this stage it is not possible to identify any particular right to be excluded from the blanket extinguishment power. A similar list appears in the equivalent article in the A14 Cambridge to Huntingdon Improvement Order 2016 (see article 25), A19/A1058 Coast Road (Junction Improvement) Order 2016 (see article 24) and the A19/A184 Testo's Junction Alteration Order 2018 (see article 24).

4.104 Article 29 is based on article 22 of the model provisions and the most recently approved order, the A1 Birtley Order (article 27).

Article 30 - Modification of Part 1 of the 1965 Act

4.105 The purpose of this article is to ensure consistency between the terms of the Order and the Compulsory Purchase Act 1965 (as amended by the Housing and Planning Act 2016) as applied by section 125 of the Act. It has precedent in the M20 Order (article 27) and the A1 Birtley Order (article 28).

Article 31 - Application of the 1981 Act

4.106 This article applies (with minor modifications to make the provisions appropriate to the context of acquisition under powers in a development consent order) the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 to compulsory acquisition under the Order so that National Highways has the option to acquire land via the vesting declarations procedure.

4.107 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase.

The other method involves serving a notice to treat on the land owner to commence the process of establishing the acquisition price, after which title in the land is transferred. The date on which title will transfer is uncertain under the notice to treat method.

- 4.108 A vesting declaration, in contrast, sets the date on which title in the land is transferred to the acquiring authority. Compensation is negotiated or determined and paid later. Vesting declarations, therefore, allow title in the land to pass to the acquirer more quickly than using the notice to treat method, and also allow several parcels to be acquired at once. Their use is subject to serving notices and observing time limits as required by the 1981 Act (as amended by the Housing and Planning Act 2016).
- 4.109 The modifications ensure consistency with the standard five year period sought under the Order for acquisition rights. It further ensures that the appropriate references are made to the Act. The article is based on article 23 of the model provisions, and previous National Highways orders such as the M20 Order (article 28) and the M4 Order (article 24).

Article 32 - Acquisition of subsoil or airspace only

- 4.110 This article allows National Highways to acquire, or acquire or create rights in, land below the surface or above the surface, rather than having to acquire all of the land.
- 4.111 The purpose of this article is to give National Highways the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on affected landowners and lower payments of compensation, both of which are in the public interest. Any subsoil or airspace acquired under this provision can only be used for the same purposes for which National Highways could have acquired all of the land. This provision allows acquisition of the minimum interest needed to deliver the scheme.
- 4.112 This article is based on article 24 of the model provisions, which related to subsoil only, It has precedent in a number of previous National Highways orders such as A1 Birtley Order (article 30), A14 Cambridge to Huntingdon Improvement Order (article 27), A19/A184 Testo's Junction Alteration Order (article 27), the M20 Order (article 29) and the M4 Order (article 25).

Article 33 - Rights under or over streets

- 4.113 The purpose of this article is to allow National Highways to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without full acquisition, is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place. The article was included in the model provisions as article 27, as well as in the A1 Birtley Order (article 31), the A19/A184 Testo's Junction Order (article 28) and the A303 Sparkford Order (article 32).

Article 34 - Temporary use of land for carrying out the authorised development

- 4.114 The purpose of this article is to allow the land set out in Schedule 7 to be occupied temporarily while the works are carried out. This is land which is required during construction of the Scheme but which is not required permanently. The authorisation of temporary possession prevents National Highways having to permanently acquire land which is required to construct the Scheme but which is not needed permanently and therefore assists in minimising the interference with landowners' rights.
- 4.115 This Article also allows for the temporary occupation of any of the Land intended for permanent acquisition that has not yet been acquired.
- 4.116 The article is based on article 28 of the model provisions, with a number of changes, which have been approved (to the extent referred to in sub paragraphs (a) to (g) below) in the A1 Birtley DCO:
- (a) First, the ability to occupy land temporarily that is subject to powers of permanent acquisition but that has not yet been acquired (paragraph (1)(a)(ii)) has been added. This allows National Highways to occupy land without having to acquire it immediately. There is a consequential amendment to paragraph (3) to cater for the two types of land.

- (b) Secondly, paragraph (1)(d) has been added so that permanent works specified in column (3) of Schedule 7, and any other permanent mitigation works in connection with the authorised development, may be left on land that has been temporarily occupied, rather than having to acquire such land for this purpose. The rationale for this is that it reduces the amount of land that is required to be subject to outright acquisition. The intended scope of 'mitigation works' is any permanent works necessary and appropriate to mitigate the impacts of the Scheme (e.g. landscaping or ecological mitigation works).
- (c) There has been a minor amendment to paragraph (2) to require the notice of intended entry to specify the purpose for which entry is to be taken where land is being entered under paragraph (1)(a)(ii).
- (d) There are amendments to the requirements for restoring the land before returning it to reflect the changes in respect of permanent works. Paragraphs 4(a) to 4(d) are restoration works approved by the Secretary of State in the A1 Birtley DCO. Paragraphs 4(e) and 4(f) have not been included in a made highway order but are included in the emerging draft A 47 North Tuddenham to Easton Dualling Order. (Note: Article 34 to be confirmed during the course of the examination),
- (e) Under paragraph (7) any dispute as to the satisfactory removal of temporary works and restoration of the land under paragraph (4) does not prevent National Highways from giving up possession of the land. This provision is considered to be reasonable as it clarifies that National Highways is able to give up possession of the land, and bring to an end any obligations associated with that possession, without affecting any duty on National Highways to undertake restorative work on land in the event that a dispute under paragraph (4) is resolved in a landowners' favour. This paragraph has been approved in the A1 Birtley DCO.

4.117 As referred to above the provisions in this article follow substantially similar provisions in the A1 Birtley DCO as well as reflecting the wording of other National Highways orders such as the M20 Order (article 31), and the M4 Order (article 28). ..

Article 35 - Temporary use of land for maintaining the authorised development

- 4.118 This article provides that National Highways may take temporary possession of land within the Order limits, as required for the purpose of maintaining the authorised development, at any time within a period of five years from the date on which that part of the authorised development is first opened for use.
- 4.119 Paragraph (1)(c) authorises the construction of such temporary works and buildings on the land as may be reasonably necessary for that purpose. Under paragraph (6) all temporary works must be removed before National Highways gives up possession under this article and the land must be restored to the reasonable satisfaction of the owners.
- 4.120 This power does not apply in relation to houses, gardens or any other buildings for the time being occupied (paragraph (2)).
- 4.121 Paragraph (3) requires at least 28 days' notice of intended entry to be served on the owners and occupiers of the land in question.
- 4.122 Paragraphs (7) to (9) provide for compensation to be paid to owners and occupiers of land of which temporary possession is taken under this article.
- 4.123 This article is substantially based on the wording of article 29 of the model provisions as well as previous Orders such as the A1 Birtley Order (article 33), A19/A1058 Coast Road (Junction Improvement Order (article 28), the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order (article 29) and the A19/A184 Testo's Junction Alteration Order (article 30).

Article 36 - Statutory undertakers

- 4.124 This article allows National Highways to extinguish rights of statutory undertakers and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted

to apparatus which has been specifically shown on the Land Plans (**TR010039/APP/2.2**) and described in the Book of Reference (**TR010039/APP/4.3**). In practice it is impractical to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.

- 4.125 As the land over which this power may be exercised is shown on the Land Plans, and the beneficiaries of such rights are described in the Book of Reference (**TR010039/APP/4.3**), the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 4.126 Paragraph (2) restricts National Highways' power to extinguish rights or remove or reposition apparatus by excluding apparatus in streets. If the streets in question are to be stopped up as part of the authorised development then the provisions of article 37 will apply.
- 4.127 This article has broad precedent in numerous development consent orders (see the A14 Cambridge to Huntingdon Improvement Order (article 32), the A19/A1058 Coast Road (Junction Improvement) Order (article 29), the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order (article 30), the A19/A184 Testo's Junction Alteration Order (article 31) and the M20 Order (article 33) as well as in article 31 of the model provisions.

Article 37 - Apparatus and rights of statutory undertakers in stopped up streets

- 4.128 This article governs what happens to statutory undertakers' apparatus (pipes, cables etc.) under streets that are stopped up by the Order. Without the article, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street.
- 4.129 Under paragraph (2), National Highways may require a statutory undertaker to remove and relocate the apparatus (or apparatus provided in substitution) elsewhere. Paragraph (3) requires National Highways to compensate the statutory undertaker for the reasonable costs it incurs in doing so.
- 4.130 Paragraph (4) provides for a reduction to the amount payable to the statutory undertaker in certain circumstances, including where replacement apparatus is provided that is of a better type, of greater capacity or of greater dimensions and those improvements or increases are not necessary. Paragraph (5) clarifies that the placing of apparatus of a greater length does not count for the purposes of paragraph (4), since it is likely that for most diversions apparatus of greater length will need to be installed. Similarly, joints in apparatus may be necessary and if so that will not lead to a reduction of the amount payable.
- 4.131 Paragraph (6) discounts from the amount payment to the statutory undertaker in compensation any financial benefit to the statutory undertaker that arises as a result of having new rather than old (i.e. older than 7.5 years) apparatus due to the deferment of the timetable for renewal of the apparatus.
- 4.132 Paragraph (7) provides that for those parts of the project that involve major highways works, major bridge works or major transport works (which are defined in Part 3 of the New Roads and Street Works Act 1991 and do not include the construction of a new highway), the compensation provisions under that Act will apply instead.
- 4.133 This article is based on the model provisions (article 32), the A1 Birtley Order (article 35), A19/A1058 Coast Road (Junction Improvement) Order (article 30) and the A19/A184 Testo's Junction Alteration Order (article 34).

Article 38 - Recovery of costs of new connections

- 4.134 This article provides that if any statutory undertaker's apparatus is removed and this interrupts a supply from that apparatus to owners or occupiers of premises such that they have to seek a connection to other apparatus, then their reasonable costs in obtaining a new supply can be claimed from National Highways.
- 4.135 This article was included in the model provisions as article 33. It also has precedent in a number of development consent orders including article 33 of the A19/A184 Testo's Junction Alteration Order and article 36 of the A1 Birtley Order.

Part 6 - Operations

Article 39 - Felling or lopping of trees and removal of hedgerows

- 4.136 This article allows any tree or shrub that is near the project to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the Scheme or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 4.137 Further, this article also authorises the removal of any hedgerow as defined in the Hedgerow Regulations 1997 listed in Schedule 8 Part 1 (removal of hedgerows) and Part 2 (removal of important hedgerows). This article is based on article 39 of the model provisions and recent National Highways orders such as the M20 Order (article 38), the M4 Order (article 35), the A14 Order (article 36) and the A1 Birtley Order (article 37).

Article 40 – Trees subject to tree preservation orders

- 4.138 This article allows any trees subject to a TPO made after the last survey was carried out, to be felled or lopped, or have its roots cut back, if they are considered to obstruct the construction, operation or maintenance of the Scheme or endanger anyone using it. Compensation is payable for any loss or damage caused. The relevant planning authority must be consulted prior to any felling or lopping taking place.
- 4.139 This article is based on article 40 of the model provisions and differs only in that it also applies to trees that are subject to a tree preservation order made after 23 March 2021 which was the date that the last tree surveys were undertaken which informed the Environmental Statement (TR010039/APP/6.1). This article has precedent in article 38 of the A1 Birtley Order and article 36 of the M4 Motorway (Junction 3 to 12) (Smart Motorway) Order.

Part 7 - Miscellaneous and General

Article 41 - Application of landlord and tenant law

- 4.140 This article governs the leasing of land by National Highways to any other person. Essentially it allows the terms of the lease to override any statutory provisions relating to landlord and tenant law.
- 4.141 This was included in the model provisions as article 35 and has precedent in article 40 of the A1 Birtley Order.

Article 42 - Operational land for purposes of the 1990 Act

- 4.142 This effect of this article is that the land within the Order limits is to be treated as the operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) (England) Order 2015/596. Although section 264 is entitled “cases in which land is to be treated as not being operational land”, subsections (3) and (4) set out cases in which land is to be treated as operational land.
- 4.143 This article follows article 36 of the model provisions as well as article 41 of the A1 Birtley Order and article 36 of the A19/A184 Testo's Junction Alteration Order 2018.

Article 43 - Defence to proceedings in respect of statutory nuisance

- 4.144 Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in civil or criminal proceedings for nuisance. This article provides a defence to proceedings brought in a magistrates' court under s.82(1) of the Environmental Protection Act 1990 in relation to certain nuisances set out in paragraph 79(1) of that Act.
- 4.145 The defence is available if the nuisance relates to:
- (a) the use of premises by National Highways for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying

out of the authorised development in accordance with a notice served, or consent given, under the Control of Pollution Act 1974; or

(b) the construction, maintenance or use of the Scheme and cannot reasonably be avoided.

4.146 This article provides a defence to those nuisances which may be of relevance to the authorised development, as set out in the Statement relating to Statutory Nuisances (**TR010039/APP/6.7**) accompanying the application.

4.147 This article is based on article 7 of the model provisions and recent National Highways orders such as the M20 Order (article 42) and the M4 Order (article 38), the A19/A184 Testo's Junction Alteration Order (article 38) and the A1 Birtley Order (article 42).

Article 44 – No double recovery

4.148 This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order.

4.149 The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than his loss, is long established and no part of the compensation code conflicts with this principle.

4.150 This article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, the National Grid (Richborough Connection Project) Development Consent Order 2017 and the North London Heat and Power Generating Station Order 2017.

Article 45 – Disregard of certain interests and improvements etc.

4.151 This article provides for the Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

4.152 It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and the River Humber Gas Pipeline Replacement Order 2016, and TWAOs such as the London Underground (Northern Line Extension) Order 2014 and the Midland Metro (Wolverhampton City Centre Extension) Order 2016.

4.153 The wording of this article mirrors section 4 (assessment of compensation) of the Acquisition of Land Act 1981 (in this paragraph "the 1981 Act"). It is necessary to specifically apply the effect of section 4 of the 1981 Act in the Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and the 2008 Act (nor standard Order provisions) does not apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 46 – Set off for enhancement in value of retained land

4.154 This article provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.

4.155 This article complies with section 126(2) of the 2008 Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and TWAOs such as the London Underground (Northern Line Extension) Order 2014 and the Midland Metro (Wolverhampton City Centre Extension) Order 2016.

- 4.156 The principle in this article is established in section 7 of the Land Compensation Act 1961 (effect of certain actual or prospective development of adjacent land in same ownership), which needs to be applied. Sections 120(3) and 120(5)(a) of and Schedule 5 (by virtue of section 120(3)) to the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 47 - Appeals relating to the Control of Pollution Act 1974

- 4.157 This article establishes an appeal process in circumstances where a local authority issues a notice under section 60, or does not grant consent or grants conditional consent under section 61, of the Control of Pollution Act 1974. Its aim is to streamline the appeal process, thereby minimising the potential for unnecessary delay to the Scheme.
- 4.158 This article was not included in the model provisions but was included in the A14 Order as article 44. It has also been included in other non-highways orders. See for instance paragraph 4 of Schedule 17 to The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014

Article 48 – Protection of interests

- 4.159 This article gives effect to Schedule 9, which contains provisions protecting the interests of third parties. It is a standard article in development consent orders that include protective provisions (see for example A14 Cambridge to Huntingdon Improvement Order, M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order, A19/A184 Testo's Junction Alteration Order and the A1 Birtley Order.
- 4.160 National Highways has sought the views of the statutory undertakers who have interests affected by the authorised development and continues to negotiate with the statutory undertakers to ensure any concerns are dealt with appropriately. National Highways will provide a full update of the status of the negotiations throughout the examination.

Article 49 - Certification of documents, public register etc.

- 4.161 This article provides for the application plans and other documents listed in Schedule 10 to be certified by the Secretary of State as true copies of those documents referred to in the Order. National Highways must establish and maintain, in an electronic form suitable for inspection by members of the public, copies of all Schedule 10 documents as well as a register of the requirements in Part 1 Schedule 2 of the Order requiring further approval by the Secretary of State. The electronic record must be maintained and the status of the requirements kept updated for 3 years after completion of the authorised development.

Article 50 - Service of notices

- 4.162 This article governs the proper service of notices required to be given under the Order. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner.
- 4.163 This article has precedent in previous orders such as article 45 of the M20 Order, article 41 of the M4 Order, article 45 of the A1 Birtley Order and article 42 of the A14 Order.

Article 51 - Arbitration

- 4.164 This article governs what happens when two or more parties disagree in the implementation of any provision of the Order. The matter is to be settled by arbitration and if the parties cannot agree on who the arbitrator should be, this is decided by the President of the Institution of Civil Engineers. Precedent is provided by most development consent orders, including article 42 of the A19/A184 Testos Junction Alteration Order 2018 and article 46 of the A1 Birtley Order.

Article 52 - Crown rights

- 4.165 This article prevents National Highways from acquiring any Crown land, or from otherwise interfering with it, without the written consent of the relevant Crown authority. The Crown's consent may be given unconditionally or subject to terms and conditions.
- 4.166 This article reflects the provisions of section 135 of the 2008 Act. It has precedent in the A19/A1058 Coast Road (Junction Improvement) Order 2016 as article 37.

Article 53 – Removal of Human Remains

- 4.167 The purpose and effect of this article is to disapply section 25 of the Burial Act 1857 and replace it with an alternative procedure for managing the removal of any human remains disturbed during the course of carrying out the authorised development. Article 56 is based on a model provision and found in the A303 Sparkford to Ilchester Order and is required to ensure that the appropriate treatment of such remains does not delay the implementation of the authorised development.
- 4.168 This article departs from the model provision in that paragraph (12) excludes the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and that no relative or personal representative of the deceased is likely to object to their removal. This approach has precedent in the Crossrail Act 2008 and the A303 Stonehenge Order (subsequently quashed). Paragraph (13) requires that the undertaker seeks and complies with direction from the Secretary of State under paragraph (14) regarding the treatment of such remains following their removal.
- 4.167 Paragraph (17) applies section 239 of the 1990 Act to land, and rights over land, acquired under the Order and permits the use of such land notwithstanding any obligation or restriction imposed under ecclesiastical law or law relating to burial grounds, save as provided for in the remainder of the article. Paragraph (18) excludes the application of Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950. The drafting in paragraphs (17) and (18) has precedent in the River Humber Gas Pipeline Replacement Order 2016 and the A303 Stonehenge Order, although like the A303 Stonehenge Order, the Order does not apply section 238 (use and development of consecrated land) of the 1990 Act as there is no consecrated land within the Order Limits.
- 4.168 Taken together the effect of Article 53 is to replace the existing and disparate regimes for regulating the removal of human remains and consolidate the applicable provisions in a single article in the Order. It is required by National Highways to ensure that archaeological remains are recovered appropriately without causing unacceptable delay to the implementation of this nationally significant infrastructure project.

5. SCHEDULE 2: REQUIREMENTS

- 5.1 The requirements in Part 1 of Schedule 2 are the equivalent of planning conditions. They apply to the carrying out and operation of the authorised development and reflect the processes and procedures usually employed by National Highways when implementing a scheme such as this.
- 5.2 Approvals will be sought from the Secretary of State for Transport. In practice this would involve certain internal approvals being obtained from independent teams within National Highways before the details are formally submitted by the project team within National Highways to the Secretary of State for Transport for approval.
- 5.3 National Highways understands that decision-making by the Secretary of State would follow similar internal processes to those employed in taking other quasi-judicial decisions (for example, in deciding whether to make a DCO or a Transport and Works Act Order), meaning a separation within the Department for Transport's Strategic Roads Division of those involved in discharging requirements from those involved in delivery of the Scheme through their relationships with National Highways.
- 5.4 The requirements provide that the various schemes, details and plans to be approved must, where appropriate, reflect the mitigation measures included in the Environmental Statement (TR010039/APP/6.1). This is the mechanism to ensure that environmental mitigation is secured by the Order, and the approach here is consistent with other DCOs which have been made. The requirements provide that the approved schemes, details and plans must be implemented as approved, unless further amendments to them are approved. A general provision to this effect is provided at requirement 13.
- 5.5 Turning to the purpose and effect of the requirements (a), (b) and (c) below are consistent with the provisions in the A1 Birtley Order, the M20 Junction 10A Order and the A19/A184 Testo's Junction Order :

- (a) Requirement 1 (*Interpretation*) contains a number of definitions used in Part 1 of Schedule 2.
- (b) Requirement 2 (*Time limits*) provides that the authorised development must not commence later than 5 years from the date of the Order coming into force.
- (c) Requirement 3 (*Detailed design*) provides that the authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the Engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority. The ability for the Secretary of State to allow for variations to the detail in the Engineering Drawings and Sections (**TR010039/APP/2.5**) is qualified by having to be within the parameters of what has been assessed in the Environmental Statement (**TR010039/APP/6.1**). This means that an appropriate balance is achieved between flexibility in detailed design and clarity of what is to be constructed.
- (d) Requirement 4 (*Environmental Management Plan*) requires the preparation of the second iteration of an environmental management plan (**EMP**) in consultation by the undertaker with the relevant planning and highway authorities, the Historic Buildings and Monuments Commission for England, the Environment Agency and the lead local flood authority and for its approval by the Secretary of State before a part of the authorised development commences (sub-paragraph (1)). The EMP (Second Iteration) must be based substantially on the EMP (First Iteration) prepared as part of the application and certified by the Secretary of State. The EMP (Second Iteration) will fulfil the construction-related objectives and measures as outlined in the REAC that are contained in the EMP (First Iteration) at Table 3.1 and must be written in accordance with ISO14001 and the content of the Environmental Statement (**TR010039/APP/6.1**).

The EMP (First Iteration) also lists (at paragraph 1.1.4) two outline management plans that will need to be developed prior to construction. These are the Outline Site Waste Management Plan (**TR010039/APP/6.3**) and the Traffic Management Plan (**TR010039/APP/7.6**).

Paragraph 1.1.5 of the EMP (First Iteration) lists further plans that will be provided with the EMP (Second Iteration), being:

- Materials Management Plan (MMP)
- Soil Management Plan
- Construction Noise and Dust Management Plan
- Construction Communication Strategy
- Landscape and Ecology Management Plan
- Biosecurity Management Plan
- Water Monitoring and Management Plan
- Detailed Heritage Written Scheme of Investigation (DHWSI) (Mitigation Strategy);
- INNS Management Plan; and
- Operational UXO Emergency Response Plan.

Following the construction of the authorised development, the EMP (Second Iteration) for a part of the authorised development will be replaced by an EMP (Third Iteration) for that part which will address the matters that are relevant to the operation and maintenance of the authorised development.

Requirement 4 reflects the terminology set out in LA 120 – Environmental Management Plans, which was introduced in November 2019 (Revision 0) (LA 120) and subsequently updated in March 2020 (Revision 1). LA 120 forms part of the Design Manual for Roads and Bridges (DMRB), which contains information about current standards relating to design, assessment and operation of motorway and all-purpose trunk roads in the United Kingdom. Terminology relating to the environmental management plans presented in recent National Highways Orders such as the M42 Junction 6 Order typically reflect the conventions set out

within Interim Advice Note 183/14 Environmental Management Plans (IAN 183/14), which was withdrawn upon publication of LA 120. IAN 183/14 adopted the following conventions: Outline Environmental Management Plan (now First Iteration EMP); the Construction Environmental Management Plan (now Second Iteration EMP); and the Handover Environmental Management Plan (now Third Iteration EMP). These provisions have been used in the emerging draft DCO for the A 428 Black Cat to Caxton Gibbet Improvements as well as the more recent A 47 dualling draft DCOs. .

- (e) Requirement 5 (*Landscaping*) provides for the preparation of a landscaping scheme covering all hard and soft landscaping works for approval by the Secretary of State, following consultation with the relevant planning authority. There is a requirement that the proposed landscaping scheme must reflect the relevant mitigation measures in the REAC and must be substantially in accordance with the environmental masterplan (TR010039/APP/6.8) and the EMP (First Iteration) (TR010039/APP/7.5). Further details of what must be contained in the landscaping scheme are set out in sub-paragraph (3). Requirement 5 is based on requirement 7 of the model provisions and recent National Highways orders such as requirement 5 of the M42 Junction 6 Order. Requirement 5 also provides for the implementation and maintenance of landscaping in accordance with the scheme prepared under this requirement.
- (f) Requirement 6 (*Contaminated land and groundwater*) provides that no part of the authorised development is to commence until for that part a contamination risk assessment has been submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency and the relevant planning authority. The assessment must include a number of measures as set out in sub-paragraph (2). The requirement also makes provision for dealing with any contaminated land discovered during construction of the works, in consultation with the relevant planning authority and the Environment Agency. This requirement is based on recent National Highways orders such as requirement 8 of the M20 Order and requirement 12 of the M4 Order.
- (g) Requirement 7 (*Protected species*) provides that no part of the authorised development is to commence until for that part, final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected. Provision is made for the submission of a scheme of protection and mitigation measures to be approved by the Secretary of State, where protected species are shown to be present and the application of relevant assessment methods used in the ES show that a significant effect is likely to occur which was not previously identified in the ES. This requirement is based on recent National Highways orders such as requirement 10 of the M20 Order and requirement 13 of the M4 Order.
- (h) Requirement 8 (*Surface and foul water drainage*) provides that no part of the authorised development is to commence until written details of a surface and foul water drainage system, reflecting the drainage strategy report (Appendix 13.2 of the Environmental Statement (TR010039/APP/6.3) and the mitigation measures in the REAC (TR010039/APP/7.4) and including means of pollution control, have been prepared in consultation with the relevant planning authority and approved in writing by the Secretary of State.
- (i) Requirement 9 (*Floodplain compensatory storage*) provides that no part of the authorised development is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State. In addition, no part of the authorised development which will reduce the capacity of the floodplain is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State. In deciding whether to approve either scheme (or both), the Secretary of State must consult with the Environment Agency and, as appropriate, with the relevant planning authority. Both schemes must factor in a climate change allowance of 1 in 100 years plus 35%. Any floodplain compensation scheme must be constructed as approved and subsequently maintained.
- (j) Requirement 10 (*Archaeological remains*) provides that 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 mitigation measures included in the Environmental Statement (TR010039/APP/6.2) and REAC (TR010039/APP/7.4), has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning

authority. This requirement is based on recent National Highways orders such as requirement 9 of the M20 Order and requirement 15 of the M4 Order.

(k) Requirement 11 (*Traffic management*) provides that no part of the authorised development comprising the construction of the A47 Wansford to Sutton dual carriageway (Work No. 1) is to commence until a traffic management plan has been prepared and approved by the Secretary of State following consultation with the relevant highway authority. This requirement is based on National Highways orders such as requirement 11 of the M20 Order and requirement 18 of the M4 Order.

(l) Requirement 12 (*Fencing*) provides that permanent and temporary fencing must be constructed and installed substantially in accordance with the EMP (First Iteration) except where agreed otherwise by the Secretary of State.

(m) Requirement 13 (*Approvals and amendments to approved details*) provides that with respect to any requirement that stipulates the authorised development must be carried out in accordance with the approved details, the approved details are taken to include any amendments that may subsequently be approved or otherwise agreed in writing by the Secretary of State.

5.6 Requirements 6 to 13 (save for requirements 9 and 12) are also based on similar wording in the A1 Birtley DCO.

5.7 Part 2 of Schedule 2 provides a procedure for the discharge of requirements by the Secretary of State. It sets out time limits for decisions to be made and makes provision for circumstances where the Secretary of State requires further information to be provided in relation to an application for the discharge of a requirement (requirements 14 and 15).

5.8 Requirement 16 of Schedule 2 provides that any anticipatory steps which National Highways takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps.

5.9 The drafting of Part 2 differs from that of previous National Highways orders in that, at the request of the Examining Authority, provision for a Register of Requirements is now contained within Article 49 (*Certification of documents, public register, etc.*) and the details of pre-submission consultation (requirement 17) have been expanded to include provision for consultation responses to be reflected, where appropriate, in the details submitted to the Secretary of State for approval. The summary report to accompany those details must be provided to consultees as well as to the Secretary of State and, if consultation responses are not included, the report must state the reasons why.

6. **SCHEDULE 3: ARTICLES 12, 13 AND 19 - CLASSIFICATIONS OF ROADS, ETC.**

This schedule sets out the classification of streets, other classified roads and other public rights of way following completion of the works.

7. **SCHEDULE 4: ARTICLES 17, 28 AND 29 - PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS**

This schedule sets out those streets that are to be permanently stopped up pursuant to Article 17 (Permanent stopping up and restriction of use of streets and private means of access).

8. **SCHEDULE 5: ARTICLE 27 - LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED**

This schedule sets out land in which new rights may be required pursuant to Article 27 (compulsory acquisition of rights and imposition of restrictive covenants).

9. **SCHEDULE 6: ARTICLE 27 - MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS**

This schedule sets out the modification of legislation on compensation and compulsory purchase

for the purpose of creating new rights and imposing restrictive covenants.

10. SCHEDULE 7: ARTICLE 34 - LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

This schedule sets out the land of which temporary possession may be taken pursuant to Article 34 (Temporary possession of land for carrying out the authorised development).

The Schedule includes the plots shown on the land plans and listed in Schedule 5 (Land in which only new rights may be acquired) for which only new rights may be acquired rather than freehold acquisition. This is to ensure that the Undertaker may benefit from the provisions of Article 33 when accessing the land for the purpose of exercising the new rights required to install and maintain the necessary apparatus.

11. SCHEDULE 8: ARTICLE 39 – REMOVAL OF HEDGEROWS AND TREES

Schedule 8 (removal of hedgerows and trees) sets out the hedgerows and trees subject to a TPO in respect of which the undertaker may exercise powers pursuant to Article 39 (Felling or lopping of trees and removal of hedgerows) and Article 40 (Trees subject to tree preservation orders).

12. SCHEDULE 9: ARTICLES 36 AND 48 - PROTECTIVE PROVISIONS

This schedule sets out any protective provisions for the benefit of Electricity, Gas, Water and Sewerage Undertakers; and the Operators of Electronic Communications Code Networks.

Specific protections are included in Part 3 for the benefit of Anglian Water Services Limited, Part 4 for the benefit of National Grid Gas plc, Part 5 for the benefit of National Grid Electricity Transmission plc and Part 6 for the benefit of Western Power Distribution (East Midlands) plc. Discussions with the relevant undertakers to finalise the provisions are ongoing.

13. SCHEDULE 10: ARTICLES 2 AND 49 – DOCUMENTS, ETC. TO BE CERTIFIED

This schedule sets out the list of documents to be certified by the Secretary of State in terms of Article 49 (Certification of documents, etc.).