

M54 to M6 Link Road
TR010054
Volume 3

3.1 Draft Development Consent Order

Regulation 5(2)(b)

Planning Act 2008

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

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Infrastructure Planning

Planning Act 2008

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

**M54 to M6 Link Road
Development Consent Order 20[]**

3.1 Draft Development Consent Order

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[] No.

INFRASTRUCTURE PLANNING

The M54 to M6 Link Road Development Consent Order 20[]

Made

Coming into force

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

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

The panel, having considered the representations made and not withdrawn and having examined the application together with the accompanying documents, in accordance with section 74(2) of the 2008 Act, has submitted a report and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The Secretary of State, having considered the representations made and not withdrawn, and the report of the panel, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

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

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the M54 to M6 Link Road Development Consent Order 20[] and comes into force on [] 20[].

Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524 and S.I. 2017/572.

(b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1980 c. 66.

(g) 1981 c. 66.

(h) 1984 c. 27.

(i) 1990 c. 8.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

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

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

“footway” and “footpath” have the same meaning as in the 1980 Act and include part of a footway or footpath;

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

(a) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26).

(b) 2004 c.18.

(c) 2008 c. 29.

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

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

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

“maintain” in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly;

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

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

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

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

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

“Severn Trent Water Ltd” means the company registered in England and Wales, company number 02366686, whose registered office address is Severn Trent Centre, 2 St John’s Street, Coventry, CV1 2LZ;

“South Staffordshire Plc” means the company registered in England and Wales, company number 04295398, whose registered office address is Green Lane, Walsall, West Midlands, WS2 7PD;

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

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

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

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

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

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

“tree preservation order/impact removal plans” means the drawings referenced in Schedule 10 (documents to be certified) and certified as the tree preservation order/impact removal plans by the Secretary of State;

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

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

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

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

(b) As inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by paragraphs 70 and 95 of Schedule 1 to the Infrastructure Act 2015 (c.7)

“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

“Western Power Distribution Plc” means the company registered in England and Wales, company number 09223384 whose registered address is Avonbank, Feeder Road, Bristol, Avon, BS2 0TB;

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

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

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

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

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

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

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

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

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

(3) Nothing in this Order prevents the carrying out of operations consisting of archaeological investigations, non-intrusive investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements immediately upon this Order coming into force.

Maintenance of authorised development

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

(a) 2017 c. 20.

Maintenance of drainage works

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

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

Limits of deviation

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

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to—
 - (i) in respect of the construction of any noise barrier, a maximum of 1 metre upwards or downwards; and
 - (ii) in respect of any other work comprised in the authorised development, to a maximum of 0.5 metres upwards or 0.5 metres 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 worse adverse environmental effects in comparison with those reported in the environmental statement.

Benefit of Order

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

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

Consent to transfer benefit of Order

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

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

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

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

(a) 1991 c.59.

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

- (a) Western Power Distribution Plc for the purposes of undertaking Work Nos. 67(i) and 70;
- (b) Severn Trent Water Ltd for the purposes of undertaking Work Nos. 67(iii) and 69(i);
- (c) South Staffordshire Plc for the purposes of undertaking Work No. 69(i);
- (d) British Telecommunications Plc (or a related or subsidiary company) for the purposes of undertaking Work No. 67(ii); and
- (e) Cadent Gas Ltd for the purposes of undertaking Work No. 68.

PART 3

STREETS

Application of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004

9.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of the 1991 Act as major highway works if—

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

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

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

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

(a) Section 64 was amended by section 102 of Schedule 17 to the Local Government Act 1965 (c. 51) and Schedule 9 to the 1991 Act.

(b) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c.48), section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and Schedule 8 to the New Roads and Street Works Act 1991 (c. 22).

(c) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(d) Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).

(e) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(f) Section 58A was inserted by section 52 of the Traffic Management Act 2004 (c. 18).

(g) Section 73A was inserted by section 55 of the Traffic Management Act 2004 (c.18).

(h) Section 73B was inserted by section 55 of the Traffic Management Act 2004 (c.18).

(i) Section 73C was inserted by section 55 of the Traffic Management Act 2004 (c.18).

(j) Section 78A was inserted by section 57 of the Traffic Management Act 2004 (c.18).

Schedule 3A (restriction on works following substantial street works)(a).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 12 (temporary stopping up and restriction of use of streets), whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

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

- section 54 (advance notice of certain works)(c), subject to paragraph (6);
- section 55 (notice of starting date of works)(d), subject to paragraph (6);
- section 57 (notice of emergency works)(e);
- section 59 (general duty of street authority to co-ordinate works)(f);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation); and
- section 77 (liability for cost of use of alternative route),

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

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

(7) Nothing in article 10 (construction and maintenance of new, altered or diverted streets)—

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

(8) No consent pursuant to any scheme made under Part 3 of the 2004 Act is required for any works executed under the powers of this Order.

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

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

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

(a) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004 (c. 18).

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

(c) As also amended by section 49(1) of the Traffic Management Act 2004 (c. 18).

(d) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 (c. 18).

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

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

street authority, that part of the street, including any culverts or other structures laid under it, must be maintained by and at the expense of the local street authority from its completion.

(3) In the case of—

- (a) a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over a special road or a trunk road, the highway surface (being those elements over the waterproofing membrane), must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the undertaker; and
- (b) the drainage attenuation and treatment systems to be constructed pursuant to Work No. 58 those works must be maintained by and at the expense of the local highway authority;

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

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

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

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

(6) The power of the undertaker to maintain the authorised development pursuant to article 4 (maintenance of authorised development) shall cease to apply to any streets and other structures which when completed must be maintained by and at the expense of the local highway authority pursuant to this article.

Classification of roads etc.

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

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

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

- (a) the undertaker is the highway authority for those roads; and

(b) they are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

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

(4) From the date on which the authorised development is open for traffic the roads described in Part 3 (classified roads) of Schedule 3 are to become classified roads for the purposes of any enactment or instrument which refers to highways classified as classified roads as if such classification has been made under section 12(3) (general provisions as to principal and classified roads) of the 1980 Act.

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

(6) From the date on which the roads specified in Part 5 (speed limits) of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (2) of that part along the lengths of the road identified in the corresponding row of column (1) of the Part.

(7) The public rights of way described in Part 6 (public rights of way) of Schedule 3 and identified in the streets, rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from—

- (a) the date on which the authorised development is open for traffic; or
- (b) such date as soon as reasonably practicable after the construction of the public right of way as may be agreed by the undertaker and the local highway authority.

(8) On a date to be determined by the undertaker, the order specified in column (3) in Part 7 (creation of new traffic regulation orders) of Schedule 3 is to be in force and no person is to drive a motor vehicle at a speed exceeding the limit in miles per hour specified in column (4) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

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

Temporary stopping up and restriction of use of streets

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

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

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

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

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

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

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

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

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets, public rights of way and private means of access specified in column (1) of Parts 1, 2, 3, 4, 5, 6 and 7 of Schedule 4 (permanent stopping up of streets, public rights of way and private means of access) to the extent specified and described in column (2) of those parts of that Schedule.

(2) No street, public rights of way or private means of access specified in column (1) of Parts 1, 3 and 6 of Schedule 4 is to be wholly or partly stopped up under this article unless—

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

(3) No street or public right of way specified in column (1) of Part 2 and 4 of Schedule 4 is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or public right of way 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 public right of way concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street or public right of way concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

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

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

(6) The undertaker may, in connection with the carrying out of the authorised development, alter the public right of way specified in column (1) of Part 5 of Schedule 4 as specified in column (2) of that Part.

(7) The undertaker may, in connection with the carrying out of the authorised development, provide or alter the private means of access specified in column (1) of Part 7 of Schedule 4 as specified in column (2) of that Part.

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

(9) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

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

Clearways

15.—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of those roads except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) may apply—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A to the Communications Act 2003^(a); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991^(b); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000^(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person's control.

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

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

(5) In this article “traffic officer” means an individual authorised to carry out assigned duties connected with, or intended to facilitate or to be conducive or incidental to the management of traffic on the relevant road network, or a person authorised by the Secretary of State in accordance with section 2 of the 2004 Act.

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

^(b) 1991 c. 56.

^(c) 2000 c. 26.

Traffic regulation

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

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

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

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

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

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

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

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

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

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

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

(b) 2004 c. 18.

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

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

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

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

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

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

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

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

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

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

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

(7) In this article—

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

^(a) S.I. 2016/1154.

^(b) 1991 c. 57.

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

Protective work to buildings

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

(2) Protective works may be carried out—

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

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

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

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

(8) Where—

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

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

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

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

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

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

Authority to survey and investigate the land

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

- (a) survey or investigate the land (including any watercourses, ground water, static water bodies or vegetation on the land);
- (b) without limitation to the scope of sub-paragraph (a), make any excavations or trial holes and boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and groundwater and remove soil and water samples and discharge water samples onto the land;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and boreholes.

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

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

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

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

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

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

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

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

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

that authority will be deemed to have granted consent.

PART 5

POWERS OF ACQUISITION AND POSSESSION

Compulsory acquisition of land

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

(2) This article is subject to paragraph (2) of article 23 (compulsory acquisition of rights and restrictive covenants) and paragraph (9) of article 29 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

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

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 25 of this Order; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and imposition of restrictive covenants

23.—(1) Subject to paragraphs (2) to (4) of this article, the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

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

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant

(a) 1981 c. 67.

affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

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

(6) 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.

Private rights over land

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

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

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

whichever is the earlier.

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

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

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

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;

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

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

- (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,
- that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

Modification of Part 1 of the Compulsory Purchase Act 1965

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

- (2) In section 4A(1) (extension of time limit during challenge)(b)—
 - (a) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the M54 to M6 Link Road Development Consent Order 20[]”.
- (3) In section 11A (powers of entry; further notice of entry)(c) —
 - (a) in subsection (1)(a), after “land” insert “under that provision”;
 - (b) in subsection (2), after “land” insert “under that provision”.
- (4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 22 (time limit for exercise of authority to acquire land compulsorily) of the M54 to M6 Link Road Development Consent Order 20[]”.
- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
 - (a) for paragraphs 1(2) and 14(2) substitute “But see article 27(3) (acquisition of subsoil and airspace only) of the M54 to M6 Link Road Development Consent Order 20[], which excludes the acquisition of subsoil or airspace only from this Schedule”; and
 - (b) after paragraph 29, insert a new paragraph:

(a) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c.22).

(b) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

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

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 18 (protective work to buildings), 29 (temporary use of land for carrying out the authorised development) or 30 (temporary use of land for maintaining the authorised development) of the M54 to M6 Link Road Development Consent Order 20[].”

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 26.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as so applied, has effect with the modifications set out in this article.
- (3) In section 1 (application of act) for subsection 2 substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.
- (4) In section 5 (earliest date for execution of declaration)(a), in subsection (2), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A (time limit for a general vesting declaration)(b).
- (6) In section 5B(1) (extension of time limit during challenge)(c)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the M54 to M6 Link Road Development Consent Order 20[].”.
- (7) In section 6 (notices after execution of declaration) in subsection (1)(b)(d) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat) in subsection (1)(a)(e), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(f), omit paragraph 1(2).
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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- (a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).
- (b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
- (c) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).
- (d) Section 6 was amended by paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).
- (e) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016 (c. 22).
- (f) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the Compulsory Purchase Act 1965 as modified by article 25 of this Order;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and
- (c) Section 153(4A)(a) (blighted land; proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

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

Rights under or over streets

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

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

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

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

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

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

Temporary use of land for carrying out the authorised development

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

(a) enter on and take temporary possession of—

- (i) the land specified in column (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
- (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

(b) remove any buildings and vegetation from that land;

(a) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016 (c.22).

- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

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

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

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7, or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land; but the undertaker is not required to—

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

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

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

(7) Any dispute as to the 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 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

- (a) acquiring new rights over any part of that land under article 23 (compulsory acquisition of rights and restrictive covenants); or
- (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 27 (acquisition of subsoil or airspace only).

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

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

Temporary use of land for maintaining the authorised development

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

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

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

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

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

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

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land.

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

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

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

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

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

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

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

Statutory undertakers

31.—(1) Subject to the provisions of Schedule 9 (protective provisions), article 23 (compulsory acquisition of rights and restrictive covenants) and paragraph (2), the undertaker may—

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

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

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 32 of this Order (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

32.—(1) Where a street is stopped up under article 13 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory 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 statutory utility in or in connection with—

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

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

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

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

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

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

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

(8) In this article—

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

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

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

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31, any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

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

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

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

PART 6

OPERATIONS

Felling or lopping of trees and removal of hedgerows

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

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

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

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

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow described in Part 1 of Schedule 8 (Hedgerows).

(5) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow which is not described in Part 1 of Schedule 8 (Hedgerows) with the prior consent of the local authority.

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

(7) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997^(a) and includes important hedgerows.

Trees subject to tree preservation orders

35.—(1) The undertaker may fell or lop any tree described in Part 2 of Schedule 8 (Trees subject to tree preservation orders) or cut back its roots or undertake such other works if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

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

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

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

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

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

(a) S.I. 1997/1160.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

36.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

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

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

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

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

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

Defence to proceedings in respect of statutory nuisance

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

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

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

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

- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

Protection of interests

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

Certification of documents, etc.

40.—(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 reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

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

(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 contain 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

41.—(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 of the Interpretation Act 1978(a) 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

(a) 1978 c. 30.

or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

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

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

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

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

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

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

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

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

(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

42. 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 Lands Chamber of the Upper 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.

Date

Signed
Title
Department

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the administrative areas of South Staffordshire and Wolverhampton

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

Work No.1A – shown on sheet number 1 of the works plans and being the alteration of verge mounted advance directional signage along the M54 carriageway.

Work No.1B – shown on sheet number 1 of the works plans and being the alteration of verge mounted advance directional signage along the M54 carriageway.

Work No.1C – shown on sheet number 1 of the works plans and being the alteration of verge mounted advance directional signage along the M54 carriageway.

Work No.1D – shown on sheet number 2 of the works plans and being the alteration of verge mounted advance directional signage along the A449 carriageway.

Work No.1E – shown on sheet numbers 3 and 4 of the works plans and being the improvement of the eastbound carriageway of the M54 Motorway at the Junction 1 diverge (approximately 480 metres in length).

Work No.2 – shown on sheet number 4 of the works plans and being the construction of a free-flowing two lane carriageway from the M54 eastbound at Junction 1 to the link road (approximately 1,200 metres in length).

Work No.3 – shown on sheet numbers 3 and 4 of the works plans and being the improvement of the westbound carriageway of the M54 at the Junction 1 merge (approximately 600 metres in length).

Work No.4 – shown on sheet number 4 of the works plans and being the construction of a free-flowing two lane carriageway link from the link road to the M54 westbound at Junction 1 (approximately 1,270 metres in length).

Work No.5 – shown on sheet number 4 of the works plans and being the construction of a slip road from the M54 Junction 1 south roundabout to the M54 westbound merge slip road (approximately 340 metres in length).

Work No.6 – shown on sheet number 4 of the works plans and being the construction of a slip road from the M54 eastbound slip road at Junction 1 to the Featherstone Junction West Roundabout (approximately 475 metres in length).

Work No.7 – shown on sheet number 4 of the works plans and being the realignment of the A460 into the M54 Junction 1 south roundabout (approximately 185 metres in length).

Work No.8 – shown on sheet number 4 of the works plans and being the demolition of the existing M54 Junction 1 circulatory carriageway and the construction of the M54 Junction 1 south roundabout.

Work No.9 – shown on sheet number 4 of the works plans and being the realignment of the M54 Junction 1 westbound diverge slip road into the M54 Junction 1 south roundabout (approximately 315 metres in length).

Work No.10 – shown on sheet number 4 of the works plans and being the construction of a dual carriageway connector road between the Featherstone Junction east roundabout and M54 Junction 1 south roundabout (approximately 370 metres in length).

Work No.11 – shown on sheet number 4 of the works plans and being the stopping up of the existing A460 at M54 Junction 1 including the construction of a turning head facility and improvements at the junction between the A460 and The Avenue.

Work No.12 – shown on sheet number 4 of the works plans and being the realignment of the M54 Junction 1 eastbound merge slip into the Featherstone Junction east roundabout (approximately 845 metres in length).

Work No.13 – shown on sheet number 4 of the works plans and being the construction of the Featherstone Junction east roundabout.

Work No.14 – shown on sheet number 4 of the works plans and being the construction of a carriageway dumbbell link between the Featherstone Junction east roundabout and the Featherstone Junction west roundabout passing over the link road via a structure (approximately 100 metres in length).

Work No.15 – shown on sheet number 4 of the works plans and being the construction of the Featherstone Junction west roundabout.

Work No.16 – shown on sheet number 4 of the works plans and being the realignment of the existing A460 to the Featherstone Junction west roundabout (approximately 460 metres in length).

Work No.17 – shown on sheet number 4 of the works plans and being the realignment of the existing A460 and construction of a T-Junction on the realigned existing A460 (approximately 110 metres in length).

Work No.18 – works number no longer in use.

Work No.19 – works number no longer in use.

Work No.20 – shown on sheet number 4 of the works plans and being the construction of an access for Tower Hill Farm connecting to the Featherstone Junction east roundabout (approximately 100 metres in length).

Work No.21 – shown on sheet number 4 of the works plans and being the construction of a Hilton Park Access Track connecting to the Featherstone Junction east roundabout (approximately 390 metres in length).

Work No.22 – shown on sheet number 4 of the works plans and being the construction of the Featherstone Junction southbound diverge slip road (approximately 520 metres in length).

Work No.23 – shown on sheet number 4 of the works plans and being the construction of the Featherstone Junction northbound merge slip road (approximately 490 metres in length).

Work No.24 – shown on sheet numbers 4 and 5 of the works plans and being the closure of Dark Lane between the final property along Dark Lane and the Junction between Dark Lane and Hilton Lane including the construction of a turning head facility.

Work No.25 – shown on sheet numbers 4 to 6 of the works plans and being the construction of the link road northbound dual carriageway to M6 Junction 11 (approximately 1650 metres in length).

Work No.26 – shown on sheet numbers 4 to 6 of the works plans and being the construction of the link road southbound dual-carriageway from M6 Junction 11 (approximately 1600 metres in length).

Work No.27 – shown on sheet number 5 of the works plans and being the construction of a realigned Hilton Lane including a structure over the link road (approximately 300 metres in length).

Work No.28 – shown on sheet number 5 of the works plans and being the construction of an accommodation overbridge and realignment of access tracks to the south of Brookfield Farm (approximately 575 metres in length).

Work No.29 – shown on sheet number 6 of the works plans and being the realignment of the existing A460 to M6 Junction 11 (approximately 330 metres in length).

Work No.30 – shown on sheet number 6 of the works plans and being the realignment of Mill Lane (approximately 200 metres in length).

Work No.31 – shown on sheet number 4 of the works plans and being the construction of a new structure on the M54 at Junction 1 to facilitate the new junction arrangement under the motorway.

Work No.32 – shown on sheet numbers 5 and 6 of the works plans and being the realignment of the M6 Junction 11 northbound diverge slip road (approximately 320 metres in length).

Work No.33 – shown on sheet number 6 of the works plans and being the realignment of the M6 Junction 11 northbound merge slip road (approximately 620 metres in length).

Work No.34 – shown on sheet numbers 5 and 6 of the works plans and being the realignment of the M6 Junction 11 southbound merge slip road (approximately 610 metres in length).

Work No.35 – shown on sheet number 6 of the works plans and being the realignment of the M6 Junction 11 southbound diverge slip road (approximately 380 metres in length).

Work No.36 – shown on sheet number 6 of the works plans and being the demolition of the two existing structures at M6 Junction 11, removal of redundant sections of the existing circulatory carriageway and the construction of a new M6 Junction 11 circulatory carriageway, including the construction of two overbridges over the M6 and installation of five portal gantries around the circulatory carriageway and associated infrastructure works along the M6 carriageway to facilitate construction.

Work No.37 – shown on sheet number 6 of the works plans and being the realignment of the A462 to M6 Junction 11 (approximately 150 metres in length).

Work No.38 – shown on sheet number 6 of the works plans and being the realignment of the adjoining Wolverhampton Road to the realigned A462.

Work No.39 – shown on sheet number 6 of the works plans and being the realignment and widening of the A460 southbound by a single lane from the M6 Toll merge to M6 Junction 11 and widening of the A460 northbound by a single lane from M6 Junction 11 tapering back down to two lanes ahead of the M6 Toll overbridge.

Work No.40 – shown on sheet number 6 of the works plans and being the realignment of the adjoining Wolverhampton Road to the realigned A460.

Work No.41 – shown on sheet number 2 of the works plans and being the installation of a cantilever gantry at M54 Junction 2 in the eastbound verge and associated infrastructure works to facilitate construction.

Work No.42 – shown on sheet number 3 of the works plans and being the installation of a cantilever gantry in the existing M54 eastbound verge and associated infrastructure works to facilitate construction.

Work No.43 – shown on sheet number 3 of the works plans and being the installation of a cantilever gantry in the existing M54 eastbound verge and associated infrastructure works to facilitate construction.

Work No.44 – shown on sheet number 4 of the works plans and being the installation of a cantilever gantry on the M54 eastbound diverge slip road and associated infrastructure works to facilitate construction.

Work No.45 – shown on sheet number 4 of the works plans and being the construction of a culvert and realignment of Watercourse 2 in the vicinity of M54 Junction 1.

Work No.46 – shown on sheet number 4 of the works plans and being the construction of a culvert and realignment of Watercourse 3 adjacent to Dark Lane and associated works required to the existing drainage pools.

Work No.47 – shown on sheet number 5 of the works plans and being the construction of a culvert on Watercourse 4 adjacent to Brookfield Farm.

Work No.48 – shown on sheet number 6 of the works plans and being the construction of a structure under the link road on Watercourse 5 (Latherford Brook).

Work No.49 – shown on sheet number 6 of the works plans and being the alteration of a portal gantry across the M6 Junction 11 southbound merge and northbound diverge slip roads.

Work No.50 – shown on sheet number 6 of the works plans and being the alteration of a portal gantry over the M6 Junction 11 southbound diverge slip road.

Work No.51 – shown on sheet number 7 of the works plans and being the alteration of a portal gantry along the M6 southbound.

Work No.52 – shown on sheet number 7 of the works plans and being the alteration of a portal gantry along the M6 southbound.

Work No.53 – shown on sheet number 7 of the works plans and being the alteration of a portal along the M6 southbound.

Work No.54 – shown on sheet number 8 of the works plans and being the alteration of a portal gantry along the M6 southbound.

Work No.55A – shown on sheet number 9 of the works plans and being the alteration of a cantilever gantry along the M6 southbound.

Work No.55B – shown on sheet number 10 of the works plans and being the alteration of a cantilever gantry along the M6 southbound.

Work No.55C – shown on sheet number 10 of the works plans and being the alteration of a cantilever gantry along the M6 southbound.

Work No.56 – shown on sheet number 3 of the works plans and being the installation of drainage attenuation and treatment systems to the north west of M54 Junction 1. Works to include the installation of a balancing pond to provide attenuation and treatment with a new outfall connection to the existing ditch. Access for maintenance to be constructed off Brookhouse Lane.

Work No.57 – shown on sheet number 4 of the works plans and being the installation of drainage attenuation and treatment systems to the north east of M54 Junction 1. Works to include the installation of a balancing pond to provide attenuation and treatment with a new outfall connection to Watercourse 2. Access for maintenance to be constructed off the dual carriageway connector road.

Work No.58 – shown on sheet number 4 of the works plans and being the installation of drainage attenuation and treatment systems to the east of the existing A460. Works to include the installation of a balancing pond to provide attenuation and treatment with a new outfall connection to the existing drainage network. Access for maintenance to be constructed off the existing A460.

Work No.59 – shown on sheet number 5 of the works plans and being the installation of drainage attenuation and treatment systems to the south of Brookfield Farm. Works to include the installation of a balancing pond to provide attenuation and treatment with a new outfall connection to Watercourse 4. Access for maintenance to the balancing pond to be along existing track that connects to Hilton Lane and via new accommodation bridge.

Work No.60 – shown on sheet number 6 of the works plans and being the installation of drainage attenuation and treatment systems to the south of M6 Junction 11. Works to include the installation of a balancing pond to provide attenuation and treatment with new outfall connection into Watercourse 5 (Latherford Brook). Access for maintenance to be constructed off the realigned existing A460.

Work No.61 – shown on sheet number 4 of the works plans and being works to realign the existing Public Right of Way (bridleway) Featherstone 3 due to the construction of the new M54 Junction 1 (approximately 250 metres in length).

Work No.62 – shown on sheet numbers 4 and 5 of the works plans and being the construction of a new Public Right of Way (bridleway) connection between Dark Lane and Hilton Lane (approximately 320 metres in length).

Work No.63 – shown on sheet number 5 of the works plans and being works to realign the existing Public Right of Way (footway) Shareshill 5 due to the construction of the link road (approximately 260 metres in length).

Work No.64 – shown on sheet number 5 of the works plans and being works to realign the existing Public Right of Way (bridleway) Shareshill 1 due to the construction of the link road (approximately 750 metres in length).

Work No.65 – shown on sheet number 6 of the works plans and being works to realign the existing Public Rights of Way (footway) Shareshill 4, Saredon 8 and Saredon 1R/2214 due to the construction of the link road (approximately 270 metres in length).

Work No.66 – shown on sheet number 6 of the works plans and being works to realign the existing Public Right of Way Saredon 13 due to the realignment of the existing A460 (approximately 250 metres in length).

Work No.67 – shown on sheet number 4 of the works plans and being the diversion of utilities and associated infrastructure (including (i) electrical, (ii) telecommunications and (iii) potable water) to a new utilities corridor to the west of M54 Junction 1 (approximately 130 metres in length).

Work No.68 – shown on sheet number 4 of the works plans and being the diversion of a high pressure gas main and associated infrastructure due to the construction of the link road (approximately 1000 metres in length).

Work No.69 – shown on sheet numbers 4 and 5 of the works plans and being the diversion of a (i) water main, (ii) sewer, (iii) communications ducts and associated infrastructure due to the construction of the link road (approximately 500 metres in length).

Work No.70 – shown on sheet number 5 of the works plans and being the diversion of an overhead electricity cable and associated infrastructure due to the construction of the link road (approximately 220 metres in length).

Work No.71 – shown on sheet number 4 of the works plans and being the construction of a temporary site compound situated on land to the east of the existing A460 and the establishment of permanent environmental mitigation areas to the west of the link road including habitat creation (species rich grassland, woodland planting and individual trees) to mitigate for biodiversity loss.

Work No.72 – shown on sheet number 6 of the works plans and being the construction of a temporary site compound situated on land to the north west of M6 Junction 11 and establishment of permanent environmental mitigation areas including species rich grassland, species rich hedgerow, ecology pond and individual trees to mitigate for biodiversity loss.

Work No.73 – shown on sheet numbers 4 and 5 of the works plans and being the modification of the junction between the existing A460, New Road and Dark Lane and associated infrastructure including the removal of the right turn prohibition in to Dark Lane.

Work No.74 – shown on sheet number 5 of the works plans and being the construction of a borrow pit including the excavation, working and restoration to win material required for the construction of the authorised development.

Work No.75 – shown on sheet number 3 of the works plans and being the establishment of environmental mitigation areas. Habitat creation (hedgerow and species rich grassland) to mitigate for biodiversity loss.

Work No.76 – shown on sheet numbers 3 and 4 of the works plans and being the establishment of ancient woodland enhancement measures to compensate for ancient woodland loss.

Work No.77 – shown on sheet number 4 of the works plans and being the establishment of environmental mitigation areas between the free flow links. Habitat creation (woodland planting) to integrate the authorised development into the surrounding landscape and to mitigate for biodiversity loss.

Work No.78 – shown on sheet number 4 of the works plans and being the establishment of environmental mitigation. Habitat creation (ecology ponds and species rich grassland) to mitigate for biodiversity loss.

Work No.79 – shown on sheet number 4 of the works plans and being the establishment of environmental mitigation areas, habitat creation (woodland planting) for visual screening and to mitigate for biodiversity loss.

Work No.80 – shown on sheet number 4 of the works plans and being the establishment of environmental mitigation areas to the west of the link road. Habitat creation for visual screening and to mitigate for biodiversity loss and integrate the authorised development into the surrounding landscape. Woodland planting to screen views of the authorised development. Replacement of existing fence along Dark Lane.

Work No.81 – shown on sheet number 5 of the works plans and being the establishment of environmental mitigation to the west of the link road including habitat creation (woodland planting and ecology ponds) to mitigate for biodiversity loss.

Work No.82 – shown on sheet number 5 of the works plans and being habitat creation (woodland planting) to the east of the link road to provide visual screening and to mitigate for biodiversity loss.

Work No.83 – shown on sheet numbers 5 and 6 of the works plans and being the establishment of environmental mitigation to the east of the link road. Habitat creation (woodland planting and ecology ponds) to mitigate for biodiversity loss and compensate for the loss of ancient woodland.

Work No.84 – shown on sheet numbers 5 and 6 of the works plans and being the establishment of woodland planting south of the M6 Junction 11 to compensate for the loss of ancient woodland.

Work No.85 – works number no longer in use.

Work No.86 – shown on sheet numbers 4 and 5 of the works plans and being the establishment of woodland enhancement measures to compensate for biodiversity loss.

Work No.87 – shown on sheet numbers 5 and 6 of the works plans and being the establishment of woodland enhancement measures to compensate for biodiversity loss.

Work No.88 – shown on sheet number 5 of the works plans and being the establishment of woodland planting south of the M6 Junction 11 to compensate for the loss of ancient woodland.

Work No.89 – shown on sheet number 6 of the works plans and being the establishment of ancient woodland enhancement measures to compensate for ancient woodland loss.

Work No.90 – shown on sheet number 4 of the works plans and being the construction of an access from the realigned existing A460 to the petrol station and local businesses situated on the existing A460.

Work No.91 – shown on sheet number 4 of the works plans and being the construction of a new public right of way (footpath) connection between the existing A460 and the Featherstone Junction West Roundabout (approximately 150 metres in length).

In connection with the construction of any of those works, further development within the Order limits consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (c) works for the strengthening, alteration or demolition of any building;
- (d) ramps, means of access, non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;
- (e) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, ponds, pollution control devices, wing walls, highway lighting, fencing and culverts;
- (f) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (g) works to place, alter, divert, relocate, remove or maintain the position of apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, lights and cables;
- (h) works to alter the course of, or otherwise interfere with a watercourse;
- (i) landscaping, noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (j) works for the benefit or protection of land affected by the authorised development;
- (k) works to place, alter, remove or maintain road furniture;
- (l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping and storage, site levelling);
- (m) the felling of trees and hedgerows;
- (n) establishment of site construction compounds, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences;
- (o) provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (p) such other works, working sites storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development which do not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.

SCHEDULE 2

REQUIREMENTS

Article 3

PART 1

REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

“bank or public holiday” means Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971^(a);

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990^(b);

“CEMP” means the construction environmental management plan;

“European protected species” has the same meaning as in regulation 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017^(c);

“HEMP” means the handover environmental management plan;

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

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981^(d);

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

“OEMP” means the outline environmental management plan submitted with the application for this Order and certified as the OEMP by the Secretary of State for the purposes of this Order; and

“REAC” means the record of environmental actions and commitments (contained in the OEMP).

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes or plans approved under this Schedule, the approved details or schemes or plans are taken to include any amendments that may subsequently be approved in writing.

Time limits

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

Detailed design

3.—(1) The authorised development must be designed in detail and carried out in accordance with the preliminary scheme design shown on the works plans and engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and the relevant local highway authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the works plans and engineering drawings and sections showing departures from the preliminary scheme design

(a) 1971 c.80.

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

(c) S.I. 2017/1012.

(d) 1981 c. 69.

would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

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

Construction and handover environmental management plans

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

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

- (a) reflect the mitigation measures set out in the REAC;
- (b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) require adherence to working hours of 07:00–19:00 Mondays to Fridays and 08:00–16:00 on Saturday with no working on Sundays and bank or public holidays except for—
 - (i) 24 hours a day 7 days a week working to carry out the works at the M54 Junction 1 for a period of up to 3 weeks whilst the motorway is closed;
 - (ii) deliveries, movements to work, maintenance and general preparation works but not including running plant and machinery for a period of one hour either side of the above times;
 - (iii) night-time closures for road crossings and final surfacing tie-ins, and bridge demolition and installation;
 - (iv) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (v) junction works;
 - (vi) repair or maintenance of construction equipment;
 - (vii) removal of overhead power lines;
 - (viii) overnight traffic management measures;
 - (ix) works associated with traffic management and signal changes;
 - (x) cases of emergency; and
 - (xi) as otherwise agreed by the local authority in advance;
- (d) include the following management plans—
 - (i) Biosecurity Management Plan;
 - (ii) Site Waste Management Plan;
 - (iii) Emergency Preparedness and Response Plan;
 - (iv) Archaeological Management Plan;
 - (v) Archaeological Mitigation Strategy;
 - (vi) Arboricultural Mitigation Strategy;
 - (vii) Fire Rescue and Translocation Strategy;
 - (viii) Landscape and Ecology Management Plan;
 - (ix) Noise and Vibration Management Plan;
 - (x) Soil Management Strategy (including a Soil Management Plan and Soil Handling Strategy);
 - (xi) Materials Management Plan;

- (xii) Asbestos Management Plan;
- (xiii) Water Management Plan;
- (xiv) Traffic Management Plan (including a Site Access Plan, Site Travel Plan and Construction Workforce Travel Plan).

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

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

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

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

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

Landscaping

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

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan annexed to the environmental statement (application document 6.2).

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

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

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

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

Contaminated land and groundwater

6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental

statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

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

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

Protected species

7.—(1) No part of the authorised development is to commence until for that part final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by any part of the relevant works, or in any of the trees and shrubs to be lopped 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 sub-paragraph (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 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, reflecting the mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant lead local flood authority and the Environment Agency 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 with the relevant lead local flood authority and the Environment Agency 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 worse adverse environmental effects in comparison with those reported in the environmental statement.

Archaeological remains

9.—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the relevant mitigation

measures set out in the REAC, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the county archaeologist.

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

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

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

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

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

Fencing

10. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the OEMP except where any departures from the OEMP are agreed in writing by the Secretary of State in connection with the authorised development.

Details of consultation

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

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

(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.

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

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

12.—(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 13; or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraphs (3) and (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 paragraph 13, 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 worse environmental effects in comparison with those reported in the environmental statement,

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

Further information

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

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within that 21 business day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as a separate application from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 12 (applications made under requirements) and in this paragraph.

(4) In this paragraph, “business day” means a day other than Saturday, Sunday or bank or public holiday.

Anticipatory steps towards compliance with any requirement

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

SCHEDULE 3

CLASSIFICATION OF ROADS, ETC.

Articles 11 and 15

PART 1

SPECIAL ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
Proposed M54 Junction 1 free-flowing eastbound link	Between points 3/2 on sheet 3 and point 4/35 on sheet 4 of the classification of roads plans
Proposed M54 Junction 1 free-flowing westbound link	Between points 3/1 on sheet 3 and point 4/36 on sheet 4 of the classification of roads plans
Proposed Featherstone Junction northbound diverge slip road	Between points 4/1 on sheet 4 and point 4/2 on sheet 4 of the classification of roads plans
Proposed M54 Junction 1 westbound merge slip road	Between points 4/4 on sheet 4 and point 4/3 on sheet 4 of the classification of roads plans
Proposed realigned M54 Junction 1 westbound diverge slip road	Between points 4/8 on sheet 4 and point 4/9 on sheet 4 of the classification of roads plans
Proposed realigned M54 Junction 1 eastbound merge slip road	Between points 4/14 on sheet 4 and point 4/15 on sheet 4 of the classification of roads plans
Proposed realigned M6 Junction 11 northbound merge slip road	Between points 6/10 on sheet 6 and point 6/11 on sheet 6 of the classification of roads plans
Proposed realigned M6 Junction 11 southbound diverge slip road	Between points 6/12 on sheet 6 and point 6/13 on sheet 6 of the classification of roads plans
Proposed realigned M6 Junction 11 southbound merge slip road	Between points 5/8 on sheet 5 and point 6/14 on sheet 6 of the classification of roads plans
Proposed realigned M6 Junction 11 northbound diverge slip road	Between points 6/8 on sheet 6 and point 6/9 on sheet 6 of the classification of roads plans

PART 2

TRUNK ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
Proposed Featherstone Junction west roundabout	Reference point 4/23 on sheet 4 of the classification of roads plans
Proposed Featherstone Junction overbridge	Between points 4/21 on sheet 4 and point 4/22 on sheet 4 of the classification of roads plans
Proposed Featherstone Junction northbound merge slip road	Between points 4/31 on sheet 4 and point 4/32 on sheet 4 of the classification of roads plans
Proposed Featherstone Junction southbound diverge slip road	Between points 4/33 on sheet 4 and point 4/34 on sheet 4 of the classification of roads plans
Proposed realigned A460 south	Between points 4/5 on sheet 4 and point 4/6 on sheet 4 of the classification of roads plans
Proposed M54 Junction 1 south roundabout	Reference point 4/7 on sheet 4 of the classification of roads plans
Proposed south-east roundabout connector	Between points 4/10 on sheet 4 and point 4/11 on sheet 4 of the classification of roads plans
Proposed Featherstone Junction east	Reference point 4/18 on sheet 4 of the

roundabout	classification of roads plans
Proposed dual-carriageway mainline link – northbound carriageway	Between points 4/35 on sheet 4 and point 6/1 on sheet 6 of the classification of roads plans
Proposed dual-carriageway mainline link – southbound carriageway	Between points 4/36 on sheet 4 and point 6/2 on sheet 6 of the classification of roads plans
Proposed Junction 11 roundabout	Reference point 6/7 on sheet 6 of the classification of roads plans
Proposed realigned A460	Between points 6/15 on sheet 6 and point 6/16 on sheet 6 of the classification of roads plans
Proposed realigned A462	Between points 6/17 on sheet 6 and point 6/18 on sheet 6 of the classification of roads plans

PART 3

CLASSIFIED ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
Proposed realigned A460 north	Between points 4/24 on sheet 4 and point 4/25 on sheet 4 of the classification of roads plans
Existing A460	Between points 4/25 on sheet 4 and point 6/3 on sheet 6 of the classification of roads plans
Proposed realigned Hilton Lane	Between points 5/1 on sheet 5 and point 5/2 on sheet 5 of the classification of roads plans
Proposed realigned A460	Between points 6/3 on sheet 6 and point 6/4 on sheet 6 of the classification of roads plans

PART 4

UNCLASSIFIED ROADS

(1) <i>Road</i>	(2) <i>Extent</i>
Connection from proposed realigned A460 north to existing A460	Between points 4/26 and point 4/27 and 4/28 on sheet 4 of the classification of roads plans
Link between proposed realigned A460 north and connection from proposed realigned A460 north to existing A460	Between points 4/39 and point 4/40 on sheet 4 of the classification of roads plans
Dark Lane	Between points 4/37 on sheet 4 and point 4/38 on sheet 4 of the classification of roads plans
Realigned Mill Lane	Between points 6/5 on sheet 6 and point 6/6 on sheet 6 of the classification of roads plans
Proposed connection to Wolverhampton Road	Between points 6/19 on sheet 6 and point 6/20 on sheet 6 of the classification of roads plans
Proposed connection to A460 north of Junction 11	Between points 6/21 on sheet 6 and point 6/22 on sheet 6 of the classification of roads plans

PART 5

SPEED LIMITS

(1) <i>Road name and description</i>	(2) <i>Speed Limit</i>
<p>Proposed M54 Junction 1 free-flowing eastbound link From the M54 along its length to where it meets the proposed dual-carriageway mainline link for a total distance of 915m As shown on sheet 3 and 4 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed M54 Junction 1 free-flowing westbound link From the proposed dual-carriageway mainline link along its length to where it meets the M54 for a total distance of 1560m As shown on sheet 3 and 4 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed Featherstone Junction northbound diverge slip road From the proposed dual-carriageway mainline link along its length to where it meets the M54 for a total distance of 585m As shown on sheet 3 and 4 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed M54 Junction 1 westbound merge slip road From the Proposed M54 Junction 1 free-flowing eastbound link along its length to where it meets the proposed Featherstone Junction west roundabout for a total distance of 333m As shown on sheet 4 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed realigned M54 Junction 1 westbound diverge slip road From the proposed M54 Junction 1 south roundabout along its length to a point 285m from where it meets the M54 for a total distance of 327m As shown on sheet 4 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed Realigned M54 Junction 1 eastbound merge slip road From the proposed Featherstone Junction east roundabout along its length to where it meets the M54 for a total distance of 825m As shown on sheet 4 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed Featherstone Junction west roundabout As shown on sheet 4 of the traffic regulation measures plans</p>	40 miles per hour
<p>Proposed Featherstone Junction overbridge From the proposed Featherstone Junction east roundabout along its length to where it meets the proposed Featherstone Junction west</p>	40 miles per hour

<p>roundabout for a total distance of 100m</p> <p>As shown on sheet 4 of the traffic regulation measures plans</p>	
<p>Proposed Featherstone Junction northbound merge slip road</p> <p>From the proposed Featherstone Junction west roundabout along its length to where it meets the proposed dual-carriageway mainline link for a total distance of 480m</p> <p>As shown on sheet 4 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed Featherstone Junction southbound diverge slip road</p> <p>From the proposed Featherstone Junction east roundabout along its length to where it meets the proposed dual-carriageway mainline link for a total of 515m</p> <p>As shown on sheet 4 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed realigned A460 south</p> <p>From the proposed M54 Junction 1 south roundabout along its length to a point 70m from the Hilton Cross roundabout for a total distance of 190m</p> <p>As shown on sheet 4 of the traffic regulation measures plans</p>	40 miles per hour
<p>Proposed M54 Junction 1 south roundabout</p> <p>As shown on sheet 4 of the traffic regulation measures plans</p>	40 miles per hour
<p>Proposed south-east roundabout connector</p> <p>From the proposed Featherstone Junction east roundabout along its length to where it meets the proposed M54 Junction 1 south roundabout for a total distance of 380m</p> <p>As shown on sheet 4 of the traffic regulation measures plans</p>	40 miles per hour
<p>Proposed Featherstone Junction east roundabout</p> <p>As shown on sheet 4 of the traffic regulation measures plans</p>	40 miles per hour
<p>Proposed realigned A460 north</p> <p>From the proposed Featherstone Junction west roundabout along its length to where it meets the junction with Dark Lane and The Avenue for a total distance of 462m</p> <p>As shown on sheet 4 of the traffic regulation measures plans</p>	30 miles per hour
<p>Connection from proposed realigned A460 north to existing A460</p> <p>From the point of stopping up/turning head along its length to where it meets the proposed realigned A460 north for a total distance of 340m</p> <p>As shown on sheet 4 of the traffic regulation measures plans</p>	30 miles per hour

<p>Link between proposed realigned A460 north and connection from proposed realigned A460 north to existing A460</p> <p>Along its length being a total distance of 90m</p> <p>As shown on sheet 4 of the traffic regulation measures plans</p>	30 miles per hour
<p>Proposed dual-carriageway mainline link – northbound carriageway</p> <p>From the proposed M54 Junction 1 free-flowing eastbound link along its length to where it meets the proposed M6 Junction 11 roundabout for a total distance of 2415m</p> <p>As shown on sheet 4, 5 and 6 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed dual-carriageway mainline link – southbound carriageway</p> <p>From the proposed M54 Junction 1 free-flowing westbound link along its length to where it meets the proposed M6 Junction 11 roundabout for a total distance of 1890m</p> <p>As shown on sheet 4, 5 and 6 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed realigned Hilton Lane</p> <p>From the Hilton Lane/existing A460 junction along its length to a point 816m east of the Hilton Lane/existing A460 junction for a total distance of 816m</p> <p>As shown on sheet 5 of the traffic regulation measures plans</p>	30 miles per hour
<p>Proposed realigned M6 Junction 11 northbound merge slip road</p> <p>From the proposed M6 Junction 11 roundabout along its length to where it meets the M6 for a total distance of 610m</p> <p>As shown on sheet 6 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed realigned M6 Junction 11 southbound diverge slip road</p> <p>From the proposed M6 Junction 11 roundabout along its length to where it meets the M6 for a total distance of 375m</p> <p>As shown on sheet 6 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed realigned M6 Junction 11 southbound merge slip road</p> <p>From the proposed M6 Junction 11 roundabout along its length to where it meets the M6 for a total distance of 606m</p> <p>As shown on sheet 5 and 6 of the traffic regulation measures plans</p>	70 miles per hour
<p>Proposed realigned M6 Junction 11 northbound diverge slip road</p> <p>From the proposed M6 Junction 11 roundabout along its length to where it meets the M6 for a total distance of 247m</p>	70 miles per hour

As shown on sheet 6 of the traffic regulation measures plans	
Proposed M6 Junction 11 roundabout As shown on sheet 6 of the traffic regulation measures plans	50 miles per hour
Proposed realigned A460 (north of M6 Junction 11) From the proposed M6 Junction 11 roundabout along its length to point 200m south-east of M6 Junction 11 for a total distance of 390m As shown on sheet 6 of the traffic regulation measures plans	50 miles per hour
Proposed realigned A462 From the proposed M6 Junction 11 roundabout along its length to a point 200m south-east of M6 Junction 11 for a total distance of 200m As shown on sheet 6 of the traffic regulation measures plans	60 miles per hour
Proposed realigned A460 (south of M6 Junction 11) From the proposed M6 Junction 11 roundabout along its length to a point 350m west of M6 Junction 11 for a total distance of 350m As shown on sheet 6 of the traffic regulation measures plans	50 miles per hour
Realigned Mill Lane From the junction with the proposed realigned A460 (south of M6 Junction 11) along its length for a total distance of 200m As shown on sheet 6 of the traffic regulation measures plans	60 miles per hour
Proposed connection to Wolverhampton Road From the Junction with the proposed realigned A460 (north of M6 Junction 11) along its length for a total distance of 30m As shown on sheet 6 of the traffic regulation measures plans	30 miles per hour
Proposed connection to Wolverhampton Road From the junction with the proposed realigned A462 along its length for a total distance of 50m As shown on sheet 6 of the traffic regulation measures plans	30 miles per hour

PART 6

PUBLIC RIGHTS OF WAY

(1) <i>Public right of way</i>	(2) <i>Extent</i>
Dark Lane (proposed Bridleway)	Between point 4/4 on sheet 4 and point 5/1 on sheet 5 of the streets, rights of way and access plans
Cannock Road (proposed footpath)	Between point 4/14 and point 4/15 on sheet 4 of

	the streets, rights of way and access plans
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PART 7

CREATION OF NEW TRAFFIC REGULATION ORDERS

<i>(1) Area</i>	<i>(2) Road name and description</i>	<i>(3) Title of Order</i>	<i>(4) Speed limit</i>
Staffordshire County Council	Proposed realigned Hilton Lane From a point 816m east of the Hilton Lane/existing A460 junction to a point 1445m east of the Hilton Lane/existing A460 junction for a total distance of 629m As shown on sheet 5 of the traffic regulation measures plans	Hilton Lane Speed Order (40mph Speed Limit)	40 miles per hour

SCHEDULE 4

Article 13

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

PART 1

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

<i>(1) Street to be stopped up</i>	<i>(2) Extent of stopping up</i>	<i>(3) New street to be substituted or provided</i>
A460 Cannock Road west of M6 Junction 11	Existing section of public road, to be stopped up between points A/7 and A/8 shown on sheet 6 of the streets, rights of way and access plans	Between points A/9 and point A/10 on sheet 6 of the streets, rights of way and access plans
Mill Lane	Existing section of public road, to be stopped up between points A/11 and A/12 shown on sheet 6 of the streets, rights of way and access plans	Between points A/13 and point A/14 on sheet 6 to point 6/6 on sheet 6 of the streets, rights of way and access plans

PART 2

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

(1) <i>Streets to be stopped up</i>	(2) <i>Extent of stopping up</i>
Existing M54 Junction 1 eastbound merge slip road	Existing section of public road, to be stopped up between points A/1 and A/2 shown on sheet 4 of the streets, rights of way and access plans
Existing A460 connecting to north of existing M54 Junction 1 roundabout	Existing section of public road, to be stopped up between points A/3 and A/4 shown on sheet 4 of the streets, rights of way and access plans
Dark Lane	Existing section of public road, to be stopped up between points A/5 on sheet 4 and A/6 shown on sheet 5 of the streets, rights of way and access plans

PART 3

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

(1) <i>Public right of way to be stopped up</i>	(2) <i>Extent of stopping up</i>	(3) <i>New highway to be substituted or provided</i>
Shareshill 5 Footpath adjacent to Hilton Lane	Existing public right of way between point 5/2 and 5/4 on sheet 5 of the streets, rights of way and access plans	A new footpath between points 5/2 and 5/12 on sheet 5, footpath to utilise Hilton Lane footway between points 5/12 and 5/3 on sheet 5 and a new footpath between points 5/3 and 5/4 on sheet 5 of the streets, rights of way and access plans

PART 4

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

(1) <i>Public right of way to be stopped up</i>	(2) <i>Extent of stopping up</i>
Saredon 1R/2214 Footpath	Full length of 70m between points 6/4 and 6/6 on sheet 6 of the streets, rights of way and access plans

PART 5

ALTERATIONS TO PUBLIC RIGHTS OF WAY

(1)	(2)
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<i>Public Rights of Way to be altered</i>	<i>Extent of alteration</i>
Featherstone 3 Bridleway south west of M54 Junction 1 between points 4/1 and 4/3 on sheet 4 of the street, rights of way and access plans	To be altered between points 4/1 and 4/2 on sheet 4 of the streets, rights of way and access plans
Shareshill 1 Bridleway adjacent Brookfield Farm between points 5/5 and 5/6 on sheet 5 of the streets, rights of way and access plans	To be diverted across the proposed Brookfield Farm overbridge between points 5/5 and 5/6 on sheet 5 of the streets, rights of way and access plans
Shareshill 4 Footpath at the south west corner of M6 Junction 11 between points 6/1 and 6/2 on sheet 6 of the streets, rights of way and access plans	To be diverted up the proposed link road embankment between points 6/1 and 6/3 on sheet 6 of the streets, rights of way and access plans
Saredon 8 Footpath at the south west corner of M6 Junction 11 between points 6/2 and 6/4 on sheet 6 of the streets, rights of way and access plans	To be diverted up the proposed link road embankment between points 6/3 and 6/5 on sheet 6 of the streets, rights of way and access plans
Saredon 13 Bridleway at the north east corner of M6 Junction 11 between points 6/7 and 6/8 on sheet 6 of the streets, rights of way and access plans	To be diverted adjacent to the A460 north east of M6 Junction 11 between points 6/8 and 6/9 on sheet 6 of the streets, rights of way and access plans

PART 6

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

<i>(1) Private means of access to be stopped up</i>	<i>(2) Extent of stopping up</i>	<i>(3) New private means of access to be substituted or provided</i>
Access track to Tower Hill Farm	Existing access track shown between points 4/5, 4/6 and 4/7 on sheet 4 of the streets, rights of way and access plans	Proposed new access from Featherstone Junction east roundabout from point 4/8 to point 4/9 on sheet 4 of the streets, rights of way and access plans
Access track to Hilton Park	Existing access track shown between points 4/10 and 4/11 on sheet 4 of the streets, rights of way and access plans	Proposed new access from Featherstone Junction east roundabout from point 4/11 to point 4/12 on sheet 4 of the streets, rights of way and access plans
Proposed Brookfield Farm overbridge access track	Between points 5/8 and 5/10 on sheet 5 of the streets, rights of way and access plans	Proposed new access from 5/8 to 5/9 and heading east from 5/9 to 5/7 and heading west from 5/9 to 5/10 on sheet 5 of the streets, rights of way and access plans

PART 7

PROVISION OR ALTERATIONS TO PRIVATE MEANS OF ACCESS

<i>(1)</i>	<i>(2)</i>
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<i>Private means of access to be provided or altered</i>	<i>Extent of provision or alteration</i>
Existing access from the A460 identified at point 4/10 on sheet 4 of the streets, rights of way and access plans	Provide new means of access between points 4/10 and 4/13 shown on sheet 4 of the streets, rights of way and access plans

SCHEDULE 5

Article 23(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>
Land Plans – Sheet 3	
3/2c, 3/2d, 3/6	To construct, operate, access and maintain a balancing pond to provide attenuation and treatment systems and a new outfall connection to the existing ditch. Maintenance access off Brookhouse Lane (Work No. 56)
Land Plans – Sheet 4	
4/17a	To construct, operate, access, maintain, protect and decommission a diversion to an existing high pressure gas main and associated infrastructure (Work No. 68)
4/20f	To construct, operate, access, maintain, protect and decommission a diversion to an existing high pressure gas main and associated infrastructure (Work No. 68)
4/20g	To construct the Hilton Park access track and to construct, operate, access and maintain a diversion of an existing high pressure gas main and associated infrastructure (Works No. 21 and 68)
Land Plans – Sheet 5	
5/7, 5/11e, 5/11f and 5/13	To construct, operate, access and maintain a balancing pond to provide attenuation and treatment systems to the south of Brookfield Farm and a new outfall connection to Watercourse 4. Maintenance access along an existing track that connects to Hilton Lane and via a new accommodation bridge (Work No. 59)
5/16	To construct, operate, access and maintain a culvert on Watercourse 4 adjacent to Brookfield Farm, a balancing pond to provide attenuation and treatment systems to the south of Brookfield Farm and a new outfall connection to Watercourse 4 as well as diversion of an overhead electricity cable and associated infrastructure. Maintenance access along an existing track that connects to Hilton Lane and via a new accommodation bridge. (Works No. 47, 59 and 70)
5/17	To construct, operate, access and maintain a diversion of an overhead electricity cable and associated infrastructure (Work No. 70)
Land Plans – Sheet 6	
6/31	To access land for works to realign the existing public right of way Saredon 13 (Work No. 66)

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

Compensation enactments

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

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

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “if” substitute—

“(a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 of the M54 to M6 Link Road Development Consent Order 20[]);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 of the M54 to M6 Link Road Development Consent Order 20[]) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land,

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

3.—(1) Without limiting paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5(3)—

(a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from”; and

(b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

Application of the 1965 Act

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

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

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

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

(a) 1973 c. 26.

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

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

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

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the 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, as from the date on which the acquiring authority has served notice to treat in respect of any right 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 (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act is 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—

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

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

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

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

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

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

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

Determination by Upper Tribunal

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

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

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

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

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

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

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

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

SCHEDULE 7

Articles 29 and 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
Land Plans – Sheet 3		
3/7a, 3/7b and 3/7c	Required to deliver ancient woodland enhancement measures	Work No. 76 as shown on sheets 3 and 4 of the works plans
Land Plans – Sheet 4		
4/1e and 4/9a	Required for alignment of the existing A460 into the M54 Junction 1 south roundabout	Work No. 7 as shown on sheet 4 of the works plans
4/1i	Required for the stopping up of the existing A460 and construction of a turning head facility	Work No. 11 as shown on sheet 4 of the works plans
4/2	Required to deliver ancient woodland enhancement measures	Work No. 76 as shown on sheets 3 and 4 of the works plans
4/8	Required for the diversion of utilities and association infrastructure to a new utilities corridor	Work No. 67 as shown on sheet 4 of the works plans
4/13, 4/14a and 4/14c	Required for the alignment of the M54 Junction 1 eastbound merge slip road and the construction of an access for Tower Hill Farm connecting to the Featherstone Junction east roundabout	Work No. 12 and 20 as shown on sheet 4 of the works plans
4/14i	Required for the construction of a free-flowing two lane carriageway, the Featherstone Junction east roundabout, a dual carriageway dumbbell link, new private means of access, the Featherstone Junction southbound diverge slip road and the diversion of a high pressure gas main	Work No. 2, 4, 13, 14, 20, 21, 22, 68 as shown on sheet 4 of the works plans
4/17b, 4/18	Required for the diversion of a high pressure gas main	Work No. 68 as shown on sheet 4 of the works plans
4/20d	Required for habitat creation for visual screening and to mitigate for biodiversity loss and the installation of a replacement fence	Work No. 80 as shown on sheet 4 of the works plans
4/22	Required for the modification of an existing junction and removal of a right turn prohibition into Dark Lane	Work No. 73 as shown on sheets 4 and 5 of the works plans
Land Plans – Sheet 5		

5/1	Required for the modification of an existing junction and removal of a right turn prohibition into Dark Lane	Work No. 73 as shown on sheets 4 and 5 of the works plans
5/6	Required for the construction of new northbound and southbound dual carriageways to M6 Junction 11 the realignment of Hilton Lane and construction of an accommodation overbridge and realignment of access tracks to the south of Brookfield Farm	Work No. 25, 26, 27 and 28 as shown on sheets 4 to 6 of the works plans
5/10	Required for the construction of new northbound and southbound dual carriageways to M6 Junction 11, realignment of Hilton Lane and the realignment of public right of way Sharesill 5	Work No. 25, 26, 27 and 63 as shown on sheets 4 to 6 of the works plans
5/11a	Required for the construction of new northbound and southbound dual carriageways to M6 Junction 11, realignment of Hilton Lane, construction of an accommodation overbridge and realignment of access tracks to the south of Brookfield Farm, installation of a new balancing pond and works to realign public right of way Sharesill 5	Work No. 25, 26, 27, 28, 59 and 63 as shown on sheet 5 of the works plans
5/11(g)	Required for the construction of a new northbound and southbound dual carriageways to M6 Junction 11, construction of an accommodation overbridge and realignment of access tracks to the south of Brookfield Farm and the diversion of an overhead electricity cable and associated infrastructure	Work No. 25, 26, 28 and 70 as shown on sheet 5 of the works plans
5/14	Required for the construction of northbound and southbound dual carriageways to M6 Junction 11 and an accommodation overbridge and realignment of access tracks	Works No. 25, 26 and 28 as shown on sheets 4 to 6 of the works plans
5/25	Required for the construction of new northbound and southbound dual carriageways	Work No. 25, 26, 27 and 74 as shown on sheet 4, 5 and 6 of the works plans

	to M6 Junction 11, realignment of Hilton Lane and the modification of the junction between the existing A460, New Road and Dark lane and the construction of a borrow pit including the excavation, working and restoration to win material required for the construction of the authorised development	
Land Plans – Sheet 6		
6/11b, 6/13, 6/18 and 6/19	Required to realign the M6 Junction 11 northbound merge slip road	Work No. 33 as shown on sheet 6 of the works plans
6/11k, 6/11l, 6/11m, 6/11n, 6/17r, 6/17q and 6/27	Required for the demolition and removal of existing M6 Junction 11 structures and redundant sections of existing circulatory carriageway. Also required for the construction of a new M6 Junction 11 circulatory carriageway and associated infrastructure, the realignment of Wolverhampton Road and the realignment and widening by a single lane of the A460 southbound and northbound	Work No. 36, 38, 39 and 40 as shown on sheet 6 of the works plans
6/12	Required to realign Mill Lane	Work No. 30 as shown on sheet 6 of the works plans
6/17f	Required for the demolition of existing structures at M6 Junction 11, and construction of new M6 Junction 11 circulatory carriageway including overbridges and portal gantries	Work No. 36 as shown on sheet 6 of the works plans
6/17g, 6/20 and 6/22a	Required for the realignment of the M6 Junction 11 southbound diverge slip road	Work No. 35 as shown on sheet 6 of the works plans
6/17h, 6/17i, 6/17j, 6/17k, 6/17m, 6/32a and 6/36	Required for the realignment and widening by a single lane of the A460 southbound and northbound	Work No. 39 as shown on sheet 6 of the works plans
6/25	Required for the realignment of the M6 Junction 11 southbound merge slip road, the demolition and removal of existing M6 Junction 11 structures and redundant sections of existing circulatory carriageway. Also required for the construction of a new M6 Junction 11 circulatory carriageway and associated	Work No. 34, 36 and 37 as shown on sheet 5 and 6 of the works plans

	infrastructure. Required for the realignment of the A462 to M6 Junction 11.	
6/37	Required for the realignment of the M6 Junction 11 southbound diverge slip road. Required for the demolition and removal of existing M6 Junction 11 structures and redundant sections of existing circulatory carriageway. Also required for the construction of a new M6 Junction 11 circulatory carriageway and associated infrastructure. Also required for the realignment and widening by a single lane of the A460 southbound and northbound and the realignment of the existing public right of way Saredon 13	Work No. 35, 36, 39 and 66 as shown on sheet 6 of the works plans

SCHEDULE 8

HEDGEROWS AND TREES

Articles 34 and 36

PART 1

HEDGEROWS

The hedgerow identifications in the table below are taken from Chapter 8: Biodiversity and Figure 8.3 of the environmental statement (application document 6.1)

<i>(1)</i> <i>Hedgerow</i>	<i>(2)</i> <i>Relevant part of the authorised development</i>	<i>(3)</i> <i>Important Hedgerow</i>
TN1 – Intact Hedge – Native Species – Rich	Work No. 66	No
TN8 – Intact Hedge – Native Species – Poor	Work No. 35	No
TN10 – Intact Hedge – Native Species – Rich	Work No. 35	No
TN11 – Intact Hedge – Native Species – Poor	Work No. 30	No
TN14 – Intact Hedge – Native Species – Rich	Work No. 30	No
TN20 – Defunct Hedge – Native Species -	Work No. 72	No
TN22 – Defunct Hedge – Native Species – Rich	Work No. 72	No
TN23 – Intact Hedge – Native Species – Rich	Work No. 72	Yes
TN29 – Intact Hedge – Native Species – Poor	Work No. 29	No
TN35 – Intact Hedge – Native Species – Poor	Work Nos. 36 and 37	No
TN37 – Defunct Hedge – Native Species – Poor	Work Nos. 34 and 85	No
TN39 – Intact Hedge – Native Species – Poor	Work Nos. 25, 26, 32 and 36	No
TN40 – Intact Hedge – Native Species – Poor	Work Nos. 25, 26, 32, and 36	No
TN41 – Intact Hedge – Native Species – Rich	Work Nos. 25, 26 and 48	Yes
TN68 – Defunct Hedge – Native Species – Rich	Work Nos. 27 and 59	No
TN71 – Intact Hedge – Native Species – Poor	Work Nos. 25, 26 and 27	No
TN75 – Defunct Hedge – Native Species – Rich	Work Nos. 71	No

PART 2

TREES SUBJECT TO TREE PRESERVATION ORDERS

The tree plan references in the table below are taken from the tree preservation order impact/removal plans (application document 6.8)

(1) <i>Type of tree</i>	(2) <i>Relevant part of the authorised development</i>	(3) <i>TPO reference</i>
T168 – Ash (<i>Fraxinus excelsior</i>)	Work No. 86	TPO – 3/1957
T46 – Ash (<i>Fraxinus excelsior</i>)	Work No. 11	TPO – 3/1957
T60 – Ash (<i>Fraxinus excelsior</i>)	Work No. 17	TPO – 3/1957
T237 – Atlantic Cedar (Blue) (<i>Cedrus libani atlantica</i> Glauca)	Work Nos. 27 and 69	TPO – 3/1957
T146 – Beech (<i>Fagus sylvatica</i>)	Work No. 16	TPO – 3/1957
T222 – Beech (<i>Fagus sylvatica</i>)	Work No. 69	TPO – 3/1957
T94 – Beech (<i>Fagus sylvatica</i>)	Work No. 16	TPO – 3/1957
G369 – Common Alder (<i>Alnus glutinosa</i>)	Work Nos. 25 and 48	TPO – 56 and 58/1981
T152 – Common Alder (<i>Alnus glutinosa</i>)	Work Nos. 22 and 26	TPO – 3/1957
W342 – Common Alder (<i>Alnus glutinosa</i>), Ash (<i>Fraxinus excelsior</i>), Crack Willow (<i>Salix fragilis</i>), Common Oak (<i>Quercus robur</i>)	Work Nos. 25, 26, 48 and 65	TPO – 56 and 58/1981
G346 – Common Alder (<i>Alnus glutinosa</i>), Crack Willow (<i>Salix fragilis</i>), Hawthorn (<i>Crataegus monogyna</i>) Common Oak (<i>Quercus robur</i>)	Work No. 26	TPO – 56 and 58/1981
G119 – Common Alder (<i>Alnus glutinosa</i>), Sycamore (<i>Acer pseudoplatanus</i>), Downy Birch (<i>Betula pubescens</i>)	Work Nos. 2 and 23	TPO – 3/1957
T101 – Common Lime (<i>Tilia X europaea</i>)	Work No. 16	TPO – 3/1957
T102 – Common Lime (<i>Tilia X europaea</i>)	Work No. 16	TPO – 3/1957
T113 – Common Lime (<i>Tilia X europaea</i>)	Work No. 16	TPO – 3/1957
T120 – Common Lime (<i>Tilia X europaea</i>)	Work No. 16	TPO – 3/1957
T110 – Common Oak (<i>Quercus robur</i>)	Work No. 16	TPO – 3/1957
T130 – Common Oak (<i>Quercus robur</i>)	Work No. 16	TPO – 3/1957
T145 – Common Oak (<i>Quercus robur</i>)	Work Nos. 4, 22 and 46	TPO – 3/1957
T242 – Common Oak	Work Nos. 24, 26 and 27	TPO – 3/1957

(Quercus robur)		
T367 – Common Oak (Quercus robur)	Work Nos. 25 and 48	TPO – 56 and 58/1981
T72 – Common Oak (Quercus robur)	Work No. 17	TPO – 3/1957
T75 – Common Oak (Quercus robur)	Work No. 17	TPO – 3/1957
T77 – Common Oak (Quercus robur)	Work No. 17	TPO – 3/1957
T78 – Common Oak (Quercus robur)	Work No. 17	TPO – 3/1957
T79 – Common Oak (Quercus robur)	Work Nos. 16 and 17	TPO – 3/1957
T81 - Sycamore (Acer pseudoplatanus)	Works Nos. 17 and 18	TPO – 3/1957
T84 – Common Oak (Quercus robur)	Work Nos. 4 and 22	TPO – 3/1957
T87 – Common Oak (Quercus robur)	Work Nos. 16 and 18	TPO – 3/1957
T88 – Common Oak (Quercus robur)	Work Nos. 4 and 22	TPO – 3/1957
T90 – Common Oak (Quercus robur)	Work Nos. 16 and 18	TPO – 3/1957
T91 – Common Oak (Quercus robur)	Work Nos. 4 and 22	TPO – 3/1957
T92 – Common Oak (Quercus robur)	Work Nos. 16 and 18	TPO – 3/1957
W512 – Common Oak (Quercus robur), Ash (Fraxinus excelsior), Sycamore (Acer pseudoplatanus), Lime (Tilia Sp.), Beech (Fagus sylvatica)	Work Nos. 16, 17, 18, 19 and 71	TPO – 3/1957
G234 - Common Oak (Quercus robur), Sycamore (Acer pseudoplatanus), Hawthorn (Crataegus monogyna)	Work Nos. 24, 25, 26 and 27	TPO – 3/1957
T183– Common Oak (Quercus robur)	Works Nos. 24 and 69	TPO – 3/1957
G184 - Common Oak (Quercus robur), Sycamore (Acer pseudoplatanus), Holly (Ilex aquifolium), other	Work Nos. 24, 25, 26 and 62	TPO – 3/1957
T140 – Downy Birch (Betula pubescens)	Work Nos. 2, 23 and 46	TPO – 3/1957
G374 – Hawthorn (Crataegus monogyna), Common Alder (Alnus glutinosa)	Work No. 36	TPO – 56 and 58/1981
G240 – Hawthorn (Crataegus monogyna), Holly (Ilex aquifolium)	Work Nos. 24, 26 and 27	TPO – 3/1957
T95 – Sessile Oak (Quercus petraea)	Work Nos. 4 and 22	TPO – 3/1957

T209 – Sweet Chestnut (<i>Castanea sativa</i>)	Work No. 86	TPO – 3/1957
G153 – Sycamore (<i>Acer pseudoplatanus</i>)	Work No. 16	TPO – 3/1957
T111 – Sycamore (<i>Acer pseudoplatanus</i>)	Work No. 16	TPO – 3/1957
T112 – Sycamore (<i>Acer pseudoplatanus</i>)	Work No. 16	TPO – 3/1957
T195 – Sycamore (<i>Acer pseudoplatanus</i>)	Work No. 86	TPO – 3/1957
T197 – Sycamore (<i>Acer pseudoplatanus</i>)	Work No. 86	TPO – 3/1957
T225 – Sycamore (<i>Acer pseudoplatanus</i>)	Work No. 69	TPO – 3/1957
T239 – Sycamore (<i>Acer pseudoplatanus</i>)	Work No. 25	TPO – 3/1957
T257 – Sycamore (<i>Acer pseudoplatanus</i>)	Work No. 74	TPO – 3/1957
T44 – Sycamore (<i>Acer pseudoplatanus</i>)	Work Nos. 45 and 68	TPO – 3/1957
T81 – Sycamore (<i>Acer pseudoplatanus</i>)	Work Nos. 17 and 18	TPO – 3/1957
T98 – Sycamore (<i>Acer pseudoplatanus</i>)	Work Nos. 16 and 19	TPO – 3/1957
T99 – Sycamore (<i>Acer pseudoplatanus</i>)	Work No. 16	TPO – 3/1957
T138 – Sycamore (<i>Acer pseudoplatanus</i>)	Work Nos. 2, 23 and 46	TPO – 3/1957
G74 – Sycamore (<i>Acer pseudoplatanus</i>), Common Alder (<i>Alnus glutinosa</i>)	Work No. 17	TPO – 3/1957
G265 – Sycamore (<i>Acer pseudoplatanus</i>), Common Oak (<i>Quercus robur</i>), Ash (<i>Fraxinus excelsior</i>), Holly (<i>Ilex aquifolium</i>)	Work Nos. 24, 25, 26, 27 and 62	TPO – 3/1957
W212 – Sycamore (<i>Acer pseudoplatanus</i>), Common Oak (<i>Quercus robur</i>), Holly (<i>Ilex aquifolium</i>), Scots Pine (<i>Pinus sylvestris</i>)	Work Nos. 62 and 69	TPO – 3/1957
W159 - Sycamore (<i>Acer pseudoplatanus</i>), Downy Birch (<i>Betula pubescens</i>), Common Alder (<i>Alnus glutinosa</i>), Beech (<i>Fagus sylvatica</i>)	Work Nos. 2, 4, 22, 23, 24, 25, 26, 46 and 62	TPO – 3/1957
G232 - Sycamore (<i>Acer pseudoplatanus</i>), Holly (<i>Ilex aquifolium</i>), Yew (<i>Taxus baccata</i>), Common Oak (<i>Quercus robur</i>)	Work Nos. 24 and 27	TPO – 3/1957
T122 – White Poplar (<i>Populus alba</i>)	Work No. 4, 22 and 46	TPO – 3/1957
T201 – Whitebeam (<i>Sorbus aria</i>)	Work No. 86	TPO – 3/1957

T180 – Willow (<i>Salix</i> sp.)	Work No. 86	TPO – 3/1957
W96 – Yew (<i>Taxus baccata</i>), Sycamore (<i>Acer pseudoplatanus</i>), Silver Birch (<i>Betula pendula</i>), Common Oak (<i>Quercus robur</i>)	Work Nos. 2, 4, 22 and 23	TPO – 3/1957
G36 – Silver Birch (<i>Betula pendula</i>), Common Oak (<i>Quercus robur</i>), Hawthorn (<i>Crataegus monogyna</i>)	Work Nos. 6 and 68	TPO – 3/1957
W516 - Sycamore (<i>Acer pseudoplatanus</i>), Birch (<i>Betula</i> sp.), Common Oak (<i>Quercus robur</i>), Common Beech (<i>Fagus sylvatica</i>), Sweet Chestnut (<i>Castanea sativa</i>),	Works No. 3	TPO – 3/1957
T97 - Scots Pine (<i>Pinus sylvestris</i>)	Works Nos. 2 and 22	TPO – 3/1957
T135 - Common Oak (<i>Quercus robur</i>)	Work No. 16	TPO – 3/1957

SCHEDULE 9

PROTECTIVE PROVISIONS

Articles 31 and 39

PART 1

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

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and the utility undertaker concerned, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order), any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between the utility undertaker concerned and the transferee or grantee (as the case may be).

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to the utility undertaker concerned (but see paragraph 11(3)(b)).

2. In this Part of this Schedule—

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

“apparatus” means—

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

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

“functions” includes powers and duties;

(a) 1989 c. 29.

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(c) 1991 c. 56.

(d) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c.37). Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c.29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c.21).

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

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

“utility undertaker” means—

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

(f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(g) a water undertaker within the meaning of the Water Industry Act 1991; and

(h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the 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 13 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 12 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

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

Removal of apparatus

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

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (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 42, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

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

Retained apparatus

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

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

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

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

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

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

Expenses and costs

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

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

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

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

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to –

- (a) 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, or
- (b) any part of the authorised development carried out by a utility undertaker in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 8 (consent to transfer benefit of Order).

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Co-operation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 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 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; and

“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 Schedule 3A Part 1 paragraph 7 of the 2003 Act;

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

16. The exercise of the powers conferred by article 31 (statutory undertakers) is subject to Schedule 3A part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code in the 2003 Act.

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(a) 2003 c. 21.

(b) See section 106.

(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 CADENT GAS LTD AS GAS UNDERTAKER

Application

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

Interpretation

19. In this Part of this Schedule—

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

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

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

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

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

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

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

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

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

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

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

“maintain” and “maintenance” for the purposes of this Part of the Schedule shall have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use, improve, landscape, preserve, decommission, refurbish or replace;

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

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

“specified works” means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development 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 sub-paragraph 24(2) (removal of apparatus) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 24(2) (removal of apparatus) or otherwise; or

On Street Apparatus

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

- (a) paragraphs 21 (apparatus of Cadent in stopped up streets), 26 (retained apparatus: protection of Cadent), 27 (expenses) and 28 (indemnity); and
- (b) where sub-paragraph (2) applies, paragraphs 24 (removal of apparatus) and 25 (facilities and rights for alternative apparatus).

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) Paragraph 27 (expenses) does 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 Cadent in such proportions as may be prescribed by any such regulations.

Apparatus of Cadent in stopped up streets

21.—(1) Where any street is stopped up under article 13 (*permanent stopping up and restriction of use of streets, public rights of way and private means of access*), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway,

but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 24 (removal of apparatus).

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

Protective works to buildings

22.—(1) The undertaker, must exercise the powers conferred by article 18 (*protective work to buildings*) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent such consent not to be unreasonably withheld or delayed.

Acquisition of land

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

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

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation 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 Cadent and other enactments relied upon by Cadent 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 Cadent under paragraph 26 (retained apparatus: protection of Cadent) or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

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

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

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

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

Removal of apparatus

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

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

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent 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 assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

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

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to

Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter may be referred to arbitration in accordance with paragraph 33 (*arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

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

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

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

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) ; and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

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

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 18 to 20 and 23 to 25 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 24(2) (removal of apparatus).

(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 (and ground monitoring scheme if required), 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 (and ground monitoring scheme if required).

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 27 (expenses).

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) In this paragraph, “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

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

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 24(3) (removal of apparatus) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 26(6) (retained apparatus: protection of Cadent).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

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

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

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

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

Indemnity

28.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 18 (protective work to buildings)) 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 the undertaker) 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 development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

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

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

- (3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;
 - (b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 8; and
 - (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1).
- (4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

29. Except where in this Part of this Schedule provides otherwise or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

30.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 24(2) (removal of apparatus) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 26 (retained apparatus: protection of Cadent), 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 Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

31. If in consequence of any agreement reached in accordance with sub-paragraph 23(1) (acquisition of land) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

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

Notices

33. Notwithstanding article 41 (service of notices) the plans submitted to Cadent by the undertaker pursuant to sub-paragraph 26(1) (retained apparatus protection of Cadent) must be sent

to Cadent Gas Limited Plant Protection via email to **plantprotection@cadentgas.com** as well as by post to Plant Protection Limited, Cadent Gas limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY 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 8 (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—

“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 includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in paragraph 42 (*retained apparatus: protection*) 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 or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“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 13 (*permanent stopping up, restriction of use and construction of streets, public rights of way 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 (*removal of apparatus*) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 42 (*retained apparatus: protection*).

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (*temporary stopping up and restriction of use of streets*), National Grid 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

38.—(1) The undertaker must exercise the powers conferred by article 18 (*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 (*retained apparatus: protection*) 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 41(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 electricity undertaker

42.—(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 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).
- (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

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 8 (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 (*retained apparatus: protection*), 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) (*acquisition of land*) 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 42 (*arbitration*).

Notices

49. Notwithstanding article 41 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 42 must be sent to National Grid Plant Protection at 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 5

FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED (WEST MIDLANDS) PLC AS ELECTRICITY UNDERTAKER

Application

50. For the protection of Western Power Distribution Limited (West Midlands) plc the following provisions, unless otherwise agreed in writing between the undertaker and Western Power Distribution Limited (West Midlands) plc, have effect.

Interpretation

51. In this Part of this Schedule—

“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 (West Midlands) plc (company number 03600574) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“WPD Network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act; and

other terms have the meaning given in article 2 (interpretation).

Precedence of 1991 Act in respect of apparatus in streets

52. 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

53. 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

54.—(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 shall 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 59 (expert determination).

(8) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 59 (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 59 (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

55.—(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 59 (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

56.—(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 54 (removal of apparatus), the undertaker shall submit to WPD a plan of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any 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 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 54(2).

(7) Nothing in this paragraph 56 precludes 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

57.—(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 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.

(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.

58.—(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

59.—(1) Article 42 (arbitration) shall apply to any difference as to the legal interpretation 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 submission;
- (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 42.

SCHEDULE 10

Article 40

DOCUMENTS TO BE CERTIFIED

(1) <i>Document</i>	(2) <i>Document Reference</i>	(3) <i>Revision</i>
Book of Reference	TR010054/APP/4.3	P09
Environmental Statement	TR010054/APP/6.1, with updated Biodiversity Chapter 8 and Noise and Vibration Chapter 11	1
Environmental Statement Addendum	TR010054/APP/8.6	1
Outline Environmental Management Plan	TR010054/APP/6.11	5
Location Plan – Regulation 5(2)(o)	TR010054/APP/2.1	P04
Land Plans – Regulation 5(4)	TR010054/APP/2.2	P05
Works Plans – Regulation 5(4)	TR010054/APP/2.4	P04
General Arrangement Scheme Layout – Regulation 5(2)(o)	TR010054/APP/2.5	P04
Streets, Rights of Way and Access Plans – Regulation 5(4)	TR010054/APP/2.7	P05
Classification of Roads Plans	TR010054/APP/2.9	P04
Engineering Drawings and Sections – Regulations 5(2)(o), 5(4) and 6(2)	TR010054/APP/2.10	P03
Tree Preservation Order/Impact Removal Plans	TR010054/APP/6.8	3
Habitats Regulations Assessment	TR010054/APP/6.9	2
Statutory Nuisance Statement	TR010054/APP/6.10	1

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to undertake works to provide a new road to link the M54 at junction 1 and M6 at junction 11 Hilton Park, Wolverhampton, Staffordshire and carry out all associated works.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, the book of reference, the environmental statement and the OEMP mentioned in this Order and certified in accordance with article 40 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England. The Cube, 199 Wharfside Street, Birmingham, B1 1RN.

STATUTORY INSTRUMENTS

20[] No. []

INFRASTRUCTURE PLANNING

The M54 to M6 Link Road Development Consent Order 20[]