

# A47 Wansford to Sutton Dualling

**Scheme Number: TR010039**

## **Volume 3**

### **3.1 Draft Development Consent Order**

APFP Regulation 5(2)(b)

Planning Act 2008

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

July 2022

Deadline 10

Infrastructure Planning

Planning Act 2008

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

**A47 Wansford to Sutton  
Development Consent Order 202[x]**

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**3.1 DRAFT DEVELOPMENT CONSENT ORDER**

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<b>Regulation Number</b>	Regulation 5(2)(b)
<b>Planning Inspectorate Scheme Reference</b>	TR010039
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<b>Author</b>	A47 Wansford to Sutton Project Team, National Highways

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**2022 No. XX**

**INFRASTRUCTURE PLANNING**

**The A47 Wansford to Sutton Development Consent Order 2022**

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* \*\*\*

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

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

The *single appointed person*, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act has submitted a report and recommendation to the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

The Secretary of State, having considered the representations made and not withdrawn, and the report and recommendation of the *single appointed person*, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

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

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the A47 Wansford to Sutton Development Consent Order 202[X] and comes into force on [XX].

#### **Interpretation**

2.—(1) In this Order except where provided otherwise—

- 
- (a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).  
 (b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/2381, S.I. 2015/377, S.I. 2017/ 572; modified by S.I. 2012/1659.  
 (c) S.I. 2010/103, amended by S.I. 2012/635.

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

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

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

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

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

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

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

“the 2004 Act” means the Traffic Management Act 2004(h);

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

“the 2017 Regulations” means the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017(j);

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

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

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order,

“the book of reference” means the document of that description certified by the Secretary of State as the book of reference for the purposes of this Order and set out in Schedule 10 (documents to be certified);

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

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

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

“carriageway” has the same meaning as in section 329(1) of the 1980 Act;

“the classification of roads plans” means the plans of that description certified by the Secretary of State as the classification of roads plans for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations 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, and “commencement” is to be construed accordingly;

“completion or completed” means the relevant parts of the authorised development are completed and fully open to traffic;

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- (a) 1961 c. 33.
  - (b) 1965 c. 56.
  - (c) 1980 c. 66.
  - (d) 1981 c. 66.
  - (e) 1984 c. 27.
  - (f) 1990 c. 8.
  - (g) 1991 c. 22.
  - (h) 2004 c.18.
  - (i) 2008 c.29.
  - (j) S.I. 2017/3.
  - (k) 1970 c.80.

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act<sup>(a)</sup> and for the purposes of this Order includes parts of a cycle track and a right of way on foot;

“detrunking plans” mean the plans of that description certified by the Secretary of State as the detrunking plans for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991<sup>(b)</sup> and includes the carrying on, for any purpose, of any practice which involves management of the level of water in a watercourse;

“electronic transmission” means a communication transmitted—

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

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

and in this definition “electronic communications network” has the same meaning as is in section 32(1) (meaning electronic communications networks and services) of the Communications Act 2003<sup>(c)</sup>

“the engineering drawings and sections” means the drawings of that description certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“the environmental statement” means the document of that description submitted with the application for this Order and certified by the Secretary of State as the environmental statement for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“footpath” and “footway” have the same meaning as in section 329(1) of the 1980 Act and include part of a footpath or footway;

“the general arrangement plans” means the plans of that description certified by the Secretary of State as the general arrangement plans for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“hedgerow” has the same meaning as in Regulation 3 of the Hedgerows Regulations 1997<sup>(d)</sup>;

“hedgerow plans” means the plans of that description certified as the hedgerow plans by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“highway” has the same meaning as in section 329(1) of the 1980 Act and includes part of a highway;

“the highway authority” means the undertaker;

“important hedgerow” has the same meaning as in Regulation 4 of the Hedgerows Regulations 1997;

“land adjacent to the Order limits” means any land outside but adjacent to the Order limits which is reasonably necessary to construct or maintain the authorised development or any section or part of the authorised development;

“the land plans” means the plans of that description certified as the land plans by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“limits of deviation” means the limits of deviation referred to in article 8 (limits of deviation);

“the local highway authority” means Peterborough City Council;

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- (a) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).
- (b) 1991 c. 59, as amended by paragraph 323, Part 1 of Schedule 2 of S.I. 2013/755 (W.55), section 100 of the Environment Act 1995 (c. 25) and paragraph 39, Schedule 2 of the Flood Water Management Act 2010 (c. 29).
- (c) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210
- (d) S.I. 1997/1160, as amended by S.I. 2003/2155, S.I. 2015/1997, S.I. 2015/377, S.I. 2009/1307 and S.I. 2013/755.

“maintain” includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, remove, replace or reconstruct, provided such works do not give rise to any materially new or materially different effects in comparison with those reported in the environmental statement, in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

“NGG” means National Grid Gas Plc (company number 02006000) whose registered office is at 1-3 The Strand, London, WC2N 5EH;

“Order land” means the land shown on the land plans which is within the limits of the land to be acquired permanently or used permanently or temporarily and described in the book of reference;

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

“outline traffic management plan” means the document of that description certified by the Secretary of State as the outline traffic management plan for the purposes of this Order and set out in Schedule 10 (documents to be certified);

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

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

“public sewer or drain” means a sewer or drain which belongs to the Environment Agency, a local authority or a sewerage undertaker;

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

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

“Secretary of State” means the Secretary of State for Transport, except in article 53 where directions may be given by the Secretary of State for Justice;

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

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

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

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

“traffic regulation plans” means the plans of that description certified as the traffic regulation plans by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified);

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

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

(a) section 10(c) (general provision as to trunk roads) or section 19(1)(d) (certain special roads and other highways to become trunk roads) of the 1980 Act;

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(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(b) This section was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22); and brought into force by S.I. 1991/2288.

(c) As amended by section 22(2) of the 1991 Act and paragraph 22 of Schedule 2 to the 2008 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(d) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

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

“the undertaker” means National Highways Limited, company number 09346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

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

“the works plans” means the plans of that description certified as the works plans by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified).

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

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

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

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

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

(7) The expression “includes” may be construed without limitation.

### **Disapplication of legislative provisions**

**3.—**(1) The provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup> insofar as they relate to temporary possession of land under articles 34 (temporary use of land for carrying out the authorised development) and 35 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development.

(2) Section 32 (variation of awards) of the Land Drainage Act 1991<sup>(b)</sup> does not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development.

(3) Schedule 1 to the 2017 Regulations is modified as follows—

- (a) In paragraph (3) of Form 1, after “from the date on which the service of notices required by section 6 of the Act is completed”, insert—

“(1)(a) The [insert land or rights or both] described in Part [X] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan annexed hereto shall vest in the third parties in question as from the end of the period of [insert period of 3 months or longer] from the date on which the service of notices required by section 6 of the Act is completed”.

- (b) References in Form 2 to “in themselves” is substituted with “in themselves and any identified third parties”.

- (c) In paragraph (b) of the notes on use of Form 2—

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<sup>(a)</sup> 2017 c. 20.

<sup>(b)</sup> 1991 c. 59, as amended by paragraph 323, Part 1 of Schedule 2 of S.I. 2013/755 (W.55), section 100 of the Environment Act 1995 (c. 25) and paragraph 39, Schedule 2 of the Flood Water Management Act 2010 (c. 29).

- (i) after “Insert the name of the authority” insert “and, where the context so requires, a reference to third parties”; and
- (ii) omit “Thereafter rely on that definition wherever “(b)” appears in the text.”.

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

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

## **PART 2**

### **PRINCIPAL POWERS**

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

5.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out and operated within the Order limits.

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

#### **Construction and maintenance of authorised development**

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

#### **Planning permission**

7. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

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

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

#### **Limits of deviation**

8.—(1) In constructing Work Nos. 1, 2, 6, 11, 12, 13, 15, 19, 20, 21, 22, 23, 37, 40, 41, 42, 43, 44, 45, 47, 51, 53 and 55 the undertaker may

- (a) in deviating laterally from the centrelines shown on the works plans, vary the situation of the centreline by up to a maximum of 3 metres either side of the centreline of that work as shown on the works plans provided the works do not extend beyond the Order limits; and
- (b) deviate by up to 3 metres from the points of commencement and termination.

(2) In constructing or maintaining any other work comprised in the authorised development the undertaker must construct any such work within the lateral limits of deviation shown on the works plan for the relevant work except that these maximum limits of lateral deviation and commencement and termination limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State’s satisfaction and the Secretary of State, following

consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects from those reported in the environmental statement.

(3) In carrying out any work comprised in the authorised development the undertaker may deviate vertically from the levels of the authorised development shown on the engineering drawings and sections, to a maximum of 1 metre upwards or 1 metre downwards, except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects from those reported in the environmental statement.

### **Benefit of Order**

9.—(1) Subject to article 10 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

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

### **Consent to transfer benefit of Order**

10.—(1) Subject to paragraph (5) the undertaker may with the written consent of the Secretary of State—

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

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (5), include references to the transferee or the lessee.

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

(4) If the benefit of the provisions of this Order relating to compulsory acquisition is transferred or granted to a transferee or grantee pursuant to this article and the transferee or grantee exercises those powers then the undertaker alone is liable for any compensation that is payable to another party as a consequence of the exercise of those powers by the transferee or grantee.

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

- (a) Anglian Water Services Limited (company number 2366656), whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire, United Kingdom, PE29 6XU (or a related subsidiary company), for the purposes of undertaking Work Nos. 27 and 49;
- (b) Western Power Distribution (East Midlands) Plc (company number 02366923), whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB, for the purposes of undertaking Work Nos. 3, 5, 8, 9, 14, 18, 26, 29, 36, 48, 52, 54, 57 and 58;
- (c) NGG for the purposes of undertaking Work No. 4.

## PART 3

### STREETS

#### Application of the 1991 Act

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

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

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

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

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

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

(5) The provisions of the 1991 Act**(i)** referred to in paragraph (4) are—

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

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- (a)** 1991 c. 22, to which are amendments not relevant to section 86 in the Act.
  - (b)** As amended by relevant instruments which are section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
  - (c)** As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 18 of and Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22).
  - (d)** As amended by sections 40 and 43 of the Traffic Management Act 2004 (c. 18).
  - (e)** Inserted by section 44 of the Traffic Management Act 2004 (c. 18).
  - (f)** As amended by section 51 of the Traffic Management Act 2004 (c. 18).
  - (g)** Inserted by section 52 of the Traffic Management Act 2004 (c. 18).
  - (h)** Inserted by section 52 and Schedule 4 of the Traffic Management Act 2004 (c. 18).
  - (i)** Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
  - (j)** As also amended by section 49(1) of the Traffic Management Act 2004.

- (c) section 57(b) (notice of emergency works);
- (d) section 59(c) (general duty of street authority to co-ordinate works);
- (e) section 60 (d) (general duty of undertakers to co-operate);
- (f) section 68 (e) (facilities to be afforded to street authority);
- (g) section 69 (f) (works likely to affect other apparatus in the street);
- (h) section 75(g) (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route).

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

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

(7) Nothing in article 12 (construction and maintenance of new, altered or diverted streets and other structures)—

- (a) affects the operation of section 87(h) (prospectively maintainable highways) of the 1991 Act;
- (b) means that the undertaker is, by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to street works to which the provisions of Part 3 of the 1991 Act apply.

(8) Any order made by the Secretary of State under section 74A(2)(a) (charge determined by reference to duration of works) of the 1991 Act for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012(i) does not have effect in relation to the construction or maintenance of the authorised development.

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

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

(2) Where a highway (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(3) Where a footpath, cycle track or bridleway is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

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

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

(c) As amended by section 41 of the Traffic Management Act 2004.

(d) As amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(e) As amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(f) As amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

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

(h) 1991 c. 22.

(i) S.I. 2012/425, as amended by S.I. 2015/377 and S.I. 2018/215.

(4) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(5) Where a highway is de-trunked under this Order—

- (a) section 265(a) (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that highway; and
- (b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that de-trunking must, unless otherwise agreed in writing with the local highway authority, be maintained by and at the expense of the local highway authority from the date of de-trunking.

(6) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road) over a trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority unless otherwise agreed in writing between the undertaker and the local highway authority, and the remainder of the bridge, including the waterproofing membrane, and structure below, parapets and any system of lighting must be maintained by and at the expense of the undertaker.

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

(8) For the purposes of a defence under paragraph (7), the court must in particular have regard to the following matters—

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

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

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

**13.—**(1) From the date on which the roads described in Part 1 (trunk roads) of Schedule 3 and identified on the classification of roads plans are completed and open for traffic, they are to become trunk roads as if they had become so by virtue of an order under section 10(2)(b) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

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(a) The following provisions have been inserted into the section by paragraph 52, Schedule 1 of the Infrastructure Act 2015 (c.7).

(b) As amended by section 22 of the 1991 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(2) From the date on which the roads described in Part 2 (classified C roads) of Schedule 3 and identified on the classification of roads plans are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

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

(4) From the date on which the roads specified in Part 4 (speed limits) of Schedule 4 and identified on the traffic regulation plans are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

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

(6) Unless otherwise agreed in writing with the local highway authority, the footpaths, cycle tracks, footways and bridleways set out in Part 6 (footpaths, cycle tracks, footways and bridleways) of Schedule 3 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.

(7) On the date on which the roads described in Part 7 (roads to be detrunked) of Schedule 3 and identified on the detrunking plans are completed and open for traffic, they are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 5(2)(a) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

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

### **Power to alter layout etc. of streets**

**14.—**(1) Subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain passing places.

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1)—

- (a) are exercisable on the giving of not less than 42 days' notice to the street authority; and
- (b) are not to be exercised without the consent of the street authority where that authority is a public authority.

(4) If a street authority which receives an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of the period of 6 weeks beginning with the date on which the application was made, it is deemed to have granted consent.

(5) Any application to which this article applies must include a statement that the provisions of paragraph (4) apply to that application.

(6) Paragraphs (2), (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Street Works**

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street; or carry out works to strengthen or repair the carriageway;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in or under the street;
- (e) maintain, renew or alter apparatus in the street or change its position;
- (f) demolish, remove, replace and relocate any street furniture;
- (g) execute any works to provide or improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;
- (j) remove and install temporary and permanent signage; and
- (k) execute any works required for, or incidental to, any works referred to in subparagraphs (a) to (j).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1)(a) (prohibition of unauthorised streetworks) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### **Temporary alteration, diversion, prohibition and restriction of use of streets**

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

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

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

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

(4) The undertaker must not temporarily alter, divert, prohibit or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act(b).

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(a) 1991 c. 21. There are amendments to section 48(3) and 51(1) but none is relevant to this Order.

(b) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

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

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

### **Permanent stopping up and restriction of use of streets and private means of access**

17.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Part 1, 2, 3 and 4 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and identified on the rights of way and access plans to the extent specified and described in column (3) of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Part 2 or Part 3 of Schedule 4 (being a highway or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new highway or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the highway or private means of access until the completion and opening of the new highway or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Part 1 or Part 4 of Schedule 4 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

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

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

(5) The undertaker may, in connection with the carrying out of the authorised development, alter the private means of access specified in column (1) of Part 5 of Schedule 4 as specified in column (2) of that Part.

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

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

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

(8) This article is subject to article 37 (apparatus and rights of statutory undertakers in stopped up streets).

### **Access to works**

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

### **Clearways**

**19.—**(1) From such day as the undertaker may determine, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 8 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) and identified on the traffic regulation plans where it is specified in the corresponding row of column (3) of that Part that such lengths of road are to become a clearway, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
  - (i) the removal of any obstruction to traffic;
  - (ii) the maintenance, improvement, reconstruction or operation of the road;
  - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable, or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 1 (the Electronic Communications Code) to the Communications Act 2003(b); or
  - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
  - (i) for police, ambulance, fire and rescue authority or traffic officer purposes,
  - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(c); or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services (Universal Postal Service) Order 2012 (d); or
- (c) in relation to a vehicle waiting when the person in control of it is—
  - (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person's control.

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(a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(b) 2003, Schedule 3A.

(c) 1991 c. 56.

(d) S.I. 2012/936, amended by 2013/3108 and 2015/643.

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

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

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

## **Traffic Regulation**

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

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

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

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

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

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

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

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

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

- (a) has effect as if duly made by, as the case may be—

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(a) 2004 c. 18, as brought into force by Article 2 of S.I. 2004/2380 and Article 2 of S.I. 2009/1095 (W.55).

- (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces) of the 1984 Act<sup>(a)</sup>, and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
  - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004<sup>(b)</sup>.
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) within a period of 24 months from the opening of the authorised development.
- (8) Before exercising the powers conferred by paragraph (2) the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.
- (9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.
- (11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.
- (12) Any application to which this article applies must include a statement that the provisions of paragraph (11) apply to that application.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

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

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

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

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

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- (a) 1984 c.27, section 32 was amended by sections 1, 2, 8(1) and paragraph 4 of Schedule 5 to the Local Government Act 1985 (c. 51) and by section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act..
  - (b) 2004 c. 18, Schedule 7 as implemented by Article 2 of S.I. 2007/2053, Article 2 and Schedule of S.I. 2007/3174; as amended by Regulation 28 of S.I. 2013/362 and Regulation 2 and 3 of S.I. 2018/488.
  - (c) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

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

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

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

(7) In this article expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(b)</sup> have the same meaning as in that Act.

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

(9) Any application to which this article applies must include a statement that the provisions of paragraph (8) apply to that application.

### **Protective work to buildings**

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

(2) Protective works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days

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(a) S.I.2016/1154, amended by S.I. 2018/110

(b) 1991 c. 57.

beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 51 (arbitration).

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

(8) Where—

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

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

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

(10) Any compensation payable under paragraph (8) or (9) is to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

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

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

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

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker sees fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land indicating the nature of the survey or investigation that the undertaker intends to carry out.

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

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

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

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(a) 2008 c. 29, section 152 as implemented by Article 3 of S.I. 2010/101 and amended by S.I. 2009/1307.

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

but such consent must not be unreasonably withheld.

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

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

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

that authority is deemed to have granted consent.

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

## PART 5

### POWERS OF ACQUISITION

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

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

(2) This article is subject to paragraph (2) of article 27 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (9) of article 34 (temporary use of land for carrying out the authorised development) and article 52 (Crown rights).

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

**25.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated into this Order subject to the modifications that—

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

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

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 34 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

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

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

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

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule and relating to that part of the authorised development specified in column (3) of that Schedule.

(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 10 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) The undertaker's power to create rights under paragraph (1) includes the power to create rights for the benefit of third parties. Where a right is for the benefit of a third party that right shall, on the exercise of the power of compulsory acquisition, have effect for that party's benefit and be treated for all purposes as though it was vested in the third party directly.

## **Public rights of way**

28.—(1) Subject to paragraph (2), the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and shown on the rights of way and access plans are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 and shown on the rights of way and access plans, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

## **Private rights over land**

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

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in

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(a) 1965 c. 56. Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), Section 103 of the Planning and Compulsory Purchase Act 2004 c. 5 and S.I. 2009/1307.

so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

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

whichever is the earlier.

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

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act (a).

(6) This article does not apply in relation to any right to which section 138 (b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 36 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

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

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

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

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

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- (a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).
  - (b) 2008 c. 29. Section 138 as amended by section 23 of the Growth and Infrastructure Act 2013 (c. 27) and paragraph 12, Schedule 1 of S.I. 2017/1285.
  - (c) 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

- “(a) In section 4A(1)(a)(extension of time limit during challenge)
  - (i) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)”, substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
  - (ii) for the “three year period” mentioned in section 4 substitute the “five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsory) of the A47 Wansford to Sutton Development Consent Order 202[X]”.
- (2) In section 11A(b) (powers of entry: further notice of entry)—
  - (a) in subsection (1)(a), after “land” insert “under that provision”;
  - (b) in subsection (2), after “land” insert “under that provision”.
- (3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 26 of the A47 Wansford to Sutton Development Consent Order 202[X]”.
- (4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
  - (a) for paragraphs 1(2) and 14(2) substitute—
    - “(2) But see article 32 (acquisition of subsoil or airspace only) on the A47 Wansford to Sutton Development Consent Order 202[X], which excludes the acquisition of subsoil or airspace only from this schedule”;
  - (b) after paragraph 29, end insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 22 (protective works to buildings), 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development) of the A47 Wansford to Sutton Development Consent Order 202[X].”

#### **Application of the 1981 Act**

- 31.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act), for subsection 2 substitute—
  - “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) Omit section 5 (c) (earliest date for execution of declaration).
- (5) Omit section 5A(d) (time limit for general vesting declaration).
- (6) In section 5B(e) (extension of time limit during challenge)—
  - (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)”, substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008”; and

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(a) 1981 c. 67.

(b) 1965 c.56, section 11A as inserted by section 202(1) Housing and Planning Act 2016 (c. 22).

(c) 1981 c.67, section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(d) 1981 c. 67, section 5A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(e) 1981 c. 67, section 5B was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

- (b) for the “three year period” mentioned in Section 5A substitute the “five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the A47 Wansford to Sutton Development Consent Order 202[X]”.
- (7) In section (6)(a)(notices after execution of declaration), in subsection (1)(b) substitute—
  - “(b) on every person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served in section 134 (notice of authorisation of compulsory acquisition of the Planning Act 2008.”
- (8) In section 7(b) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(c) (counter-notice requiring purchase of and not in general vesting declaration) for paragraph 1(2) substitute—
  - “(2) But see article 32 (acquisition of subsoil or airspace only) of the A47 Wansford to Sutton Development Consent Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule.”
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125(d) (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 30 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

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

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

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and
- (c) section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(4) Paragraphs (1) and (2) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

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

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

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(a) As amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

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

(c) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2012/16.

(d) 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act<sup>(a)</sup>.

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

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

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

- (a) enter on and take possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11(c) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act <sup>(d)</sup>;
- (b) remove any buildings and vegetation from that land,
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken), or any other mitigation works in connection with the authorised development.

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

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 7 (land of which temporary possession may be taken); or

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(a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(b) 1991 c. 22, to which there are no amendments relevant to section 85 of the Act.

(c) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(d) 1981 c. 66. Section 4 as amended by section 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 21).

- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act **(a)** or made a declaration under section 4 of the 1981 Act **(b)** in relation to that land.

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

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

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

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act **(c)**.

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

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

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

- (a) acquiring new rights over any part of that land that is also specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired); or
- (b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 32 (acquisition of subsoil or airspace only).

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

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

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**(a)** 1965 c. 56, section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), Section 103 of the Planning and Compulsory Purchase Act 2004 c. 5 and S.I. 2009/1307.

**(b)** 1981 c. 66. Section 4 as amended by section 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 21).

**(c)** 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

**(d)** 2008 c. 29, section 152 as implemented by Article 3 of S.I. 2010/101 and amended by S.I. 2009/1307.

**(e)** 1965 c. 56, section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and part of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

**(f)** 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

(12) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 24 (compulsory acquisition of land) or article 27 (compulsory acquisition of rights and imposition of restrictive covenants).

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

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

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

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

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

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

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

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

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act<sup>(a)</sup>.

(9) Nothing in this article affects any liability to pay compensation under section 152<sup>(b)</sup> (compensation in case where no right claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

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

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(a) 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

(b) 2008 c. 29, Section 152 as implemented by Article 3 of S.I. 2010/101 and amended by S.I. 2009/1307.

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

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

### **Statutory undertakers**

**36.**—(1) Subject to the provisions of article 27 (compulsory acquisition of rights and imposition of restrictive covenants), Schedule 9 (protective provisions) and paragraph (2), the undertaker may—

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

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

- (a) Part 3(c) (street works in England and Wales) of the 1991 Act; and
- (b) article 37 (apparatus and rights of statutory undertakers in stopped up streets).

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

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

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

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

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

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

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

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

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(a) 1965 c. 56, section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and part of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(b) 2008 c. 29, section 125 as amended by paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

(c) 1991 c.22, Part 3 as amended by 2004 (c. 18), S.I. 2007/1952, S.I. 2008/102 (w. 55) and 2003 (c. 21).

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

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

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

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

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

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

(8) In this article—

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

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider.

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

**38.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 36 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 36, any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 37 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph “public utility undertaker” means a gas, water, electricity or sewerage undertaker.

## PART 6

### OPERATIONS

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

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

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

(2) In carrying out any activity authorised by paragraph (1) or (4), the undertaker must—

- (a) do no unnecessary damage to any tree or shrub;
- (b) pay compensation to any person for any loss or damage arising from such activity; and
- (c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981<sup>(a)</sup> and the Conservation of Habitats and Species Regulations 2010<sup>(b)</sup> or any successor acts and regulations.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act <sup>(c)</sup>.

(4) The undertaker may, for the purposes of carrying out the authorised development —

- (a) remove any hedgerows within the Order limits and specified in Schedule 8 Part 1 (removal of hedgerows);
- (b) remove the important hedgerows that are within the Order limits and specified in Schedule 8 Part 2 (removal of important hedgerows); and
- (c) without limitation on the scope of sub-paragraph (a), and with the consent of the local authority in whose area the hedgerow is located, remove or translocate any hedgerow within the Order limits.

(5) The grant of consent of a local authority in terms of paragraph (4)(c) must not be unreasonably withheld.

(6) If a local authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(c) the local authority is deemed to have granted consent.

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

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<sup>(a)</sup> S.I. 2015/596.

<sup>(b)</sup> S.I. 2010/490, amended by S.I. 2010/490, S.I. 2010/2020, S.I. 2011/603, S.I. 2011/625, S.I. 2011/950, S.I. 2012/630, S.I. 2012/635, S.I. 2012/637, S.I. 2012/1914, S.I. 2012/1927, S.I. 2013/755, S.I. 2014/2933, S.I. 2015/377, S.I. 2015/1390, S.I. 2015/2020, S.I. 2016/1154, S.I. 2017/1012.

<sup>(c)</sup> 1961 c. 33, Part 1 as amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

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

**40.**—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made after 23 March 2021 if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

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

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and
- (c) the undertaker must consult the relevant planning authority prior to that activity taking place.

(3) The authority given in paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

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

## **PART 7**

### **MISCELLANEOUS AND GENERAL**

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

**41.**—(1) This article applies to—

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

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

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

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

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

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

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

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

**43.—**(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(b) in relation to a nuisance falling within paragraphs (d), (fb), (g) or (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(c) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(d); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

## **No double recovery**

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

## **Disregard of certain improvements etc.**

**45.—**(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

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- (a) 1990 c. 8, to which there are amendments to this sub-section not relevant to this Order.
  - (b) 1990 c. 43, to which there are amendments to this sub-section not relevant to this Order.
  - (c) 1990 c. 43, section 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6, Schedule 17 of the Environment Act 1995 (c. 25).
  - (d) 1974 c. 40. Section 60 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43), there are further amendments to section 61 but none is relevant to this Order.
  - (e) 1974 c. 40, section 61 to which there are amendments to section 61 but none is relevant to this Order.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

#### **Set off for enhancement in value of retained land**

**46.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 27 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity, which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

#### **Appeals relating to the Control of Pollution Act 1974**

**47.**—(1) The undertaker may appeal in the event that a local authority issues a notice under section 60 (control of noise on construction sites), or does not give consent or grants consent but subject to conditions, under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(a).

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority and affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
- (d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and

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(a) 1974 c. 40. Section 60 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43), there are further amendments to section 61 but none are relevant to this Order.

- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.
- (3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.
- (4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.
- (5) Any further information required under paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.
- (6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.
- (7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).
- (8) On an appeal under this paragraph, the appointed person may—
- (a) allow or dismiss the appeal; or
  - (b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.
- (9) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.
- (10) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.
- (11) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.
- (12) Except where a direction is given under paragraph (13) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.
- (13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.
- (14) In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Ministry for Housing, Communities and Local Government or such guidance as may from time to time replace it.

### **Protection of interests**

48. Schedule 9 (protective provisions) to the Order has effect.

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

49.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 10 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 10 (documents to be certified) is required to be amended to accord with the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

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

(4) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public:

- (a) a copy of each of the documents listed in Schedule 10 (documents to be certified) as may be amended in accordance with paragraph (2); and
- (b) a register of those requirements contained in Part 1 of Schedule 2 of this Order (requirements) that provide for further approvals to be given by the Secretary of State.

(5) The register pursuant to sub-paragraph (4)(b) must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(6) The electronic record set out in paragraph (4) must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

### **Service of notices**

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

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

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

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

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

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

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

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(a) 1978 c.30, as amended by section 17 of 1994 (c. 36), there are other amendments but none are relevant.

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

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

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

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

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

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

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

## **Arbitration**

**51.** Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

## **Crown Rights**

**52.—(1)** Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker to use, enter upon or in any manner interfere with any land or rights of any description—

- (a) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

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

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

## Removal of Human Remains

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

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

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

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land for a minimum of 28 days.

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

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

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

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium, and that person is to, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

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

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (10) the undertaker is to remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be reinterred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any

reasonable request that person may make in relation to the removal and re-interment of cremation of the remains.

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

- (a) a certificate of re-interment or cremation is to be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the local planning authority.

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

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

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (14) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

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

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

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

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

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order,

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

(18) The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950(113a) do not apply to the authorised development.

Signed by authority of the Secretary of State for Transport

	<i>Name</i>
Address	Head of the Transport and Works Act Orders Unit

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(a) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1).

Date

Department for Transport

# SCHEDULES

## SCHEDULE 1

Articles 2, 5 and 6

### WORKS DESCRIPTION

#### **In the administrative areas of Peterborough City Council**

The authorised development is a nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways) of the 2008 Act (FN66) and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

**Work No. 1** – Dualling of the A47 mainline from the existing Wansford eastern roundabout for 2,600 metres to the termination point to the east for tie into existing A47 including earthworks and associated drainage, as shown on sheets 3, 4, 6 and 7 of the works plans;

**Work No. 2** – A new private means of access to 4 properties and a service vehicle turning point including earthworks and associated drainage, as shown on sheet 1 of the works plans;

**Work No. 3** – Diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and underground electricity cables as shown on sheet 1 of the works plans;

**Work No. 4** – Protection of NGG gas pipeline as shown on sheet 1 of the works plans;

**Work No. 5** – Diversion and removal of underground electronic communication cables and apparatus, and underground electricity cables as shown on sheets 1 and 2 of the works plans;

**Work No. 6** – A new carriageway to create a free flow link from A1 southbound to the dualled A47 eastbound (Work No.1) for 634 metres including embankments and associated drainage, as shown on sheets 1, 2 and 3 of the works plans;

**Work No. 7** – Extension to the existing A1 southbound culvert and environmental mitigation to the existing burn and ditch for a length of 400 metres, as shown on sheets 2 and 3 of the works plans;

**Work No. 8** – Diversion of 11kV electricity cable as shown on sheets 2 and 3 of the works plans;

**Work No. 9** – Removal of underground electricity cables as shown on sheets 2 and 3 of the works plans;

**Work No. 10** – A new balancing pond west of the new free flow link from A1 southbound to the dualled A47 eastbound (Work No. 6) and north of Work No. 11 including earthworks, drainage inlets/outlets and a maintenance access track as shown on sheets 2 and 3 of the works plans;

**Work No. 11** – Improvements to the existing A1/A47 on and off ramps to the Wansford eastern roundabout including earthwork widening for 203 metres from the A1 southbound diverge to the Wansford eastern roundabout with a spur 116 metres from the Wansford eastern roundabout, for 65 metres, to the A1 southbound merge as shown on sheets 2 and 3 of the works plans;

**Work No. 12** – Improvement to the eastbound carriageway of the existing A47 from a point 42 metres west of the Wansford western roundabout for 268 metres over the A1 including the of realignment of the central reserve and a new cycle crossing point at the Wansford western roundabout as shown on sheet 2 and 3 of the works plans;

**Work No. 13** – Improvements to the existing A47 Wansford eastern roundabout including widening, earthworks and drainage as shown on sheet 3 of the works plans;

**Work No. 14** – Diversion and removal of electricity cables as shown on sheet 3 of the works plans;

**Work No. 15** – A new 900.20 metre length of carriageway to form a new link road from A47 Wansford eastern roundabout (Work No.13) a new A47 westbound off slip from the dualled A47 (Work No.1) including earthworks, associated drainage and along part of a cycle track as shown on sheets 3 and 4 of the works plans;

**Work No. 16** – Diversion and removal of electronic communication and cables and apparatus and diversion of water pipes and construction of a site office and construction areas as shown on sheets 3 and 4 of the works plans;

**Work No. 17** – Two new balancing ponds and construction areas east and north of the new link to filling station and Sacrewell Farm (Work No. 15) and south of the dualled A47 (Work No. 1) including earthworks and drainage inlets and outlets between ponds an outlet to the river Nene and a maintenance access track as shown on sheet 3 of the works plans;

**Work No. 18** – Diversion and removal of electricity cables as shown on sheet 3 of the works plans;

**Work No. 19** – Realignment pumping station access road for 45 metres including earthworks and drainage as shown on sheet 3 of the works plans;

**Work No. 20** – Realignment of footpath to the south of the dualled A47 (Work No.1) as shown on sheet 4 of the works plans;

**Work No. 21** - A new Sacrewell Farm access road connecting to Work No.15 and running north for 312.75 metres passing through the Sacrewell Farm underbridge including earthworks and drainage as shown on sheet 3 of the works plans;

**Work No. 22** – A new access track from Sacrewell Farm access road (Work No. 21) for 21.30 metres to the existing access track including improvements to the existing access as shown on sheet 3 of the works plans;

**Work No. 23** – Realignment of shared cycle track and permissive bridleway and formation of a means of access as shown on sheet 3 of the works plans;

**Work No. 24** – Temporary welfare and compound area including a haul route to Works Nos. 6, 7, 8, 9 and 10 as shown on sheets 2 and 3 of the works plans;

**Work No. 25** – A new Sacrewell Farm Underbridge under the dualled A47 (Work No.1) including structural units, concrete foundations, drainage and waterproofing as shown on sheet 3 of the works plans;

**Work No. 26** – Diversion and removal of electricity cable to mobile mast as shown on sheet 3 of the works plans;

**Work No. 27** – Protection, diversion and resilience works to large diameter water pipelines and associated apparatus as shown on sheet 3 of the works plans;

**Work No. 28** – A new balancing pond to the north of the dualled A47 (Work No.1) including drainage inlets, an outlet to river Nene to the south and an access track as shown on sheet 4 of the works plans;

**Work No. 29** – Diversion and removal of overhead electrical cables as shown on sheets 4 and 6 of the works plans;

**Work No. 30** – Replacement of Wansford Sluice under the dualled A47 (Work No. 1) between Willow Brook and the existing ditch outlet to river Nene on the south as shown on sheet 4 of the works plans;

**Work No. 31** – A new balancing pond to the south of the existing A47 (Work No. 41) including drainage inlets and an outlet to Wansford Sluice (Work No. 30) to the west and an access track as shown on sheet 4 of the works plans;

**Work No. 32** – A flood compensation area to the south of the dualled A47 (Work No.1) consisting of tree clearance, ground works and ground stabilisation as shown on sheet 4 of the works plans;

**Work No. 33** – New access track to balancing pond (Work No. 31) and together with a new bridleway over the access track and access ramps north and south of the dualled A47 (Work No. 1) leading to the new underpass (Work No. 35) to create a walking, cycling, horse riding route including earthworks and drainage as shown on sheet 4 of the works plans;

**Work No. 34** – Demolition of Station House and construction of a new bat hotel as shown on sheet 4 of the works plans;

**Work No. 35** – A new underpass below the dualled A47 (Work No. 1) for walking, cycling and horse-riding including embankments, drainage and waterproofing as shown on sheet 4 of the works plans;

**Work No. 36** – Diversion and removal of electronic communication cables and apparatus, electrical cables and potable water pipes and associated apparatus as shown on sheets 4, 5 and 6 of the works plans;

**Work No. 37** – A new turning head on Sutton Heath Road adjacent to Station House as shown on sheet 4 of the works plans;

**Work No. 38** – A temporary welfare and compound area including a haul road to the north of the dualled A47 (Work No. 1) and a new temporary access track from Work No. 37 as shown on sheets 4, 5 and 6 of the works plans;

**Work No. 39** – Ecological works and landscaping area to the south of the dualled A47 (Work No. 1) as shown on sheet 6 of the works plans;

**Work No. 40** – Conversion works to the existing A47 to create a new private means of access, part cycle track and part bridleway from the dualled A47 (Work No. 1) running east for 590 metres to the new link road to Sutton Heath roundabout (Work No. 45) as shown on sheets 4 and 6 of the works plans;

**Work No. 41** – A realigned carriageway Sutton Heath Road for 150 metres to Work No. 42 including earthworks and drainage as shown on sheet 5 of the works plans;

**Work No. 42** – A new carriageway from the new Sutton Heath roundabout (Work No. 44) north for 718 metres to Sutton Heath Road including earthworks and drainage and access points as shown on sheets 5 and 6 of the works plans;

**Work No. 43** – Realignment of the existing junction between Sutton Heath Road and Langley Bush Road to create a new junction with the new link to Sutton Heath Road (Work No.42) for 57 metres including earthworks and drainage as shown on sheet 5 of the works plans;

**Work No. 44** – A new Sutton Heath roundabout including earthworks, drainage and a safety barrier as shown on sheet 6 of the works plans;

**Work No. 45** – A new part improved carriageway from Sutton Heath roundabout (Work No. 44) for 1,019 metres to Peterborough Road to form the new link road including earthworks, drainage and cycle track as shown on sheets 6 and 7 of the works plans;

**Work No. 46** – A new infiltration pass with drainage inserts to a pond and an access track, to the north of the new link road (Work No.45) and to the south of the dualled A47 (Work No. 1) as shown on sheet 6 of the works plans;

**Work No. 47** – Alterations to The Drift to prevent vehicular traffic and provide a bridleway together with a new turning head to the existing Drift including fencing and gates as shown on sheet 6 of the works plans;

**Work No. 48** – Diversion and removal of existing electronic communication cables and apparatus, underground electricity cables, and potable water pipes as shown on sheets 6 and 7 of the works plans;

**Work No. 49** – Protection, diversion and resilience works to potable water pipes and associated apparatus as shown on sheets 6 and 7 of the works plans;

**Work No. 50** – A new attenuation basin to the south of the dualled A47 (Work No.1) including inlet and outlets with a connection to positive drainage, an access track and breaking up and removal of existing carriageway as shown on sheet 7 of the works plans;

**Work No. 51** – Realignment of the junction between Peterborough Road and Nene Way for 28 metres including earthworks, drainage and footways as shown on sheet 7 of the works plans;

**Work No. 52** – Diversion and removal of electricity cables to the east of Work No. 51 as shown on sheet 7 of the works plans;

**Work No. 53** – A new turning head and access on Upton Road adjacent to Lower Lodge Farm including fencing and gates as shown on sheet 7 of the works plans;

**Work No. 54** – Diversion and removal of existing underground electricity cables, electronic communication cables and apparatus and potable water pipes along Upton Road as shown on sheet 7 of the works plans;

**Work No. 55** – Improvements to the existing Upton Drift including passing places, widening the metalled surface into highway verge, straightening of the S- bend and sight lines and widening of its existing junction with Langley Bush Road and the existing injunction adjacent to Model Farm for 639 metres including earthworks and drainage as shown on sheet 5 of the works plans;

**Work No. 56** – Diversion of electronic overhead and underground communication cables and apparatus as shown on sheet 5 of the works plans;

**Work No. 57** – Diversion of a 11kV electricity cable as shown on sheet 5 of the works plans;

**Work No. 58** – Diversion of the underground cables and protection of the foul sewer as shown on sheet 5 of the works plans;

**Work No. 59** – A new traffic sign indicating The Drift is closed to vehicles as shown on sheet 7 of the works plans.

And for the purposes of or in connection with the construction of any of those works mentioned above, further development within the Order limits consisting of:

- (a) alteration to the layout of any street permanently or temporarily, including as part of detrunking or stopping up orders, including but not limited to increasing or reducing the width of the carriageway of the street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level of any such kerb, footpath, footway, cycle track or verge; installing low noise surfacing; and landscaping sections of disused sections;
- (b) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (c) ramps, means of access, non-motorised links, footpaths, cycle tracks and crossing facilities;
- (d) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, barriers, pumping stations, parapets, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;

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

## SCHEDULE 2 REQUIREMENTS

Article 5

### PART 1 REQUIREMENTS

#### **Interpretation**

##### **1. In this Schedule—**

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

“DMRB” means the Design Manual for Roads and Bridges, which accommodates all current standards, advice and other documents relating to the design, assessment and operation of trunk roads and motorways, or any equivalent replacement to the DMRB published;

“EMP (First Iteration)” means the first iteration of the environmental management plan produced in accordance with the DMRB during the preliminary design stage and certified by the Secretary of State as the environmental management plan for the purposes of this Order and set out in Schedule 10 (documents to be certified);

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

“EMP (Second Iteration)” means the second iteration of the environmental management plan produced in accordance with the DMRB, which is to be a refined version of the EMP (First Iteration) including more detailed versions of the outline plans contained or listed within the EMP (First Iteration) or any other plans as required;

“EMP (Third Iteration)” means the third iteration of the environmental management plan produced in accordance with the DMRB, which is a refined version of the EMP (Second Iteration) and which relates to the operational and maintenance phase of the authorised development;

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

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

“the masterplan” means the environmental masterplan certified by the Secretary of State for the purposes of this Order and set out in Schedule 10 (documents to be certified);

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981<sup>(b)</sup> or which are European protected species;

“REAC” means the Register of Environmental Actions and Commitments forming table 3.1 of the EMP (First Iteration).

### **Time limits**

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

### **Detailed design**

3.—(1) The authorised development must be designed in detail and carried out 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 and local highway authority on matters related to their functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

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

### **Environmental Management Plan**

4.—(1) No part of the authorised development is to commence until an EMP (Second Iteration) for that part, substantially in accordance with the EMP (First Iteration) has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, the relevant local highway authority, the Environment Agency, Natural England, the lead local flood authority and the Historic Buildings and Monuments Commission for England to the extent that the content of the EMP (Second Iteration) relates to matters relevant to their functions.

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(a) S.I. 2017/1012.

(b) 1981 c. 69.

(2) The EMP (Second Iteration) for any part of the authorised development must be written in accordance with ISO14001 and so far as is relevant to that part of the authorised development, must reflect the mitigation measures required by the REAC and set out in the environmental statement and must include as many of the following plans and strategies as are applicable to the part of the authorised development to which it relates—

- (a) Site waste management plan;
- (b) Materials management plan;
- (c) Soil management plan, which includes:
  - (i) a soil resource plan;
  - (ii) a soil handling strategy;
- (d) Construction noise and dust management plan;
- (e) Construction communication strategy;
- (f) Landscape and ecology management plan;
- (g) Biosecurity management plan; and
- (h) Water monitoring and management plan;
- (i) Detailed heritage written statement of investigation (mitigation strategy);
- (j) Non Native Species management plan; and
- (k) Operational Unexploded Ordnance emergency response plan.

(3) The relevant part of the authorised development must be constructed in accordance with the approved EMP (Second Iteration).

(4) On completion of construction of each part of the authorised development the EMP (Third Iteration) relating to that part must be submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, the relevant local highway authority, the Environment Agency, Natural England, the lead local flood authority and the Historic Buildings and Monuments Commission for England to the extent that the content of the EMP (Third Iteration) relates to matters relevant to their functions.

(5) The relevant part of the authorised development must be operated and maintained in accordance with the EMP (Third Iteration).

## **Landscaping**

**5.—**(1) The authorised development must be landscaped in accordance with a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its functions.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and be based on the masterplan.

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

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels;
- (e) implementation timetables for all landscaping works; and
- (f) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged.

(4) All landscaping works detailed in the approved landscaping scheme referred to in paragraph (1) must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

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

### **Contaminated land and groundwater**

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

(2) Where the risk assessment prepared in accordance with sub-paragraph (1) determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its function and the Environment Agency.

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

### **Protected species**

7.—(1) No part of the authorised development is to commence until for that part, final preconstruction 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 by that part of the relevant works, or in any of the trees and shrubs to be lopped, removed or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;
- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and
- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in subparagraph (2) prior to submission to the Secretary of State for approval, except where a suitably qualified and experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation by the undertaker with Natural England, and under any necessary licences.

## **Surface and foul water drainage**

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

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and the lead local flood authority on matters related to their functions, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

## **Flood compensatory storage**

**9.**—(1) Subject to paragraph (2) below, 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, following consultation with the relevant planning authority and the Environment Agency.

(2) No part of the authorised development which will reduce the capacity of the floodplain is to commence until a detailed floodplain compensation scheme design for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency.

(3) A floodplain compensation scheme prepared under paragraphs (1) and (2) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year plus 35% climate change allowance event.

(4) Construction of the authorised development must be sequenced so that at no point will the capacity of the floodplain be reduced below pre-construction levels.

(5) Any floodplain compensation scheme must be constructed as approved under paragraphs (1) and (2) and subsequently maintained.

## **Archaeological remains**

**10.**—(1) No part of the authorised development is to commence until for that part a written scheme of investigation (“WSI”) of areas of archaeological interest, reflecting the relevant mitigation measures set out in the REAC, has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority and the Historic Buildings and Monuments Commission.

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

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

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported by way of a notice to the relevant planning authority, and to the Historic Buildings and Monuments Commission in the case of the scheduled monument area, as soon as reasonably practicable from the date they are identified.

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

(6) If the relevant planning authority or, in the case of a scheduled monument, the Historic Buildings and Monuments Commission determines in writing that the archaeological remains referred to in sub-paragraph (4) require further investigation or mitigation, no construction operations are to take place within 10 metres of the remains until provision has been made for such mitigation or the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority or, in the case of a scheduled monument, the Historic Buildings and Monuments Commission.

### **Traffic management**

**11.—**(1) No part of the authorised development comprising the construction, alteration or improvement of Work No. 1 is to commence until a traffic management plan substantially in accordance with the outline traffic management plan, for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the local highway authority on matters related to its function.

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

### **Fencing**

**12.** Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the EMP (First Iteration) maintained by or on behalf for the undertaker except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

### **Approvals and amendments to approved details**

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

## **PART 2**

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

#### **Applications made under requirements**

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

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2 (further information); or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (4), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where the Secretary of State requests further information pursuant to requirement 15, and no further information has been submitted eight weeks from that day immediately following that on which the application was received by the Secretary of State, the application or (if applicable) the

part of the application to which the request for further information relates is taken to have been refused by the Secretary of State.

(4) Where—

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

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

### **Further information**

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

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the Secretary of State does not give such notification within that 21 day business period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 1 (applications made under requirements) and in this paragraph.

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

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

### **Details of pre-submission consultation**

4.—(1) In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 14 days for any response to the consultation.

(2) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and an account as to how the undertaker has had regard to the responses received.

(3) At the time of submitting an application to the Secretary of State, the undertaker must provide a copy of the summary report to the requirement consultees referred to in the requirement under which approval is being sought.

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

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

(5) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under subparagraph (1) the reasons why the consultation responses have not been reflected in the submitted details with the reasons published in the public register published pursuant to Article 49.

## SCHEDULE 3 Articles 12, 13 and 19

### CLASSIFICATION OF ROADS, ETC

#### PART 1

#### TRUNK ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
<b>The classification of roads plans – sheets 3-4 and 6-7</b>	
Wansford Sutton	<p>A length of highway to be classified as part of the proposed A47 Trunk Road</p> <p>(1) On the eastbound carriageway:</p> <p>(a) from point A (sheet 3), east of the Wansford eastern roundabout, in an easterly direction to point A1 (sheet 6), a distance of 1752 metres; and</p> <p>(b) from point A2 (sheet 6), 25 metres north west of the junction where the Drift joins the existing A47, in an easterly direction to point B (sheet 7), a distance of 829 metres.</p> <p>(2) On the westbound carriageway:</p> <p>(a) from point C (sheet 3), at the Wansford eastern roundabout, to point C1 (sheet 6), a distance of 1747 metres; and</p> <p>(b) from point C2 (sheet 6), 88 metres north west of the junction where the Drift joins the existing A47, in an easterly direction to point D (sheet 7), a distance of 828 metres.</p>
<b>The classification of roads plans – sheets 1, 2 and 3</b>	
Thornaugh Wansford	<p>Proposed free flow link from A1 to A47 new eastbound diverge slip road to be classified as part of the A47 Trunk Road</p> <p>From point E, 350 metres south of the junction between A1 and Windgate Way, in a south-easterly direction to point F (sheet 3), a distance of 2490 metres.</p>
<b>The classification of roads plans – sheet 2 and 3</b>	
Wansford	<p>Improved existing A47 eastbound roundabout connector road to be classified as part of the A47 Trunk Road.</p>

	From point K, on the Wansford western roundabout, in an easterly direction to point L (sheet 3), a distance of 254 metres.
<b>The classification of roads plans – sheet 3</b>	
Wansford	Improved Wansford eastern roundabout to be classified as part of the A47 Trunk Road with reference AA, the centrepiece of the roundabout is 114 metres east of the A47/A1 overbridge.
Wansford	Improved westbound roundabout connector road to be classified as part of the A47 Trunk Road. From point N, at the Wansford eastern roundabout, in a westerly direction to point M, a distance of 66 metres.
Wansford	Existing A1 southbound diverge slip road to be classified as part of the A47 Trunk Road From point G, 135 metres north west of the A47/A1 overbridge, in a south easterly direction to point I, a distance of 230 metres.
Wansford	Existing A1 southbound merge slip road to be classified as part of the A47 Trunk Road From point H, 65 metres north of the A47/A1 overbridge, in an easterly direction to point J, a distance of 187 metres.
<b>The classification of roads plans – sheet 6</b>	
Sutton	New Sutton Heath roundabout to be classified as part of the A47 Trunk Road with reference BB, the centrepiece of the roundabout is 84 metres north west of the junction where the Drift joins the existing A47.

## PART 2

### CLASSIFIED C ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
<b>The classification of roads plans – sheet 3</b>	
Wansford	New link to filling station and Sacrewell Farm to be classified as C Road. From point O, 30 metres south of the centre of the Wansford eastern roundabout, in a southerly and then easterly direction to point P (sheet 4), a distance of 869 metres.
<b>The classification of roads plans – sheet 4</b>	
Sutton	Proposed turning head along Sutton Heath Road to be classified as a C Road. From point EE, 1326 metres east of Wansford western roundabout, to point FF, a distance of 12.5 metres.
<b>The classification of roads plans – sheet 5</b>	
Sutton	New link road from the new Sutton Heath roundabout linking into Sutton Heath Road and

	Langley Bush Road to be classified as C Road. From point Q, 131 metres north west of the existing Langley Bush Road junction with existing Sutton Heath Road, in a south easterly direction to point R (sheet 6), a distance of 729 metres.
Sutton	Improved Langley Bush Road to be classified as C Road. From point S, 13 metres east of the existing Langley Bush Road junction with existing Sutton Heath Road, in an easterly direction to point T, a distance of 60 metres.
Sutton	Realigned Sutton Heath Road to be classified as C Road. From point U, 93 metres to the south east of the existing Langley Bush Road junction with existing Sutton Heath Road, in a south westerly direction to point V, a distance of 60 metres.
<b>The classification of roads plans – sheet 6</b>	
Sutton	New connector road to the new Sutton Heath roundabout and De-trunked A47 to be classified as C Road. From point W, 77 metres north west of the junction where the Drift joins the existing A47, in a south easterly direction to point X (sheet 7), a distance of 865 metres.

## PART 3

### UNCLASSIFIED ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
<b>The classification of roads plans – sheet 3</b>	
Wansford	Proposed route to pumping station. From point CC, in a south easterly route to point DD, a distance of 50 metres.
<b>The classification of roads plans – sheet 5</b>	
Upton	Existing Upton Drift Existing carriageway to be an unclassified road From point AC, at the junction between Upton Drift and Langley Bush Road, in an easterly direction to point AD, as distance of 639 metres.
<b>The classification of roads plans – sheet 7</b>	
Sutton	Existing Nene Way Existing carriageway to be an unclassified road from point Z, 157 metres to the south west of the centreline of the existing Nene Way roundabout, in a northern-easterly direction to point Y, a distance of 58 metres.
Sutton	Proposed new turning head to be an

	unclassified road. From point GG, 304 metres north east of the existing Nene Way roundabout, to point HH, a distance of 23 metres.
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## PART 4

### SPEED LIMITS

Note: where speed limits are indicated on the plans relating to this Part (the traffic regulation plans) but are not referenced in this schedule they indicate that national speed limits apply in accordance with either:

- (a) the national speed limit set out in Section 86 and Schedule 6 of the Road Traffic Regulation Act 1984 and the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 as varied by the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 and continued indefinitely by Regulation 2 of the 70 Miles Per Hour, 60 Miles Per Hour and 50 Miles Per Hour (Temporary Speed Limit) (Continuation) Order 1978 (SI 1978/1548)(a); or
- (b) the provisions of the Road Traffic Regulation Act 1984 (which defines speed limits on 'restricted roads' by reference to street lighting),

and are not subject to this Order.

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed Limit</i>
<b>The traffic regulation plans – sheets 2</b>		
Wansford	A47 trunk road From point J at the eastern side of the Wansford western roundabout, in an easterly direction to point H (sheet 3), a distance of 242 metres.	Removal of Restricted Road Status.
<b>The traffic regulation plans – sheet 3</b>		
Wansford	A1 southbound diverge to Wansford eastern roundabout From point A, in an easterly and southerly direction to point C, a distance of 180 metres.	Removal of Restricted Road Status.
Wansford	A1 southbound merge from Wansford eastern roundabout From point B, in an easterly and southerly direction to point C1, a distance of 57 metres.	Removal of Restricted Road Status.
Wansford	A47 trunk road westbound west of Wansford eastern roundabout	Removal of Restricted Road Status.

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- (a) SI 1978/1548. The Road Traffic Regulation Act 1984 and the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 and the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 were not statutory instruments.

	From point K, 145 metres east of the Wansford eastern roundabout, in an easterly direction to point G, a distance of 66 metres.	
Wansford	Wansford eastern roundabout The whole roundabout from point I around the roundabout to point I, a distance of 170 metres.	Removal of Restricted Road Status.
Wansford	A47 trunk road eastbound From point D, at the eastern side of the Wansford eastern roundabout in an easterly direction to point L, a distance of 127 metres.	Removal of Restricted Road Status.
Wansford	A47 Trunk road westbound A47 trunk road From point E, at the eastern side of the Wansford eastern roundabout in an easterly direction to point M, a distance of 127 metres.	Removal of Restricted Road Status.
Wansford	New link to filling station and Sacrewell Farm southbound From point N, 128 metres south of the southern side of the Wansford eastern roundabout in an easterly direction to point O (sheet 4), a distance of 750 metres.	30 miles per hour.
<b>The traffic regulation plans – sheet 6</b>		
Sutton	New link to Sutton Heath Road From point S at the northern side of Sutton Heath Roundabout on the northbound carriageway in a northerly direction to point X, a distance of 98 metres.	Removal of Restricted Road Status.
Sutton	Sutton Heath Roundabout The whole roundabout from point AB around the roundabout to point AB, a distance of 175 metres.	Removal of Restricted Road Status.
Sutton	A47 trunk road eastbound From point T at the eastern side of the Sutton Heath roundabout in a south-easterly direction to point Z, a distance of 132 metres.	Removal of Restricted Road Status.
Sutton	A47 trunk road westbound From point U, at the eastern side of the Sutton Heath roundabout. in a south-	Removal of Restricted Road Status.

	easterly direction to point AA, a distance of 127 metres.	
Sutton	Sutton Heath Roundabout southern arm From point V, in a south-easterly and then easterly direction to point Y, a distance of 133 metres.	Removal of Restricted Road Status.
Sutton	A47 trunk road westbound From point W, at the western side of the Sutton Heath roundabout, in a north-westerly direction to point Q, a distance of 148 metres.	Removal of Restricted Road Status.
Sutton	A47 trunk road eastbound From point R, at the western side of the Sutton Heath roundabout, in a north-westerly direction to point P, a distance of 179 metres.	Removal of Restricted Road Status

## PART 5

### REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1) Parish</i>	<i>(2) Road name, number and length</i>	<i>(3) Title of Order</i>	<i>(4) Revocations or Variations</i>
<b>The traffic regulation plans – sheets 3, 4, 6 and 7</b>			
	Detrunked A47	The A47 Trunk Road (Wansford, City of Peterborough to Great Yarmouth, Norfolk) (24 Hour Clearway) Order 2013.	Paragraph 1 of the said order will not apply to the former A47 trunk road from point X7 (sheet 3), at the eastern exit of the Wansford eastern roundabout, in an easterly direction to point X9 (sheet 7) a distance of 2,486 metres
	Detrunked A47	The A47 Trunk Road (Wansford, City of Peterborough to Great Yarmouth, Norfolk) (24 Hour Clearway) Order 2013.	Paragraph 1 of the said order will not apply to the whole Nene Way roundabout from point X10 around the roundabout to point X10, a distance of 106 metres.
	Detrunked A47	The A47 Trunk Road (Wansford, City of Peterborough to Great Yarmouth, Norfolk) (24 Hour Clearway)	Paragraph 1 of the said order will not apply to the A47 trunk road westbound from point X11 at the

		Order 2013.	eastern exit of the Nene Way roundabout, in an easterly direction to point X12 a distance of 76 metres.
	Detrunked A47	The A47 Trunk Road (Wansford, City of Peterborough to Great Yarmouth, Norfolk) (24 Hour Clearway) Order 2013.	Paragraph 1 of the said order will not apply to the A47 trunk road eastbound from point X13 at the eastern exit of the Nene Way roundabout, in an easterly direction to point X14 a distance of 70 metres.

## PART 6

### FOOTPATHS, CYCLE TRACKS, FOOTWAYS AND BRIDLEWAYS

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Length of Footpath/Cycle track/Footway/Bridleway</i>
<b>The rights of way and access plans – sheet 2</b>	
Wansford	Reference SU1 to SU2 A new cycle track across the central reservation of the A47 trunk road 25 metres west of the Wansford western roundabout from point SU1 in a southerly direction to SU2, a distance of 2.7 metres.
<b>The rights of way and access plans – sheet 3</b>	
Wansford	Reference SU3 to SU4 A cycle track on the south side of the new link to filling station and Sacrewell Farm from point SU3 at junction of Nene Way permissive bridleway with the existing unnamed access road to picnic site from Leicester Road in a north-easterly direction joining the new link road to Point SU4 at the western side of the realigned pumping station access road, a distance of 135.64 metres.
Wansford	Reference SU5 to SU6 A cycle track on the south side of the new link to filling station and Sacrewell Farm from point SU5 at the eastern side of the realigned pumping station access road in an easterly direction to the western side of the existing western access to the filling station at Point SU6, a distance of 295 metres.
Wansford	Reference SU7 to SU8 A cycle track on the south side of the new link to filling station and Sacrewell Farm from Point SU7 at the eastern side of the western

	access to the filling station in an easterly direction to Point SU8 at the western side of the eastern access to the filling station, a distance of 28 metres.
<b>The rights of way and access plans – sheet 4</b>	
Sutton	Reference SU9 to SU10 A shared cycle track on the south side of the new link to filling station and Sacrewell Farm and the A47 trunk road from Point SU9 at the eastern side of the existing eastern access to the filling station in an easterly direction to Point SU10, a distance of 649 metres.
Sutton	Reference FP1 to FP2 A new footpath to the south of the A47 trunk road in a southerly and then easterly direction from point FP2, 1,112 metres east of the Wansford eastern roundabout in an easterly direction, to point FP1 at Wansford footpath 4, a distance of 67 metres.
Sutton	Reference BR7 to BR1 A bridleway crossing the A47 trunk road in the vicinity of Sutton Heath Road:  (1) from point BR7 on the stopped up A47, 1,275 metres east of the Wansford eastern roundabout, in a southerly direction to point BR6, a distance of 21 metres;  (2) from point BR6 in an easterly direction to point BR5, a distance of 18 metres;  (3) from point BR5 in a northerly direction under the existing bridge under the stopped up A47 and through a new underpass under the A47 trunk road to point BR4, a distance of 53 metres;  (4) from point BR4 in an easterly direction to point BR3, a distance of 49 metres;  (5) from point BR3 in a northerly direction to point BR2, a distance of 10 metres; and  (6) from point BR2 in a westerly direction to point BR1, a distance of 38 metres.  (7) NOTE: between point BR5 and point BR4 the bridleway is subject to:  (a) the existing road bridge carrying the de-trunked A47; and  (b) the underpass under the A47 trunk road where headroom for users is subject to a limitation of 2.7 metres.
Sutton	Reference BR7 to BR8 (sheet 6) A bridleway along the southern side of the stopped up A47 Roman Road from point BR7 in an easterly and then south-easterly direction to point BR8 (sheet 6) at the junction with The Drift, a distance of 577 metres.
<b>The rights of way and access plans – sheet 6</b>	

Sutton	Reference SU11 to SU14 (sheet 7) A cycle track along the southern side of the detrunked A47 from point SU11, 67 metres east of the Wansford eastern roundabout, in a south-easterly direction to point SU14 on the western side of Nene Way, a distance of 682 metres.
Sutton	Reference BR8 to BR9 A bridleway along the stopped up The Drift from point BR8 at the western access to The Drift from the detrunked A47, in a south-easterly direction to point BR9 on The Drift, a distance of 278 metres.
Sutton	Reference SU12 to SU13 A cycle track along the stopped up The Drift from point SU12 at the eastern access to The Drift from the detrunked A47, in a south-westerly and then south-easterly direction to point SU13 on The Drift, a distance of 50 metres.
<b>The rights of way and access plans – sheet 7</b>	
Sutton	Reference FW1 to FW2 A footway on the eastern side of Nene Way, from point FW1, 17 metres south of its junction with Peterborough Road passing onto the southern side of Peterborough Road, to point FW2, a distance of 40.11 metres.
Sutton	Reference FW3 to FW4 A footway on the northern side of Peterborough, from point FW3, 30 metres east of its junction with Nene Way in an easterly direction to point FW4, a distance of 81.40 metres.

## PART 7

### ROADS TO BE DETRUNKED

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Length of Road</i>
<b>The detrunking plans – sheets 3 &amp; 4</b>	
Wansford	A length of 334 metres of the existing A47 Trunk Road from point A, 87 metres north-west of the Pumping Station, to Point B.
<b>The detrunking plans – sheets 6 and 7</b>	
Sutton	A length of 512 metres of the existing A47 Trunk Road from point C, 50 metres north-west of the junction between A47 and the Drift, to point D.

## PART 8

### TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
<b>The traffic regulation plans – sheet 3</b>		
Thornhaugh Wansford	New free flow link A1 Southbound to A47 eastbound From point X1 122 metres south of Thornhaugh bridleway 8 (Windgate Way), in a southerly then south-easterly then easterly direction to point X2 (sheet 3), a distance of 1,246 metres.	Clearway (including verges, hardshoulders).
<b>The traffic regulation plans – sheet 3</b>		
Wansford	Wansford eastern roundabout The whole of the roundabout from point I around the roundabout to point I, a distance of 151 metres.	Clearway (including verges, hardshoulders).
Wansford Sutton	A47 Trunk Road eastbound From point D in an easterly direction to point R (sheet 6), a distance of 1,751 metres.	Clearway (including verges, hardshoulders).
Wansford Sutton	A47 Trunk Road westbound From point E in an easterly direction to point W (sheet 6), a distance of 1,747 metres.	Clearway (including verges, hardshoulders).
<b>The traffic regulation plans – sheet 6</b>		
Sutton	Sutton Heath Roundabout The whole roundabout from point AB around the roundabout to point AB, a distance of 175 metres.	Clearway (including verges, hardshoulders).
Sutton	A47 Trunk Road eastbound From point T in an easterly direction to point X14 (sheet 7), a distance of 825 metres.	Clearway (including verges, hardshoulders).
Sutton	A47 Trunk Road eastbound From point U in an easterly direction to point X12 (sheet 7), a distance of 824 metres.	Clearway (including verges, hardshoulders).

## SCHEDULE 4

Article 17, 28 and 29

### PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

In relating this Schedule to the rights of way and access plans, the provisions described in this Schedule are shown on the rights of way and access plans in the following manner—

- (a) Existing highways are to be stopped up, as described in column (2) of Parts 1 and 2 of this Schedule, are shown by black diagonal hatching (as shown in the key on the rights of way and access plans) over the extent of the area to be stopped up, which is described in

column (3) of Parts 1 and 2 of this Schedule and given a reference label in a square box (a capital A followed by a number).

- (b) New highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 2 of this Schedule, are shown by red honeycomb-hatching (for motorways and trunk roads), blue cross-hatching (for other classified roads and highways) yellow continuous lines (for cycle tracks) and a blue continuous line (for public footpaths) (as shown in the key on the rights of way and access plans) and are given a reference label in a square (D for new highway to be substituted, SU for cycle tracks and FP for footpaths) followed by a number and will be a road unless the word 'footpath', 'bridleway', 'footway' or 'cycle track' appears beneath its reference letter in column (4) of Part 2 of this Schedule.
- (c) Private means of access to be stopped up, as described in column (2) of Parts 3 and 4 of this Schedule, are shown by blue diagonal hatching (as shown in the key on the rights of way and access plans) over the extent of stopping up described in column (3) of Parts 3 and 4 of this Schedule, and are given a reference label in a square (a capital B followed by a number).
- (d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 3 of this Schedule, are shown by purple hatching (as shown in the key on the rights of way and access plans) and are given a reference label in a square (a capital C followed by a number).
- (e) Private means of access to be altered are included in column (2) of Part 5 of this Schedule, are shown by purple line hatching (as shown in the key on the rights of way and access plans) and are given a reference label in a square (a capital C followed by a number).

## PART 1

### HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Highway to be stopped up</i>	(3) <i>Extent of stopping up</i>
<b>The rights of way and access plans – sheet 3</b>		
Wansford	Reference A2 Part of the Unnamed Access Road to Picnic Site from Leicester Road and link to the pumping station	Reference A2 A length, from a point 103 metres north-west from the pumping station, south of its junction with stopped up A47 in a south westerly and then southerly direction, a distance of 95 metres.
Wansford	Reference A9 Part of the width of Unnamed Access Road to Picnic Site from Leicester Road	Reference A9 A length, from its boundary with the A1 trunk road in a north-easterly direction, for a distance of 326 metres.
<b>The rights of way and access plans – sheet 6</b>		
Sutton	Reference A6 Part of The Drift	Reference A6 From the junction of The Drift with the de-trunked A47 in a south-easterly direction for a distance of 271 metres
<b>The rights of way and access plans – sheet 7</b>		

Sutton Parish	Reference A8 Part of Upton Road and part of the Nene Way roundabout	Reference A8 Part of the Nene Way roundabout and a length of Upton Road from its junction with the Nene Way roundabout in a north-easterly direction for a distance of 298 metres.
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## PART 2

### HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New highway to be substituted/provided</i>
<b>The rights of way and access plans – sheet 3</b>			
Wansford	Reference A1 Part of the A47 Leicester Road	Reference A1 A length from its junction with the Wansford eastern roundabout, in an easterly direction, to the new link to filling station and Sacrewell Farm a distance of 504 metres.	References D1 and D2 Part of new link to filling station and Sacrewell Farm To be substituted by the following lengths of new highway: (1) Reference D1 from the Wansford eastern roundabout in a southerly and then easterly direction for a distance of 205 metres; and (2) Reference D2 from a point 205 metres south of the Wansford eastern roundabout in an easterly direction for a distance of 368 metres
<b>The rights of way and access plans – sheet 4</b>			
Wansford	Reference A3 Wansford Footpath 4	Reference A3 From its junction with the existing A47 in a south-easterly direction for a distance of 27 metres.	Reference FP1 and FP2 To be substituted by a new footpath from point FP1, 27 metres south-east of the existing junction of Wansford Footpath 4 with the existing A47, in a westerly and then northerly direction for 83 metres to Point

			FP2 on the A47 Trunk Road.
Sutton	Reference A11 Part of Sutton Heath Road	Reference A11 From its junction with the existing A47 in a northerly direction for a distance of 28 metres.	Reference D3 and D5 To be substituted by the following lengths of new highway:  (1) Reference D3 (sheet 5) from a point 75 metres south-east of the junction of Sutton Heath Road with Langley Bush Road in a south-westerly direction for a distance of 117 metres; and  (2) Reference D5 (sheets 5 and 6) from Sutton Heath Roundabout for a distance of 537 metres in a northerly direction to the existing Sutton Heath Road
Wansford Sutton	Reference A5 Existing A47	Reference A5 A47 Leicester Road from a point 1,245 metres east of the Wansford eastern roundabout in an easterly and then south-easterly direction to its junction with The Drift (Sheet 6), a distance of 586 metres.	References D6 and D7 To be substituted by the following lengths of new highway:  (1) Reference D6 (sheets 4 and 6) from a point 1245 metres east of the Wansford eastern roundabout in an easterly direction along the A47 Trunk road to Sutton Heath roundabout, a distance of 557 metres; and  (2) Reference D7 (sheet 6) from a point on the Sutton Heath roundabout, 1,800 metres east of the Wansford eastern roundabout, in a southerly direction to the junction of the stopped up A47 with The Drift, a distance of 94 metres.
<b>The rights of way and access plans – sheet 5</b>			
Sutton	Reference A4	Reference A4	References D4 and

	Sutton Heath Road	From the junction of Sutton Heath Road with Langley Bush Road, in a southerly and then south-westerly direction for a distance of 172 metres.	D3 To be substituted by the following lengths of new highway:  (1) Reference D4 from the junction of Sutton Heath Road with Langley Bush Road in a south-easterly direction, for a distance of 101 metres; and  (2) Reference D3 from a point 75 metres south-east of the junction of Sutton Heath Road with Langley Bush Road in a south-westerly direction for a distance of 117 metres.
<b>The rights of way and access plans – sheet 7</b>			
Sutton	Reference A7 Part of the existing A47 and part of Nene Way roundabout and Peterborough Road	Reference A7 A length of the existing A47, from its junction with Peterborough Road in a westerly direction or a distance of 285 metres and a length of the existing Nene Way roundabout and a length of Peterborough Road from its junction with the Nene Way roundabout in a southerly direction for a distance of 52 metres.	Reference D8 (sheets 6 and 7) To be substituted by a new highway Reference D8 from the junction of the Existing A47 with Nene Way in a westerly direction for a distance of 695 metres.

### PART 3

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of access to be stopped</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New private means of access to be substituted or provided</i>
<b>The rights of way and access plans – sheet 1</b>			
Thornough	Reference B1	Reference B1	Reference C1

	Access to the A1 Houses from the A1 trunk road southbound	The whole of the private access from the northern boundary of Thornhaugh Bridleway 8 (Windgate Way) in a northerly direction for a distance of 72 metres.	New private access road to the A1 Houses from the junction of the A1 trunk road with the access to Abbott's Cottages and Sacrewell Lodge in an easterly direction for a distance of 37 metres, and then a southerly direction for a distance of 260 metres to the northern boundary of Thornhaugh Bridleway 8 (Windgate Way).
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**The rights of way and access plans – sheet 3**

Wansford	Reference B3 Access to Sacrewell Farm from the unnamed access road to picnic site from Leicester Road.	Reference B3 The whole of the private access track from its junction with the stopped up A47 in a northerly direction for 232 metres to where the access road diverges, and including the north-westerly diverge towards Sacrewell Farm for a distance of 35 metres and the north-easterly diverge for a distance of 9 metres.	Reference C2 A new private means of access to Sacrewell Farm from the new link to filling station and Sacrewell Farm in a northerly direction passing through the Sacrewell Farm underbridge and continuing in a northerly and then easterly direction to tie in with the existing private access road which leads to the east of Sacrewell Farm, a distance of 404 metres.
Wansford	Reference B4 Access to field to the north of the existing link to the A47.	Reference B4 Private access along the existing link from the existing A47, 280 metres south west of the Wansford eastern roundabout	Reference C8 New private access from the new link to the petrol station to the existing road to be stopped up to the west of the pumping station. This access will be used for the maintenance of existing utilities along that existing road and also, for maintenance of the proposed ecological mitigation area to the west to the petrol station road.
Wansford	Reference A2 Part of the Unnamed	Reference A2 A length, from a point	Reference C9 New private access

	Access Road to Picnic Site from Leicester Road and link to the pumping station	103 metres north-west from the pumping station, south of its junction with stopped up A47 in a south westerly and then southerly direction, a distance of 95 metres.	from the new link to the petrol station to the existing road to be stopped up. This access will be used for the maintenance of existing utilities along that existing road to the east of the pumping station.
Wansford	None	None	Reference C10 New private access from the new link to the petrol station to the proposed A47 west bound verge. This access will be used for maintenance of the proposed traffic monitoring equipment in the mainline verge.
<b>The rights of way and access plans – sheet 4</b>			
Sutton	Reference B6 Access to Old Station House on the Western Side of Sutton Heath Road 51 metres north of the junction of Sutton Heath Road with the existing A47.	Reference B6 The whole of the private access from a point 51 metres north of the junction of Sutton Heath Road with the existing A47 in a northerly direction for a distance of 1 metre.	Reference C3 A part new and part improved private means of access to Old Station House from a point 51 metres north of the junction of Sutton Heath Road with the existing A47 in a northerly direction, for a distance of 7 metres.
<b>The rights of way and access plans – sheet 6</b>			
Sutton	None	None	Reference C4 A new private means of access on the western side of the new link to Sutton Heath Road from a point 320 metres south of the junction of Sutton Heath Road and Langley Bush Road (sheet 5) for a distance of 8.5 metres.
Sutton	None	None	Reference C5 A new private means of access on the eastern side of the new link to Sutton Heath Road from a point 323 metres

			south of the junction of Sutton Heath Road and Langley Bush Road (sheet 5) for a distance of 8.5 metres.
Sutton	None	None	Reference C7 A new private means of access to Deep Springs along the line of the stopped up A47 from a point 60 metres south of the Sutton Heath roundabout in a westerly direction for a distance of 266 metres.
<b>The rights of way and access plans – sheet 7</b>			
Sutton	Reference B7 Field access on the western side of Upton Road	Reference B7 The whole of the private access from a point 312 metres north east of the Nene Way roundabout in a north-easterly direction for a distance of 5 metres.	Reference C6 A new private means of access on the western side Upton Road at the north-western end of the new turning head on Upton Road from a point 317 metres north east of the Nene Way roundabout in a north-easterly direction for a distance of 9 metres.

## PART 4

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
<b>The rights of way and access plans – sheet 2</b>		
Wansford	Reference B2 Access to Sacrewell Farm from the A1, 472 metres south of Thornhaugh Bridleway 8 (Windgate Way).	Reference B2 Part of the private access from a point 14 metres south of Thornhaugh Bridleway 8 (Windgate Way) in an easterly direction for a distance of 39 metres.
<b>The rights of way and access plans – sheet 4</b>		
Wansford Parish	Reference B5 Private access road from existing A47 64 metres north of the river Nene.	Reference B5 A point extending 7 metres south from the existing A47.

Sutton Parish	Reference B8 Access along the Eastbound carriageway of the existing A47, 65 metres west of the existing bridge over the abandoned railway.	Reference B8 A point extending for 34 metres heading north east from the existing eastbound A47 carriageway.
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## PART 5

### ALTERATIONS TO PRIVATE MEANS OF ACCESS

(1) <i>Parish(es)</i>	(2) <i>Private means of access to be altered</i>
<b>The rights of way and access plans – sheet 3</b>	
Wansford	Reference C2A Modified southern access to Sacrewell Farm from a point 2 metres north-west of the diverge in the current access road in a north westerly and then westerly direction, a distance of 30 metres.

## SCHEDULE 5

Article 27

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

(1) <i>Plot reference number shown on land plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Works for which rights over land may be acquired</i>
1/3f	Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers. Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure. Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers. Right to pass and repass with or without plant and vehicles and including access to highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	2, 3
1/4b	Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.	2, 3

	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
1/5a	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	2, 3
1/6b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	2, 3
1/7b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes,</p>	2, 3

	<p>cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
1/8b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	2, 3
1/10d	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	5
3/1h	Place, divert, alter, remove or maintain apparatus	16, 18

	<p>including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
3/1m	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	16
3/1n	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	16
3/2j	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use,</p>	27

	<p>monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
3/2l	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	26
3/3h	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	26
3/4d	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made</p>	16

	materially more difficult.	
3/4f	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables and 11kv electricity cable together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	8, 16, 26, 27
3/4j	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	16
3/4k	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made</p>	16, 18

	materially more difficult.	
3/6b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	16, 18
3/7b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	16, 17, 18
3/7c	<p>Divert, install, underground, alter, create new connections to, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	17
3/7d	<p>Divert, install, underground, alter, create new connections to, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and</p>	17

	<p>vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
3/8b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, create new connections to, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	27
4/3e	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	29
4/6c	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, create new connections to, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with</p>	29, 31, 33, 36

	<p>accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
4/7b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights, bat hotel and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	33, 34, 36
4/9e	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	33, 36, 37, 38
4/10a	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables</p>	36

	<p>including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
5/2c	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	36
5/4b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	55, 56
5/4c	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables and 11kV electricity cable together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p>	57

	<p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
5/4e	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables and 11kv electricity cable together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	55, 57
5/4f	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	55, 56
5/6d	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	56
5/6j	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated</p>	58

	<p>infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
5/7b	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	56
5/7d	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	58
6/4f	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	49
6/5c	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p>	49

	<p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
7/3d	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	48
7/4c	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	49
7/4e	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines, conduits and associated infrastructure.</p> <p>Right to pass and repass with or without plant and</p>	48, 52

	vehicles and including access to highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	
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## SCHEDULE 6

Article 27

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

#### Compensation enactments

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

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

(2) For section 5(1) (5A) (relevant valuation date) of the 1961 Act substitute—

“5.—(1) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the A47 Wansford to Sutton Development Consent Order 202[X] (“the A47 Wansford to Sutton Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(7) of Schedule 4 to the A47 Wansford to Sutton Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land,

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

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

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

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

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

4. Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 30 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the

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(a) 1973 c. 80.

compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27(1) (compulsory acquisition of rights and imposition of restrictive covenants)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

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

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

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

(3) For Section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

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

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

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 24), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections—

- (a) 11A(b) (powers of entry: further notices of entry),
- (b) 11B(c) (counter-notice requiring possession to be taken on specified date),
- (c) 12(d) (unauthorised entry), and
- (d) 13(e) (refusal to give possession to acquiring authority)

of the 1965 Act are modified correspondingly.

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- (a) 1965 c. 56. Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), Section 103 of the Planning and Compulsory Purchase Act 2004 c. 5 and S.I. 2009/1307.
  - (b) 1956 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
  - (c) 1956 c. 56. Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
  - (d) 1956 c. 56. Section 12 was amended by section 56(2) of, and part of Schedule 9, to the Courts Act 1971 (c. 23).
  - (e) 1956 c. 56. Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunal, Courts and Enforcement Act 2007 (c. 15).

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30 is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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

## “SCHEDULE 2A

### COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

#### **Introduction**

1.—(1) This Schedule applies where an undertaker serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 31 (application of the 1981 Act) of the A47 Wansford to Sutton Development Consent Order 202X in respect of the land to which the notice to treat relates.

(2) But see article 32(acquisition of subsoil or airspace only) of the A47 Wansford to Sutton Development Consent Order 202[X] which excludes the acquisition of subsoil or airspace only from this Schedule.

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

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

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

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

#### **Response to counter-notice**

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

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

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

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(a) 1956 c. 56. Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

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

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

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

#### **Determination by the upper Tribunal**

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

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

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

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

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

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

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

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

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”

## **SCHEDULE 7**

Article 34

### **LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Plot Reference Number shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Works for which temporary possession may be taken</i>
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Parish of Thornhaugh	1/1a	Temporary storage and working area to support construction of the following in adjoining land parcels: a new private means of access to 4 properties, diversion, protection and removal of potable water pipes and the protection of the NGG gas pipeline including the crossing of Work No. 2.	2, 3, 4
Parish of Thornhaugh	1/1c	Temporary storage and working area to support construction of the following in adjoining land parcels: a new private means of access to 4 properties, diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and underground electricity cables.	2, 3
Parish of Thornhaugh	1/1e	Temporary storage and working area to support construction of the following in adjoining land parcels: diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, overhead and underground electricity cables crossing Work No.2 and protection of NGG gas pipeline.	3, 4
Parish of Thornhaugh	1/3a	Temporary storage and working area to support construction of the following in adjoining land parcels: diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and underground electricity cables and adjacent utility works.	3
Parish of Thornhaugh	1/3c	Temporary storage and working area to support construction of the following in adjoining land parcels: diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and underground electricity cables and adjacent utility works.	3
Parish of Thornhaugh	1/9a	Protection, diversion and removal of existing water pipes, electricity and telecommunications cables and associated apparatus Temporary storage and working area to support construction of the following in adjoining land parcels: new private means of access to 4 properties and a service vehicle turning point including earthworks and associated drainage. Temporary storage and working area to support construction of the following in adjoining land parcels: diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and	2, 3

		underground electricity cables and adjacent utility works.	
Parish of Thornhaugh	1/10a	Temporary storage and working area to support construction of the following in adjoining land parcels: diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and underground electricity cables and adjacent utility works.	3, 5
Parish of Wansford	2/1d	Temporary protection of electricity and telecommunications cables and associated apparatus. Temporary storage and working area to support construction of the following in adjoining land parcels: improvement to the eastbound carriageway of the existing A47 including the realignment of the central reserve and a new cycle crossing point at the Wansford western roundabout.	12
Parish of Thornhaugh	2/3b	Temporary storage and working area to support construction of the following in adjoining land parcels: new carriageway to create a free flow link from A1 southbound to the dualled A47 eastbound including embankments and associated drainage. Temporary storage and working area to support diversion and removal of underground electronic communication cables and apparatus and adjacent utilities works.	5, 6
Parish of Wansford	3/1c	Temporary protection of electricity and telecommunications cables and associated apparatus. Temporary storage and working area to support construction of the following in adjoining land parcels new carriageway to create a free flow link from A1 southbound to the dualled A47 eastbound including embankments and associated drainage. Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline including earthworks and associated drainage. Temporary storage and working area to support diversion, protection and removal of potable water pipes, electronic communication cables and apparatus, and overhead and adjacent utilities works.	1, 2, 6
Parish of Wansford	3/1j	Temporary protection of electronic communications cables and associated apparatus. Temporary access to facilitate construction	16

		of the following in adjoining land parcels: diversion and removal of electronic communication cables and apparatus and diversion of water pipes and construction of a site office and construction areas.	
Parish of Wansford	3/11	Temporary protection of water pipes, sewers, electricity and telecommunications cables and associated apparatus. Temporary access to facilitate construction of the following in adjoining land parcels: diversion and removal of electronic communication cables and apparatus and diversion of water pipes and construction of a site office and construction areas.	16
Parish of Wansford	3/1o	Temporary protection of electronic communications cables and associated apparatus. Temporary access to facilitate construction of the following in adjoining land parcels: diversion and removal of electronic communication cables and apparatus and diversion of water pipes and construction of a site office and construction areas..	16
Parish of Wansford	3/2c	Temporary welfare and compound area including a haul route.	24
Parish of Wansford	3/2e	Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the existing A47 including earthworks and associated drainage. Temporary storage and working area to facilitate construction of the following in adjoining land parcels: a new Sacrewell Farm access road connecting to Work No.15 and running north passing through the Sacrewell Farm underbridge including earthworks and drainage. Temporary welfare and compound area including a haul route.	1, 21, 24
Parish of Wansford	3/2i	Temporary protection of water pipes and associated apparatus. Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the termination point to the east for tie into existing A47 including earthworks and associated drainage. Temporary storage and working area to facilitate construction of the following in adjoining land parcels: a new Sacrewell Farm access road connecting to Work No.15 and running north passing through	1, 21, 24

		the Sacrewell Farm underbridge including earthworks and drainage. Temporary welfare and compound area including a haul route	
Parish of Wansford	3/2k	Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the termination point to the east for tie into existing A47 including earthworks and associated drainage. Temporary welfare and compound area including a haul route	1, 24
Parish of Wansford	3/3d	Temporary storage and working area to support provision of a new Sacrewell Farm access road connecting to Work No.15 and running north passing through the Sacrewell Farm underbridge including earthworks and drainage.	23
Parish of Wansford	3/3g	Temporary storage and working area to support provision of a new Sacrewell Farm access road connecting to Work No.15 and running north passing through the Sacrewell Farm underbridge including earthworks and drainage and access link to Sacrewell Farm.	23
Parish of Wansford	3/4h	Temporary protection of electronic communications cables and associated apparatus. Temporary access to facilitate construction of the following in adjoining land parcels: diversion and removal of electronic communication cables and apparatus and diversion of water pipes, provision of a site office and construction area and a new Sacrewell Farm Underbridge under the dualled A47 (Work No.1) including structural units, concrete foundations, drainage and waterproofing.	16, 25
Parish of Wansford	3/4i	Temporary protection of electronic communications cables and associated apparatus. Temporary access to facilitate construction of the following in adjoining land parcels: diversion and removal of electronic communication cables and apparatus and diversion of water pipes, provision of a site office and construction area and protection, diversion and resilience works to large diameter water pipelines and associated apparatus and adjacent utility works.	16, 27
Parish of Wansford	3/5a	Temporary storage and working area to facilitate construction of the following in adjoining land parcels: the removal of	9, 11, 27

		underground electricity cables crossing Work Nos. 1, 8, 10, 11, 13, 16, 17, 21 and 26, and improvements to the existing A1/A47 on and off ramps to the Wansford east roundabout including earthwork widening	
Parish of Wansford	4/2b	Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the existing A47 including earthworks and associated drainage, the provision of support for a new balancing pond to the north of the dualled A47 (Work No.1) including drainage inlets, an outlet to river Nene and an access track.  Temporary storage and working area to support the diversion and removal of overhead electrical cables and adjacent utilities works.	1, 28, 29
Parish of Wansford and Parish of Sutton	4/2f	Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the existing A47 including earthworks and associated drainage and adjacent utilities works.	1, 16, 26
Parish of Sutton	4/2i	Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the termination point to the existing A47 including earthworks and associated drainage and adjacent utilities works and provision of a new balancing pond to the north of the dualled A47 (Work No.1) including drainage inlets, an outlet to river Nene and an access track.	1, 16, 26, 27, 28
Parish of Wansford	4/3d	Temporary storage to facilitate construction of the following in adjoining land parcels: the dualling of the A47 mainline from the existing Wansford eastern roundabout to the existing A47 including earthworks and associated drainage, a new length of carriageway to form a new link road from A47 Wansford eastern roundabout (Work No.13) and a new A47 westbound off slip from the dualled A47 (Work No.1) including earthworks, associated drainage and a cycle track, and adjacent utilities works.	1, 15, 16, 29
Parish of Wansford	4/3f	Temporary storage and working area to support diversion and removal of overhead electrical cables crossings and utilities works in adjoining land parcels.	29

Parish of Sutton	4/5b	Temporary storage and working area to support diversion and removal of electronic communication cables and apparatus and utilities works in adjoining land parcels.	36
Parish of Sutton	4/6b	Temporary storage and working area to support diversion and removal of overhead electrical cables crossings and utilities works in adjoining land parcels.	29, 32
Parish of Sutton	4/9a	Temporary access route from Work No. 37 turning to temporary welfare and compound area including a haul road to the north of the dualled A47 (Work No. 1) and a new temporary access track from Work No. 37.	38
Parish of Sutton	5/3a	Temporary storage and working area to facilitate construction of the following in adjoining land parcels: new Sutton Heath House roundabout (Work No.44) north to Sutton Heath Road including earthworks and drainage and access points.	42
Parish of Sutton	5/3b	Temporary storage and working area to facilitate construction of the following in adjoining land parcels: new Sutton Heath House roundabout (Work No.44) north to Sutton Heath Road including earthworks and drainage and access points.	42
Parish of Upton	5/4d	Temporary storage and working area to support diversion of electronic overhead and underground communication cables and apparatus crossings in adjoining land parcels.	56
Parish of Upton	5/5b	Temporary storage and working area to support improvements to the existing Upton Drift including passing places and other works in adjoining land parcels.	55
Parish of Upton	5/6a	Temporary storage and working area to support construction of the following in adjoining land parcels: improvements to the existing Upton Drift including passing places, widening the metalled surface into highway verge, straightening of the S-bend and sight lines and widening of its existing junction with Langley Bush Road and the existing junction adjacent to Model Farm.	55
Parish of Upton	5/6c	Temporary storage and working area to support improvements to the existing Upton Drift including passing places in adjoining land parcels.	55
Parish of Upton	5/6e	Temporary storage and working area to support improvements to the existing Upton Drift including passing places and connected works in adjoining land parcels.	55
Parish of Upton	5/6g	Temporary storage and working area to support diversion of electronic overhead	56

		and underground communication cables and apparatus crossings in adjoining land parcels.	
Parish of Upton	5/6h	Temporary storage and working area to support diversion of electronic overhead and underground communication cables and apparatus crossing in adjoining land parcels.	56
Parish of Upton	5/6k	Temporary storage and working area to support diversion of the underground cables and protection of the foul sewer crossings in adjoining land parcels.	58
Parish of Upton	5/6l	Temporary storage and working area to support improvements to the existing Upton Drift including passing places, widening the metalled surface into highway verge, straightening of the S-bend and sight lines and widening of its existing junction with Langley Bush Road and the existing junction adjacent to Model Farm including earthworks and drainage in adjoining land parcels.	55
Parish of Upton	5/7a	Temporary storage and working area to support improvements to the existing Upton Drift including passing places, widening the metalled surface into highway verge, straightening of the S-bend and sight lines and widening of its existing junction with Langley Bush Road and the existing junction adjacent to Model Farm including earthworks and drainage in adjoining land parcels.	55
Parish of Upton	5/7c	Temporary storage and working area to support improvements to the existing Upton Drift including passing places, widening the metalled surface into highway verge, straightening of the S-bend and sight lines and widening of its existing junction with Langley Bush Road and the existing junction adjacent to Model Farm including earthworks and drainage in adjoining land parcels.	55
Parish of Upton	5/8a	Temporary storage and working area to support diversion of the underground cables and protection of the foul sewer crossings in adjoining land parcels.	58
Parish of Sutton	6/1e	Temporary storage and working area to support with the creation of a new turning head to the existing Drift with gated access for service providers for 250 metres including earthworks, drainage, sub-base layers, pavement, signage, fence and gates in adjoining land parcels	47
Parish of Sutton	6/2a	Temporary storage and working area to support a new access route from Work No. 37,	38

		temporary welfare and compound area including haul road to the north of the dualled A47 in adjoining land parcels.	
Parish of Sutton	6/3f	Temporary storage and working area to support creation of new turning head to the existing drift with gated access for service providers for 250 metres including earthworks, drainage, sub-base layers, pavement, signage, fence, and gates in adjoining land parcels.	47
Parish of Sutton	6/3h	Temporary storage and working area to support diversion and removal of existing electronic communication cables and apparatus, underground electricity cables, and utility works in adjoining land parcels.	48
Parish of Sutton	6/4a	To support access route from Work No. 37. Temporary welfare and compound area including haul road to the north of the dualled A47 (Work No.1). To support diversion and removal of electronic communication cables and apparatus, electrical cables and potable water pipes and adjacent utility works in adjoining land parcels.	36, 38
Parish of Sutton	6/4e	Temporary storage and working area to support a new access route from Work No. 37. Temporary welfare and compound area including haul road to the north of the dualled A47 (Work No.1) and a new temporary access track from Work No 37.	38
Parish of Sutton	6/4g	Temporary storage and working area to support a new access route from Work No. 37. Temporary welfare and compound area including haul road to the north of the dualled A47 (Work No.1) and a new temporary access track from Work No 37. Temporary storage and working area to facilitate the protection, diversion and resilience works to potable water pipes and associated apparatus and adjacent utility works in adjoining land parcels.	38, 49
Parish of Sutton	6/5b	Temporary storage and working area to support the following in adjoining land parcel: diversion, and removal of existing electronic communication cables and apparatus, underground electricity cables, and adjacent utility works, ecological works and provision of landscaping area to the south of the dualled A47.	39, 48
Parish of Sutton	6/5e	Temporary storage and working area to support alterations to The Drift in adjoining land parcels.	47
Parish of Sutton	7/3a	Temporary storage and working area to support alterations to The Drift and to	47, 49

		facilitate the protection, diversion and resilience works to potable water pipes and associated apparatus and utility works in adjoining land parcels.	
Parish of Sutton	7/4b	Temporary storage and working area to support alterations to The Drift and to support diversion and removal of existing electronic communication cables and apparatus, underground electricity cables, and potable water pipes and utility works in adjoining land parcels.	47, 48

## SCHEDULE 8

Article 39

### REMOVAL OF HEDGEROWS AND TREES

#### PART 1

##### REMOVAL OF HEDGEROWS

<i>(1)</i> <i>Location of hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Located at the A1 side road, next to the proposed access to the properties on the A1. H2 shown on sheet 1 of the Hedgerow Plans	Partial removal	Work nos. 2, 3 and 4
Located at A1 side road H3 shown on sheet 2 of the Hedgerow Plans	Full removal	Work nos. 5, 6 and 7
Located at the pond maintenance track next to the new proposed free flow link road from the A1 to the A47. H4 and H6 shown on sheets 3 of the Hedgerow Plans	Partial removal	Work nos. 9 and 10
Located at the proposed Sacrewell Farm Access Road. H7 shown on sheet 3 of the Hedgerow Plans	Partial removal	Work no. 21
Located at the existing A47 near the proposed Sacrewell Farm Access Road. H9 shown on sheet 3 of the Hedgerow Plans	Partial removal	Work nos. 1, 8, 9, 17 and 21
Located at the existing A47 nearby the proposed Sacrewell Farm Access Road. H11 and H13 on sheet 3 of the Hedgerow Plans	Partial removal	Work nos. 8, 17 and 21
Located at the existing A47 near the existing Sacrewell	Partial removal	Work nos. 1, 15, 16, 27 and 28

Farm link road. H15 shown on sheets 3 and 4 of the Hedgerow Plans		
Located at the existing A47 near the existing Sacrewell Farm link road. H16 shown on sheet 3 of the Hedgerow Plans	Full removal	Work nos. 8, 15, 16, 26 and 27
Located at the existing A47 where it overlaps with the proposed A47. H17 shown on sheet 4 of the Hedgerow Plans	Full removal	Work nos. 1, 15, 16, 28, 29, 30, 33, 36 and 40
Located at the existing A47 where it overlaps with the proposed A47. H19 shown on sheet 4 of the Hedgerow Plans	Partial removal	Work nos. 1, 16 and 28
Located at the new link to Sutton Heath Road and Langley Bush Road. H21 shown on sheet 5 of the Hedgerow Plans	Partial removal	Work nos. 36, 42 and 43
Located near the new A47 Sutton Roundabout. H29 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work nos. 1 and 38
Located at the new link to Sutton Heath Road. H31 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work nos. 36 and 42
Located at the new A47 Sutton roundabout. H33 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work nos. 1, 36 and 46
Located at the proposed A47 dual carriageway. H35 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work nos. 1 and 49
Located at the proposed A47 dual carriageway. H38 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work nos. 1 and 48
Located at the existing A47 where it is used as cyclepath/footway. H39 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work nos. 36 and 40
Located at the new link with Peterborough Road. H42 shown on sheet 6 and 7 of the Hedgerow Plans	Partial removal	Work nos. 45, 48 and 49
Located at the new pond near Nene Way. H44 shown on sheet 7 of the	Partial removal	Work nos. 48 and 50

Hedgerow Plans		
Located at the new link with Peterborough Road. H46 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work nos. 45, 48 and 50
Located at the new link with Peterborough Road H49 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work nos. 45, 48, 50 and 52
Located at the proposed A47 dual carriageway. H51 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work nos. 1 and 48
Located at Upton Road. H53 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work nos. 53 and 54
Located at Upton Road. H54 shown on sheet 7 of the Hedgerow Plans	Full removal	Work nos. 53 and 54
Located at Upton Drift. H55 and H56 shown on sheet 5 (Inset 5B) of the Hedgerow Plans	Full removal	Work nos. 55, 56, 57 and 58

## PART 2

### REMOVAL OF IMPORTANT HEDGEROWS

<i>(1)</i> <i>Location of hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Located at the new link to Sutton Road. H23 shown on sheet 5 of the Hedgerow Plans	Partial removal	Work nos. 36, 42 and 43
Located at the new link to Sutton Road. H25 shown on sheet 5 of the Hedgerow Plans	Partial removal	Work nos. 36 and 41
Located at the Wansford NMU Underpass to Sutton Heath Road. H27 shown on sheet 4 of the Hedgerow Plans	Partial removal	Work nos. 1, 33, 37 and 38

# SCHEDULE 9

## PROTECTIVE PROVISIONS

Articles 36 and 48

### PART 1

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

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

2. In this Part of this Schedule—

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

“apparatus” means—

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

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation)(f) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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- (a) 1989 C. 29. The definition of “electricity plant” (in section 64) was amended by section 108 of, and paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27).
  - (b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of Schedule 6, and Schedule 8 to the Utilities Act 2000 (c. 27), sections 1459(1) and (5) and 197(9) of, and part 1 of Schedule 23 to, the Energy Act 2004 (c. 20) and S.I. 2011/2704.
  - (c) 1991 c. 56.
  - (d) 1991 c. 56. Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37) and section 56 of, and paragraph 90 of Schedule 7 to, the Water Act 2014 (c. 21).
  - (e) Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003; section 42(3) of the Flood and Water Management Act 2010 (c. 29); and sections 11(1) and (2) and 56 of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014.
  - (f) There are amendments to section 219 which are not relevant to this Order.

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

### **On street apparatus**

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

### **Apparatus in stopped up streets**

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

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

### **Protective works to buildings**

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

### **Acquisition of land**

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

### **Removal of apparatus**

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

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 51 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 51 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

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

**8.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 51 (arbitration).

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

### **Retained apparatus**

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

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

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

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

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

(6) The undertaker is not required to comply with sub-paragraph (5) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, or involve embankment works within 10 metres of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

### **Expenses and costs**

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 51 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount

which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

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

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

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

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

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

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

## **Cooperation**

**12.** Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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

## PART 2

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

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

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

“the electronic communications code” has the same meaning as in Chapter 1 (electronic communications, networks and services) of Part 2 (networks, services and the radio spectrum) of the 2003 Act(b);

“electronic communications code network” means—

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

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

16. The exercise of the powers conferred by article 36 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the

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

(b) See section 106 of the 2003 Act, which was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30). See also Schedule 3A to the 2003 Act, which was inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017.

undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 51 (arbitration).

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

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

## PART 3

### FOR THE PROTECTION OF ANGLIAN WATER

#### Application

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

#### Interpretation

19. In this part of this Schedule –

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

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited (company number 02366656), whose registered office is Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire, PE29 6YJ;

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under The Water Industry Act 1991,
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act; and
- (d) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus

and for the purpose of this definition, where words are defined by section 219 (general interpretation) of the Water Industry Act 1991 they shall be taken to have the same meaning. “functions” includes powers and duties

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

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

### **On street apparatus**

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

### **Schedule of apparatus**

21.—(1) Before commencement of any work set out in Schedule 1 to divert any apparatus the undertaker will provide Anglian Water with a schedule of apparatus which will be diverted as part of the authorised development setting out for each piece of apparatus whether those works are to be undertaken under this Schedule or under the 1991 Act and, where a diversion is to be carried out partly under this Schedule and partly under the 1991 Act, details of which part of the diversion is to be carried out under which power.

(2) The undertaker may from time to time provide to Anglian Water amendments to the schedule referred to in sub-paragraph (1).

(3) No amendment may be submitted under sub-paragraph (2) in respect of apparatus which is to be diverted as part of a work set out in Schedule 1, or which comprises such a work, after that work has commenced.

### **Apparatus in stopped up streets**

22.—(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), where Anglian Water has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Anglian Water legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 25 or the power of the undertaker to carry out works under paragraph 27.

(2) Regardless of the temporary alteration, diversion or prohibition of the use of or restriction of the use of any highway under the powers conferred by article 16 (temporary alteration, diversion, prohibition and restriction of the use of streets), Anglian Water is at liberty at all times to take all necessary access across any such altered, diverted, prohibited or restricted highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the alteration, diversion or prohibition of use of or restriction of use was in that highway.

### **Protective works to buildings**

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

### **Acquisition of land**

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

## **Removal of apparatus**

**25.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not (without the prior written consent of Anglian Water) be extinguished, until—

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 26.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 (arbitration), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

(7) Notice under sub-paragraph (6) that Anglian Water desires the undertaker to execute any work, or part of any work, must be given within 14 days of agreement under sub-paragraph (4) or, in default of agreement, within 14 days of the date of settlement by arbitration under sub-paragraph (4).

(8) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(9) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to—

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

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

**26.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Anglian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

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

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

### **Retained apparatus**

**27.—**(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 25(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

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

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

(4) If Anglian Water, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 25(2).

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

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

emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1), works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 451 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres.

### **Expenses and costs**

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

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

**29.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 23 or 25(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is

any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

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

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

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

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Cooperation**

**30.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 25(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 27, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

**31.** Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

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

**33.** Any time period in which an action must be taken in this part of the Schedule may be amended by written agreement between the undertaker and Anglian Water.

## **PART 4**

### **FOR THE PROTECTION OF NATIONAL GRID AS GAS UNDERTAKER**

#### **Application**

**34.—**(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 10 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 44(3)(b)).

## **Interpretation**

**35.** In this Part of this Schedule—

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

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

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

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

“commence” and “commencement” in paragraph 42 and 44 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

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

“functions” includes powers and duties;

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

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

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

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

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

“National Grid” means National Grid Gas Plc (company number 02006000), whose registered office is 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986 as the context requires;

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

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

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 40(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 40(2) or otherwise.

36. Except for paragraphs 37 (apparatus in stopped up streets), 42 (retained apparatus: protection), 43 (expenses) and 44 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

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

37.—(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 40 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 42.

(2) Notwithstanding the temporary alteration, diversion or restriction of any highway under the powers of article 16 (temporary alteration, diversion, prohibition and restriction of use of streets), National Grid will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the alteration, diversion or restriction was in that street.

#### **Protective works to buildings**

38. The undertaker must exercise the powers conferred by article 22 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld)

#### **Acquisition of land**

39.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected

in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 42 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**40.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 41(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or secured by, the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

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

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

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

(2) If the facilities and rights to be afforded by the undertaker under paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 48 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## **Retained apparatus: protection of gas undertaker**

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

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

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

(3) The undertaker must not commence any specified works until National Grid has given written approval of the plan so submitted.

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

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

(5) National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and National Grid; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 34 to 36 and 39 to 41 apply as if the removal of the apparatus had been required by the undertaker under paragraph 40(2).

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

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 11.

(11) The undertaker is not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11), “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

## **Expenses**

**43.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 40(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

## **Indemnity**

44.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in

consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 10 (consent to transfer benefit of Order).

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

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

### **Enactments and agreements**

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

### **Co-operation**

**46.—**(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 40(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 42, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

### **Access**

**47.** If in consequence of the agreement reached in accordance with paragraph 39(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

48. Save for differences or disputes arising under paragraph 40(2), 40(4) and 41(1), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 53(arbitration).

## **Notices**

49. Notwithstanding article 52 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 42 must be sent to <https://lsbud.co.uk/> and National Grid Plant Protection at [assetprotection@nationalgrid.com](mailto:assetprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing

# **PART 5**

## **FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER**

## **Application**

50.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 10 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 60(3)(b)).

## **Interpretation**

51. In this Part of this Schedule—

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

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

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

“commence” and “commencement” in paragraph 59 and 60 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

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

“functions” includes powers and duties;

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

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

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

“National Grid” means National Grid Electricity Transmission Plc (company number 02366977), whose registered office is 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act ;

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

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

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 56(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 56(2) or otherwise.

**52.** Except for paragraphs 53 (apparatus in stopped up streets), 58 (retained apparatus: protection), 59 (expenses) and 60 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

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

**53.—**(1) Where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 56 or the power of the undertaker, subject to compliance with this subparagraph, to carry out works under paragraph 58.

(2) Notwithstanding the temporary alteration, diversion or restriction of any highway under the powers of article 16 (temporary alteration, diversion, prohibition and restriction of use of streets), National Grid will be at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the alteration, diversion or restriction was in that street.

### **Protective works to buildings**

**54.** The undertaker must exercise the powers conferred by article 22 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld)

### **Acquisition of land**

**55.—**(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

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

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 58 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**56.—**(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 57(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or secured by, the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

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

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

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

(2) If the facilities and rights to be afforded by the undertaker under paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 64 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of electricity undertaker**

**58.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

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

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

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to 26 tonnes in weight.

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

(5) Any approval of National Grid required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 50 to 52 and 55 to 57 apply as if the removal of the apparatus had been required by the undertaker under paragraph 56(2).

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

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) “emergency works” means works whose execution at the time when they are executed is required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

## **Expenses**

**59.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 56(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 64 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph

(1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

## **Indemnity**

**60.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 10 (consent to transfer benefit of Order).

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

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

### **Enactments and agreements**

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

### **Co-operation**

**62.—**(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 56(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 58, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

### **Access**

**63.** If in consequence of the agreement reached in accordance with paragraph 55(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**64.** Save for differences or disputes arising under paragraph 56(2), 56(4) and 57(1), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 52 (arbitration).

### **Notices**

**65.** Notwithstanding article 51 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 58 must be sent to <https://lsbud.co.uk/> and National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PART 6

### FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED (EAST MIDLANDS) PLC AS ELECTRICITY UNDERTAKER

#### Application

66. For the protection of Western Power Distribution Limited (East Midlands) plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and Western Power Distribution Limited (East Midlands) plc.

#### Interpretation

67. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents, or permissions required by WPD in order to permit or authorise a diversion and to permit or authorise WPD to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by WPD;

“diversion” means an alteration to the WPD Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

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

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

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

“WPD” means Western Power Distribution (East Midlands) plc (company number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB; and

“WPD Network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act.

#### Precedence of 1991 Act in respect of apparatus in streets

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

#### No acquisition except by agreement

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

#### Removal of apparatus

70.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of

WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and WPD may agree between them.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a consequence of the exercise of any of the powers conferred by this Order WPD reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then WPD must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to WPD the necessary facilities and alternative rights for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or WPD requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then WPD shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and WPD is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and WPD shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), WPD will on the transfer of the benefit of the necessary provisions of this Order to WPD use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed in accordance with a timetable agreed between WPD and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 75 (expert determination).

(8) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 75 (expert determination), and after the acquisition by or grant to WPD of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed under the provisions of this Part of this Schedule.

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

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and WPD, or, in default of agreement, determined in accordance with paragraph 75 (expert determination); and
- (b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

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

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

71.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights are to be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 75 (expert determination).

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

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;
- (c) have regard to WPD's ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights WPD ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

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

### **Retained apparatus**

72.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 70 (removal of apparatus), the undertaker must submit to WPD a plan of the specified works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3).

(2) Subject to sub-paragraph (3) the undertaker must not commence any specified works to which sub-paragraph (1) applies until WPD has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted WPD has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in writing in accordance with sub-paragraph (2) by WPD and WPD shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker shall comply with WPD's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014),

the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Addition) (2014) as the same may be replaced from time to time.

(6) If WPD, in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 70(2) (removal of apparatus).

(7) Nothing in this paragraph 72 prevents the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by WPD under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents WPD from exercising its rights under sub-paragraph (6).

### **Expenses and costs**

**73.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

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

(3) If in accordance with the provisions of this Part of this Schedule WPD requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, WPD shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

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

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

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

**74.—**(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

- (a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and
- (b) reimburse WPD for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by WPD, by reason or in consequence of any such damage or interruption.

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

(3) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) WPD's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and WPD shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus

### **Expert determination**

**75.—**(1) Article 51 (arbitration) applies to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between WPD and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of WPD and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submissions;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) WPD's service obligations and licence conditions; and

(f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 51 (arbitration).

## SCHEDULE 10

### DOCUMENTS TO BE CERTIFIED

Articles 2 and 49

### PART 1

#### ENVIRONMENTAL STATEMENT

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Environmental Statement - Chapter 1: Introduction	TR010039/APP/6.1	0
Environmental Statement - Chapter 2: The Proposed Scheme	TR010039/APP/6.1	2
Environmental Statement - Chapter 3: Consideration of Alternatives	TR010039/APP/6.1	1
Environmental Statement - Chapter 4: Environmental Assessment Methodology	TR010039/APP/6.1	0
Environmental Statement - Chapter 5: Air Quality	TR010039/APP/6.1	0
Environmental Statement - Chapter 6: Cultural Heritage	TR010039/APP/6.1	1
Environmental Statement - Chapter 7: Landscape and Visual Effects	TR010039/APP/6.1	0
Environmental Statement - Chapter 8: Biodiversity	TR010039/APP/6.1	1
Environmental Statement - Chapter 9: Geology and Soils	TR010039/APP/6.1	2
Environmental Statement - Chapter 10: Materials Assets and Waste	TR010039/APP/6.1	0
Environmental Statement - Chapter 11: Noise and Vibration	TR010039/APP/6.1	1
Environmental Statement - Chapter 12: Population and Human Health	TR010039/APP/6.1	3
Environmental Statement - Chapter 13: Road Drainage and Water Environment	TR010039/APP/6.1	2
Environmental Statement - Chapter 14: Climate	TR010039/APP/6.1	0
Environmental Statement - Chapter 15: Cumulative Effects Assessment	TR010039/APP/6.1	0
Environmental Statement Figure 1.1	TR010039/APP/6.2	0
Environmental Statement Figures 2.1 to 2.3	TR010039/APP/6.2	0
Environmental Statement Figure 5.1 to 5.3	TR010039/APP/6.2	1
Environmental Statement Figure 5.4 to	TR010039/APP/6.2	1

5.8		
Environmental Statement Figure 6.1 to 6.4	TR010039/APP/6.2	0
Environmental Statement Figure 7.1 to 7.5	TR010039/APP/6.2	1
Environmental Statement Figures 7.6.1a to 7.6.1d	TR010039/APP/6.2	0
Environmental Statement Figures 7.6.2a to 7.6.2d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.3a to 7.6.3d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.4a to 7.6.4d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.5a to 7.6.5d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.6a to 7.6.6d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.7a to 7.6.7d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.8a to 7.6.10b	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.11a to 7.6.12d	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.13a to 7.6.14b	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.15a to 7.6.16b	TR010039/APP/6.2	0
6.2 Environmental Statement Figures 7.6.17a to 7.6.18b	TR010039/APP/6.2	0
Environmental Statement Figure 8.1 to 8.4	TR010039/APP/6.2	0
Environmental Statement Figure 9.1 to 9.2	TR010039/APP/6.2	0
Environmental Statement Figure 11.1 to 11.8	TR010039/APP/6.2	0
Environmental Statement Figure 11.9 to 11.16	TR010039/APP/6.2	0
Environmental Statement Figure 11.17 to 11.23	TR010039/APP/6.2	0
Environmental Statement Figure 11.24 to 11.30	TR010039/APP/6.2	0
Environmental Statement Figure 12.1 to 12.4	TR010039/APP/6.2	2
Environmental Statement Figure 13.1 to 13.7	TR010039/APP/6.2	0
Environmental Statement Figure 15.1	TR010039/APP/6.2	0
Environmental Statement - Appendix 4.1: Scoping opinion responses	TR010039/APP/6.3	0
Environmental Statement - Appendix 5.1: Air quality modelling process	TR010039/APP/6.3	0
Environmental Statement - Appendix 5.2: Air quality verification and model adjustment	TR010039/APP/6.3	0
Environmental Statement - Appendix	TR010039/APP/6.3	0

5.3: Receptor results		
Environmental Statement - Appendix 6.1: Cultural heritage baseline	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.2: Geophysical survey	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.3: Geophysical and metal detector survey	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.4: Archaeological observation report	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.5: Geophysical survey of the scheduled monument	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.6: Archaeological trial trenching survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 6.7: Former Wansford Road Station Building advice report	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.1: Planning policy context	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.2: ZTV and verified photomontage methodology	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.3: Landscape character areas	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.4: Visual receptors	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.5: Representative viewpoints	TR010039/APP/6.3	0
Environmental Statement - Appendix 7.6: Arboricultural impact assessment	TR010039/APP/6.3	1
Environmental Statement - Appendix 7.7: Lighting assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.1: Botanical and hedgerow update survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.2: Fungi survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.3: Terrestrial invertebrate survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.4 Aquatic invertebrate survey report (Sutton Heath)	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.5 Aquatic invertebrate survey report (Nene Valley)	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.6: Great crested newt survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.7: Reptile survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.8: Breeding bird survey report	TR010039/APP/6.3	0

Environmental Statement - Appendix 8.9 Barn owl survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.10: Wintering bird survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.11: Bat hibernation report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.12: Bat emergence / re-entry survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.13 Bat activity survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.14: Otter and water vole survey report	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.15: Confidential badger survey report	TR010039/APP/6.3	1
Environmental Statement - Appendix 8.16: DMRB Biodiversity evaluation assessment methodology	TR010039/APP/6.3	0
Environmental Statement - Appendix 8.17: Legislation and policy framework	TR010039/APP/6.3	0
Environmental Statement - Appendix 9.1: Hierarchy of screening criteria for generic quantitative risk assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 9.2: Agricultural land classification report	TR010039/APP/6.3	1
Environmental Statement - Appendix 9.3: Preliminary sources study report	TR010039/APP/6.3	0
Environmental Statement - Appendix 9.4: Construction workers risk assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 10.1: Legislation and policy framework	TR010039/APP/6.3	0
Environmental Statement - Appendix 10.2: Outline site waste management plan	TR010039/APP/6.3	0
Environmental Statement - Appendix 10.3: Mineral impact assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 11.1: Glossary of terms	TR010039/APP/6.3	0
Environmental Statement - Appendix 11.2: Legislation and policy framework	TR010039/APP/6.3	0
Environmental Statement - Appendix 11.3: Baseline noise survey	TR010039/APP/6.3	0
Environmental Statement - Appendix 11.4: Model validation	TR010039/APP/6.3	0
Environmental Statement - Appendix 11.5: Construction noise assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 13.1: Flood risk assessment	TR010039/APP/6.3	1
Environmental Statement - Appendix 13.2: Drainage strategy	TR010039/APP/6.3	2
Environmental Statement - Appendix 13.3: Surface water quality assessment	TR010039/APP/6.3	0

Environmental Statement - Appendix 13.4: Groundwater assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 13.5: Geomorphological assessment	TR010039/APP/6.3	0
Environmental Statement - Appendix 14.1: Embodied carbon report	TR010039/APP/6.3	0
Environmental Statement - Appendix 15.1: Cumulative effects stage 2 screening	TR010039/APP/6.3	0
Environmental Statement – Addendum One	TR010039/EXAM/9.35	0
Environmental Statement – Addendum Two	TR010039/EXAM/9.36	0

## PART 2

### OTHER DOCUMENTS

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Book of reference (parts 1-5) and Schedules	TR010039/APP/4.3	3
Classification of roads plans	TR010039/APP/2.11	0
Crown land plans	TR010039/APP/2.8	2
Detrunking Plans	TR010039/APP/2.8	0
Engineering drawings and sections	TR010039/APP/2.5	1
Environmental management plan	TR010039/APP/7.5	3
Environmental masterplan	TR010039/APP/6.8	3
General arrangement plans	TR010039/APP/2.6	2
Hedgerow plans	TR010039/APP/2.12	0
Land plans	TR010039/APP/2.2	4
Outline traffic management plan	TR010039/APP/7.6	1
Rights of way and access plans	TR010039/APP/2.4	3
Traffic regulation plans	TR010039/APP/2.10	0
Works plans	TR010039/APP/2.3	3

## **EXPLANATORY NOTE**

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

This Order authorises National Highways Limited to improve the A47 between Wansford and Sutton in Norfolk and carry out all associated works.

The Order permits National Highways Limited to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, book of reference and environmental statement mentioned in this Order and certified in accordance with article 49 (certification of documents, etc.) may be inspected free of charge during working hours at National Highways, Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.