

A46 Coventry Junctions (Walsgrave) Scheme Number: TR010066

3.1 Draft Development Consent Order

APFP Regulation 5(2)(b)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations
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A46 Coventry Junctions (Walsgrave)
Development Consent Order 202[x]

DRAFT DEVELOPMENT CONSENT ORDER

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INFRASTRUCTURE PLANNING

**The A46 Coventry Junctions (Walsgrave) Development Consent
Order 202[]**

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

The application was examined by a Panel of [x] members “the Panel” appointed as an examining authority (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The Panel, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 74(2) of the 2008 Act, has submitted a report and recommendation to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The Secretary of State, having considered the representations made and not withdrawn, and the report of the Panel, has decided to make an Order granting development consent for the development described in the application with modifications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(d), 115(e), 117(f), 120(g), 122(h) and 123(i) of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5(j) to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[] and comes into force on [].

Interpretation

2.—(1) In this Order—

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

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

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

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

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- (a) Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
- (b) Amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572 and S.I. 2024/332.
- (c) Amended by S.I. 2024/317.
- (d) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
- (e) Section 115 was amended by paragraph 56 of Part 2 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
- (f) Section 117 was amended by paragraph 58 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.
- (g) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
- (h) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
- (i) Section 123 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
- (j) Part 1 of Schedule 5 was amended by paragraph 4 of Part 1 of Schedule 8 and Part 2 of Schedule 22 to the Marine and Coastal Access Act 2009 (c.23), paragraph 71 of Part 1 of Schedule 13 to the Localism Act 2011 and paragraph 76 of Part 3 of Schedule 6 to the Wales Act 2017.
- (k) 1961 c. 33.
- (l) 1965 c. 56.
- (m) 1980 c. 66.

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

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

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

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

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

“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) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

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

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

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

“classification of roads plans” means the document of that description listed in Schedule 11 (documents to be certified) certified by the Secretary of State as the classification of roads plans for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than operations consisting of pre-commencement works, and “commencement” is to be construed accordingly;

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

“electronic transmission” means a communication transmitted—

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

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003(g);

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

“environmental masterplan” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the environmental masterplan for the purposes of this Order;

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

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

“highway”, “highway authority” and “local highway authority” have the same meaning as in section 329(1) of the 1980 Act;

(n) 1981 c. 66.

(a) 1984 c. 27.

(b) 1990 c. 8.

(c) 1991 c. 22.

(d) 2008 c. 29.

(e) S.I. 2017/3.

(f) 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).

(g) 2003 c. 21.

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

“limits of deviation” means the limits of deviation referred to in article 7 (limits of deviation);

“maintain” in relation to any part of the authorised development includes to inspect, repair, adjust, alter, improve, landscape, preserve, remove, decommission, reconstruct, refurbish or replace, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, 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 (interpretation) of the Acquisition of Land Act 1981(a);

“permit scheme” means any schemes made under Part 3 of the Traffic Management Act 2004(b) in force at the date in which this Order is made;

“pre-commencement plan” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the pre-commencement plan for the purposes of this Order;

“pre-commencement works” means the work described as such in the Pre-Commencement Plan;

“relevant planning authority” means in any given provision of this Order, either Coventry City Council or Rugby Borough Council in their capacity as local planning authorities insofar as the matter in question falls within their respective administrative areas or both, as the case may be;

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

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

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

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

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

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

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

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

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

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

(b) 2004 c. 18.

(c) Section 121A was inserted by section 168(1) of, and paragraph 70 of Part 2 of Schedule 8, to the New Roads and Street Works Act 1991 (c. 22).

- (a) section 10(a) (general provision as to trunk roads) or 19(1)(b) (certain special roads and other highways to become trunk roads) of the 1980 Act;
- (b) an order or direction under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

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

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

“the works plans” means the plans of that description listed in Schedule [11] (documents to be certified) and certified by the Secretary of State as the works plans 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) References in this Order to the creation and acquisition of rights over land includes references to rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the discretion of the undertaker, either—

- (a) to an affected person directly, where that person’s land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in the Order are to be granted for the benefit of the land in which that affected person has an interest at the time of the making of this Order; or
- (b) to any statutory undertaker for the purpose of their undertaking.

(4) 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.

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

(6) References to any statutory body includes that body’s successor bodies from time to time that have jurisdiction over the authorised development.

(7) 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 rights of way and access plans.

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

(9) In this Order, the expression “includes” is to be construed without limitation.

(10) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement must not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the environmental statement as a result of the authorised development.

(a) Section 10 was amended by section 22(2) of the New Roads and Street Works Act 1991; paragraph 22 of Schedule 2 to the Planning Act 2008; and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

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

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.

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

Maintenance of authorised development

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

Maintenance of drainage works

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

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

Planning permission

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

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

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

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

(3) To the extent any development carried out or used pursuant to a planning permission granted under section 57 (requirement of planning permission) of the 1990 Act or compliance with any conditions of that permission is inconsistent with the exercise of any power, right or obligation under this Order or the authorised development—

- (a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter or that planning permission is capable of physical implementation; and
- (b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that planning permission, or compliance with any conditions of that permission, whether inside or outside the Order limits.

(a) 1991 c. 59. The definition of “drainage” was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

(4) Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act including permissions falling under sub-paragraph (1) or (3) or otherwise, is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(5) Any works carried out under this Order are deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act for the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(a).

(6) In paragraph (3), “enforcement action” means any enforcing action under Part 7 of the 1990 Act.

Limits of deviation

7.—(1) In carrying out and maintaining 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 up to a maximum of 1 metre upwards or 1 metre downwards;

except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State’s satisfaction, and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) The maximum limits of deviation set out in paragraph (1) do not apply where it is demonstrated by the undertaker to the Secretary of State’s satisfaction and the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to their functions and, in respect of the authorised development comprising highways other than a trunk road, consultation by the undertaker with the relevant local highway authority on matters related to their functions, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) applies to an application to the Secretary of State for certification under paragraph (1) as though it were an approval required by a requirement under that Schedule.

Benefit of Order

8.—(1) Subject to paragraph (2) and article 9 (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

9.—(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

(a) 1967 c. 10.

- (b) grant to another person (“the grantee”) for a period agreed between the undertaker and the grantee 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), includes references to the transferee or the grantee.

(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.

PART 3

STREETS

Application of the 1991 Act

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

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

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

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

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

-
- (a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
 - (b) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.
 - (c) Section 56 was amended by section 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.
 - (e) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.
 - (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
 - (g) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
 - (h) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
 - (i) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
 - (j) Section 78A was inserted by section 57 of the Traffic Management Act 2004.

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

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any alteration, diversion or restriction of a street of a temporary nature by the undertaker under the powers conferred by article 15 (temporary closure, alteration, diversion and restriction of use of streets), whether or not the alteration, diversion or restriction 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(c) (advance notice of certain works), subject to paragraph (6);
- section 55(d) (notice of starting date of works), subject to paragraph (6);
- section 57(e) (notice of emergency works);
- section 59(f) (general duty of street authority to co-ordinate works);
- 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 an alteration, diversion or restriction (as the case may be) required in a case of emergency.

(7) Nothing in article 13 (construction and maintenance of new, altered or diverted streets and other structures)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act and the undertaker is not by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 (street works in England and Wales) 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 (street works in England and Wales) of the 1991 Act apply.

(8) Any order which may be made by the Secretary of State under section 74A(2) of the 1991 Act for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012(g) will not have effect in relation to the construction or maintenance of the authorised development.

Street works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;

(a) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.

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

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

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

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

(g) S.I. 2012/425.

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

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

(3) Subject to article 10 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout etc. of streets

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

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

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

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

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

(4) If a street authority which receives an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

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

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

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

13.—(1) Any highway (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing between the undertaker and 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 highway (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing between the undertaker and the local highway authority, be maintained by and at the expense of the local highway authority from its completion.

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

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

(5) 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 or structure to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), 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 or structure and that the competent person had carried out those instructions.

Access to works

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

Temporary closure, alteration, diversion and restriction of use of streets

15.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, 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 closed, altered, diverted 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 closure, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily close, alter, divert or restrict the use of any street 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 (determination of questions of disputed compensation) 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.

Use of private roads

16.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction and maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

Permanent stopping up of streets and private means of access

17.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in column (1) of Parts 1 and 2 of Schedule 3 (permanent stopping up of streets and private means of access) to the extent specified and described in column (2) of that Schedule.

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

(a) the new street to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, is open for use and 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 to be stopped up is first provided and 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 until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

(a) all rights of way over or along the street 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 as is bounded on both sides by land owned by the undertaker.

(4) 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 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article is subject to article 43 (apparatus and rights of statutory undertakers in stopped up streets).

Classification of roads, etc.

18.—(1) On the date on which the relevant part of the authorised development is completed and open for traffic the roads described in Part 1 (trunk roads) of Schedule 4 (classification of roads, etc.) will be trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(2) On the date on which the roads described in Part 2 (classified roads) of Schedule 4 are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(3) Unless otherwise agreed in writing with the local authority, the footways set out in Part 3 (footways) of Schedule 4 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised developed is open for traffic.

(4) The private means of access specified in column (2) of Part 4 (private means of access) of Schedule 4 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.

(5) On the date on which the roads specified in Part 5 (speed limits) of Schedule 4 (are completed and open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(6) Where the words “national speed limit” appear in column (3) of the table in Part 5 (speed limits) of Schedule 4, on and after the date on which the lengths of road identified in the corresponding row of column (2) of that table are open to traffic the national speed limit will apply to those lengths of roads.

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

Clearways

19.—(1) From the date on which the roads described in column (2) of Part 6 (traffic regulation measures (clearways)) of Schedule 4 (classification of roads, etc.) and identified in the corresponding row of column (3) of that Part as to become a clearway, are open for traffic, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

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

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, maintenance or renewal 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 (the electronic communications code) 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 paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

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

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

Traffic regulation

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

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

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

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

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

(a) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

(b) 1991 c. 56.

(c) 2000 c. 26.

(d) 2004 c. 18.

(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 the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of the 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(a) (power of local authorities to provide parking spaces) 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(a).

(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 conferred by 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 have the same meaning in this article as in that Act.

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

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

(12) Any application for consent under paragraph (2) must be accompanied by a letter informing the traffic authority—

(a) of the period mentioned in paragraph (11); and

(b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

(a) 2004 c. 18.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

21.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out 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 (right to communicate with public sewers) of the Water Industry Act 1991^(a).

(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 not, in carrying out or maintaining the works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river subject to the works that are authorised under this Order.

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

(7) Subject to article 52(1)(a) (disapplication and modification of legislative provisions), nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016^(b).

(8) In this article—

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

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

(a) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154.

(c) 1991 c. 57.

Powers in relation to watercourses

22. Subject to Schedule 9 (protective provisions), the undertaker may, for the purpose of or in connection with the carrying out and maintenance of the authorised development, regardless of any interference with any public or private rights—

- (a) temporarily alter, interfere with, occupy and use the banks, bed, waters and walls of a watercourse; and
- (b) construct, place, maintain and remove temporary works and structures within the banks, bed, waters and walls of a watercourse,

in such manner and to such extent as may appear to it to be necessary or convenient.

Protective work to buildings

23.—(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, and place on, leave on, and remove from the building any apparatus and equipment for use in connection with the survey.

(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 56 (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) Where the undertaker exercises the power under paragraph (1) in relation to a building listed under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990^(a), the undertaker must, except in an emergency—

- (a) serve the notice served on owners and occupiers of a building or land under paragraph (5) on the local planning authority and Historic England; and
- (b) have due regard to any response received from the local planning authority or Historic England within the period specified in the notice under paragraph (5).

(10) Without affecting article 54 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152^(b) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto 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 (compulsory acquisition provisions) of the 2008 Act.

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

(13) 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 land and any building on that land by the carrying out, maintenance or use of the authorised development;
- (b) any works the purpose of which is to remedy any damage which has been caused to the land or any building on that land by the carrying out, maintenance or use of the authorised development; and
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk to such operation being disrupted.

Authority to survey and investigate the land

24.—(1) The undertaker may for the purposes of the construction, operation or maintenance of the authorised development 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 on the scope of sub-paragraph (a), make any excavations, trial holes, boreholes and other investigations in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and ground water, to investigate the extent and nature of underground structures, foundations, plant or apparatus and remove soil and water samples and discharge water from sampling operations onto the land;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes for such purposes; and

^(a) 1990 c. 9.

^(b) Section 152 was amended by S.I. 2009/1307.

- (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 survey or investigation or to make the trial holes or boreholes.
- (4) No trial holes or boreholes are to be made under this article—
 - (a) in land located within a highway boundary without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority,
 but such consent must not be unreasonably withheld.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (6) If either a 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 highway authority; or
 - (b) under paragraph (4)(b) in the case of a street authority,
 that authority will be deemed to have granted consent.
- (7) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the entry onto 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 of the 2008 Act (application of compulsory acquisition provisions).

Felling or lopping of trees and removal of hedgerows

- 25.—**(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) and (4), 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 (determination of questions of disputed compensation) 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 within the Order limits that is required to be removed.

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

(6) Development consent granted by this Order is to be treated as planning permission pursuant to Part 3 of the 1990 Act for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012^(b) and section 9(4)(d) of the Forestry Act 1967^(c).

Trees subject to tree preservation orders

26.—(1) The undertaker may fell or lop any tree described in Schedule 5 (hedgerows and trees) or cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, 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 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)—

- (a) the undertaker will 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) (replacement of trees) of the 1990 Act will not apply.

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

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

PART 5

POWERS OF ACQUISITION AND POSSESSION OF LAND

Compulsory acquisition of land

27.—(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 30 (compulsory acquisition of rights and imposition of restrictive covenants) and article 39 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

28. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981^(d) are incorporated in this Order subject to the modification that—

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

(a) S.I. 1997/1160.

(b) S.I. 2012/605.

(c) 1967 c. 10.

(d) 1981 c. 67.

- (d) for “compulsory purchase order” substitute “this order”.

Time limit for exercise of authority to acquire land compulsorily

29.—(1) After the end of the period of 5 years beginning on the start date—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by this Order; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 36 (application of the 1981 Act).

(2) The authority conferred by article 39 (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.

(3) In this article “start date” means—

- (a) where no challenge to this Order has been made under section 118 of the 2008 Act, the day after the period for legal challenge in respect of this Order under section 118 of the 2008 Act expires; or
- (b) where a legal challenge to this Order has been made under that section, the earlier of—
 - (i) the day after the final determination of any legal challenge under that section; or
 - (ii) the day after the one-year anniversary of the date of the expiry of the period for legal challenge under section 118 of the 2008 Act, whether or not such proceedings have been finally determined by that date.

Compulsory acquisition of rights and imposition of restrictive covenants

30.—(1) Subject to paragraphs (2) to (5), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 27 (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 6 (land in which new rights only etc. may be acquired) the undertaker’s powers of compulsory acquisition under article 25(1) 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 under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 6 for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 6 as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 6 as are required for the benefit of any other statutory undertaker or any other person.

(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 7 (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 affecting land, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition

under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Private rights over land

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

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the 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 onto 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 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 42 (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 right or the imposition of the restrictive covenant over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

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

(a) 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.

- (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 right of way, 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.

Power to override easements and other rights

32.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) The interests and rights to which this article applies include any 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 the virtue of a contract.

(3) Subject to article 54 (no double recovery), where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or section 101 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(4) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (3); and
- (b) fails to discharge that liability, the liability is enforceable against the undertaker.

(5) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(6) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

Disregard of certain improvements etc.

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

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

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

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

Set off for enhancement in value of retained land

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 30 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the claim—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

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

Modification of Part 1 of the 1965 Act

35.—(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)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118(c) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 29 (time limit for exercise of authority to acquire land compulsorily) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[](d)”.

(3) In section 11A(e) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 29 (time limit for exercise of authority to acquire land compulsorily) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[]”.

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

-
- (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) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).
 - (d) S.I. 202[]/[].
 - (e) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

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

“(2) But see article 37(3) (acquisition of subsoil or airspace only) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

- (b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include exercising the powers under articles 16 (use of private roads), 23 (protective work to buildings), 24 (authority to survey and investigate the land), 39 (temporary use of land for carrying out the authorised development) or 40 (temporary use of land for maintaining the authorised development) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[].”.

Application of the 1981 Act

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

(2) The 1981 Act, as so applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection (2) substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(a) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

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

(6) In section 5B(1)(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008 the five year period mentioned in article 29 (time limit for exercise of authority to acquire land compulsorily) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[]”.

(7) In section 6(d) (notices after execution of declaration) in subsection (1)(b) 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(e) (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

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

“(2) But see article 37(3) acquisition of subsoil or airspace only) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[], which excludes the acquisition of subsoil or airspace only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act

(a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016.

(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.

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

(e) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016.

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

(and as modified by article 35 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

37.—(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 27 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 35 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(a) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(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 or airspace above a house, building or manufactory.

Rights under or over streets

38.—(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 (determination of questions of disputed compensation) of the 1961 Act.

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

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

Temporary use of land for carrying out the authorised development

39.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 29 (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 8 (land of which temporary possession only 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 and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (other than a notice of entry or a declaration in connection with the acquisition of rights and/or the imposition of restrictive covenants only);
- (b) remove any apparatus, buildings, landscaping and vegetation from that land;
- (c) remove any electric line, electrical plant, apparatus, buildings, landscaping and vegetation from that land;
- (d) construct temporary works (including the provision of means of access) and buildings on that land; and
- (e) 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 is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

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

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

(4) 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 two years beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 8; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of two years 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.

(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 reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;

- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (e) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works; or
- (f) remove any temporary works where this has been 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 provisions of 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 (determination of questions of disputed compensation) of the 1961 Act.

(8) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.

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

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

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

Temporary use of land for maintaining the authorised development

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

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

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

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

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

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

- (a) the authorised development or any of its parts;
- (b) the public; and/or

(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).

(c) the surrounding environment,

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

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

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker is not required to restore the land to a condition better than the relevant land was in before temporary possession was taken.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (6) does not prevent the undertaker giving up possession of the land.

(8) 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.

(9) 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 (determination of questions of disputed compensation) of the 1961 Act.

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

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

(12) 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.

(13) 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.

Crown rights

41.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary—

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

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

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

Statutory undertakers

42.—(1) Subject to the provisions of Schedule 9 (protective provisions), article 30 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, acquire existing rights, create 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 43 (apparatus and rights of statutory undertakers in stopped up streets) of this Order.

Apparatus and rights of statutory undertakers in stopped up streets

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) In this article—

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

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

Recovery of costs of new connections

44.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 42 (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 38, 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 43 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

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

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

Special category land

45.—(1) So much of the special category land as is required for the purposes of the exercising by the undertaker of the relevant Order powers will be discharged from all rights, trusts and

(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

incidents to which it was previously subject but only in so far as their continuance would be inconsistent with the exercising by the undertaker of the relevant Order powers.

(2) So far as the temporary use of land under article 39 (temporary use of land for carrying out the authorised development) is concerned, then the discharge in paragraph (1) is only for such time as the land is being used under that article.

(3) In this article—

“the relevant Order powers” means the rights and powers exercisable over the special category land by the undertaker under article 30 (compulsory acquisition of rights and imposition of restrictive covenants) and article 39 (temporary use of land for carrying out the authorised development);

“the special category land” means the land identified as forming part of a common, open space, or fuel or field allotment in the book of reference subject to compulsory acquisition and shown on the plan entitled “special category land plans”; and

“special category land plans” means the document of that description for the purposes of this Order.

PART 6

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

46.—(1) This article applies to—

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

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

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

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

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

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

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

Defence to proceedings in respect of statutory nuisance

48.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (d), (fb), (g) and (ga) of section 79(1) (statutory nuisances and inspection therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(b) 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(c); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use or operation 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

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

Certification of documents, etc.

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

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

(4) If a plan certified under paragraph (1) is inaccurate, the undertaker, after giving not less than 28 days' notice to the relevant local planning authority, and any persons it considers appropriate including the owners and occupiers of any land affected, may apply to two justices having jurisdiction in the place where any land affected is situated for the correction of that document.

(5) The application under paragraph (4) must include copies of any representations from the relevant local planning authority and any other persons notified and the undertaker must provide notice to the relevant local planning authority of the date on which the justices will consider any such application as soon as reasonably practicable.

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

(b) Subsection (2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection which are not relevant to this Order.

(c) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to this subsection which are not relevant to this Order.

(6) If on an application under paragraph (4) it appears to the justices that the inaccuracy or wrong description arose from mistake or inadvertence, the justices will certify accordingly and will in their certificate state in what respect a matter is misstated or wrongly described.

(7) A certificate under subsection (6) must be notified to the Secretary of State, and upon that notification, the document certified under paragraph (1) is deemed to be amended according to that certificate and it will be lawful for the undertaker to proceed under this Order as if the certified document had always been in the corrected form.

(8) A copy of a certificate under subsection (6) must be kept with the documents to which it relates and be provided to any persons notified under paragraph (4).

(9) The undertaker must make copies of the certified plans available in electronic form to the public no later than 28 days after certification under paragraph (1) until no earlier than one year after the completion of all parts of the authorised development.

Service of notices

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

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

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

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(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 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) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of

that notice or other document the sender 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.

Disapplication and modification of legislative provisions

52.—(1) The following provisions 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 or maintenance of the authorised development—

- (a) section 23 (prohibition on obstructions etc. in watercourses), section 30 (authorisation of drainage works in connection with a ditch) and section 32 (variation of awards) of the Land Drainage Act 1991^(a);
- (b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991;
- (c) the provisions of any byelaws made under, or having effect as if made under, paragraph 5, 6 or 6A of Schedule 25 (bye-law making powers of the appropriate agency) to the Water Resources Act 1991^(b); and
- (d) sections 28E (duties in relation to sites of special scientific interest) and 28H (Statutory undertakers, etc.: duty in relation to carrying out operations) of the Wildlife and Countryside Act 1981^(c).

(2) The provisions of the Neighbourhood Planning Act 2017^(d), insofar as they relate to temporary possession of land under articles 39 (temporary use of land for carrying out the authorised development) and 40 (temporary use of land for maintaining the authorised development) 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 39(13), any maintenance of any part of the authorised development.

(3) The provisions of the Traffic Management (Coventry City Council) Permit Scheme Order 2014^(e) will not have effect in relation to any “works” or “urgent activities or works” (as those terms are defined in that Order) which are required for the carrying out of the authorised development.

(a) 1991 c. 59.

(b) 1991 c. 57.

(c) 1981 c. 69. Section 28E was amended by section 105(1) of, and paragraphs 79 and 80 of Part 1 of Schedule 11 to, Natural Environment and Rural Communities Act 2006 (c. 16).

(d) 2017 c. 20.

(e) The Traffic Management (Coventry City Council) Permit Scheme Order 2014 was made under Part 3 of the Traffic Management Act 2004 (c.18) and the Traffic Management Permit Scheme (England) Regulations 2007 (SI 2007/3372) as amended by Traffic Management Permit Scheme (England) (Amendment) Regulations 2015 (SI 2015/958).

(4) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010^(a) any building comprised in the authorised development is to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(5) Nothing in this Order is to prejudice the operation of, and the exercise of powers and duties of the undertaker, a statutory undertaker or the Secretary of State under the 1980 Act, the 1991 Act, the 2000 Act and the Town and Country Planning (General Permitted Development) (England) Order 2015^(b).

Amendment of local legislation

53.—(1) The following local enactments and local byelaws, and any byelaws or other provisions made under any of those enactments or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order—

- (a) sections 32, 33, 37, 57, 77, 78, 79, 80, 81, 82, 83, 84 and 85 of the Trent Valley Railway Act 1845^(c);
- (b) sections 40 and 42 of the Coventry Gas Act 1856^(d);
- (c) byelaw of Coventry City Council in relation to the destruction of Ferns and other Plants 1930;
- (d) byelaws 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 25, 29, 30 and 31 of Coventry City Council in relation to Pleasure Grounds 1931;
- (e) byelaws 1 to 55 of Coventry City Council in relation to the Water Undertaking 1950;
- (f) byelaws 12, 13, 17, 18, 21 and 30 of Coventry City Council in relation to the Good Rule and Government of the City of Coventry 1953;[].
- (g) byelaws 7, 25, 29, 34 and 39 of Rugby District Council in relation to the Good Rule and Government and for the Prevention of Nuisances 1934;
- (h) byelaws 1 to 14 of Rugby District Council in relation to the Good Rule and Government and for the Prevention of Nuisances 1938; and
- (i) byelaws 1 and 2 of Rugby District Council in relation to the Good Rule and Government and for the Prevention of Nuisance 1959.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

^(a) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.

^(b) S.I. 2015/596, amended by S.I. 2015/659.

^(c) 1845 c. cxii.

^(d) 1856 c. xxxviii.

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

No double recovery

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

Appeals relating to the Control of Pollution Act 1974

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

(2) The appeal process is as follows—

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

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(a) 1974 c. 40.

(5) Any further information required under paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

(8) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(9) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(10) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(11) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(12) Except where a direction is given under paragraph (13) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(14) In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Department for Levelling Up, Housing and Communities or such guidance as may from time to time replace it.

Arbitration

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

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

Date

Name
Title
Department for Transport

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

The authorised development comprises a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act and associated development, as defined in section 115(2) of the 2008 Act, comprising—

In the administrative areas of Coventry City Council and Rugby Borough Council

The Works are situated as follows—

- (a) in respect of—
 - (i) the whole of Work Nos. 1G, 1L, 1M, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I and 4A,
 - (ii) part of Work Nos. 1B, 1C 1D and 2A,in the administrative area of Coventry City Council; and
- (b) in respect of—
 - (i) the whole of Work Nos. 1A, 1E, 1F, 1H, 1I, 1J, 1K, 3A and 3C,
 - (ii) part of Work Nos. 1B, 1C, 1D and 2A,in the administrative area of Rugby Borough Council.

Work No. 1A — Improvement and realignment of the existing A46 northbound and southbound carriageway, as shown on sheets 1, 2, 4 and 5 of the works plans, and including—

- (a) realignment and new construction along a length of 880 metres, commencing at a location situated 80 metres north of the existing Brinklow Road underbridge and terminating at a location situated 12 metres south of the existing Hungerley Hall Farm accommodation overbridge as shown between reference points 1/2 on sheet 1 and 1/15 on sheet 2 of the rights of way and access plans;
- (b) cross-section widening along the A46 and provision of connection to new slip roads from 12 metres south of Hungerley Hall Farm accommodation overbridge, 900 metres in length, as shown between reference points 1/15 on sheet 2 and 1/7 on sheet 4 of the rights of way and access Plan; and
- (c) placement of 50mph Speed Limit Terminal signs, as shown between reference point 1/2 on sheet 1 and point 1/8 of sheet 5 of the traffic regulations Plans.

Work No. 1B — A new A46 Walsgrave overbridge comprising of single span, 30 metres in length, carrying the new dumb-bell link road connecting the two new roundabouts (Work No 1G and 1H) of the new A46 Walsgrave grade separated junction, as shown on sheet 4 of the works plans.

Work No. 1C — A new northbound off-slip, 264 metres in length, commencing at a location situated 128 metres north of the existing Hungerley Hall Farm accommodation overbridge and continuing northwest until the new circulatory carriageway of western roundabout (Work No. 1G), as shown on sheet 4 of the works plans.

Work No. 1D — A new northbound on-slip, 290 metres in length, commencing from the new circulatory carriageway of western roundabout (Work No. 1G) and continuing northeast to merge with the existing A46, as shown on sheet 4 of the works plans.

Work No. 1E — A new southbound off-slip, 294 metres in length, commencing at a location situated 460 metres south of the existing Farber Road overbridge and continuing southeast until

the new circulatory carriageway of eastern roundabout (Work No. 1H), as shown on sheet 4 of the works plans.

Work No. 1F — A new southbound on-slip, 274 metres in length, commencing from the new circulatory carriageway of eastern roundabout (Work No. 1H) and continuing southwest to merge with the existing A46, as shown on sheet 4 of the works plans.

Work No. 1G — New roundabout to the west of the A46 providing connection between the existing A46 and realigned B4082, as shown on sheet 4 of the works plans.

Work No. 1H — New roundabout to the east of the A46 providing connection between the existing A46 and realigned B4082, as shown on sheet 4 of the works plans.

Work No. 1I — New maintenance layby, 110 metres in length, constructed along the A46 northbound carriageway located north of the northbound off-slip (Work No.1C) and south of the northbound on-slip (Work No.1D), as shown on sheet 4 of the works plans.

Work No. 1J — A new gantry, or similar signage, over the A46 northbound carriageway, at a location situated 28 metres south of the new single span overbridge (Work No. 1B), as shown on sheet 4 of the works plans.

Work No. 1K — Removal and reinstatement of existing environmental bund situated southeast of the realigned A46 (Work No. 1A), from south of the existing Smite Brook culvert for up to 150 metres in length, as shown on sheet 2 of the works plans.

Work No. 1L — A new northern pond, together with associated drainage facilities including a new outfall, situated at a location west of Work No. 1A and south of Work No. 4A, as shown on sheet 4 of the works plans.

Work No. 1M — A new northern pond access, 810 metres in length, commencing at its junction with the private means of access (Work No. 2C) and circulating around Work No. 1L, as shown on sheets 2 and 4 of the works plans.

Work No. 2A — Realignment, improvement and new construction of the B4082 road, as shown on sheets 2, 3 and 4 of the works plans including—

- (a) the construction of a new section of highway with two-way single carriageway commencing at a location situated 240 metres east of the existing Clifford Bridge Road roundabout, running generally northwards parallel to the A46, passing between Hungerley Hall Farm buildings and the existing A46 before connecting to the new western roundabout (Work No.1G) of the new A46 Walsgrave grade separated junction, with a total length of 894 metres as shown on sheets 3 and 4 of the works plans; and
- (b) placement of 40mph Speed Limit Repeater signs along B4082, as shown between reference point 2/11 on sheet 3 and point 2/8 of sheet 4 of the traffic regulations plans.

Work No. 2B — A new private means of access, 34 metres in length, commencing from a new junction with the realigned B4082 road (Work No. 2A) and terminating at Hungerley Hall Farm accommodation overbridge, as shown on sheet 2 of the works plans.

Work No. 2C — A new private means of access, 118 metres in length, commencing at a new junction with the realigned B4082 road (Work No. 2A) and terminating at Hungerley Hall Farm buildings, as shown on sheet 2 of the works plans.

Work No. 2D — A new central pond, together with associated drainage facilities including a new outfall, situated at a location between Work No.1A and Work No. 2A, as shown on sheet 4 of the works plans.

Work No. 2E — A new southern detention basin, together with associated drainage facilities, situated at a location to the northeast of Work No. 2A, as shown on sheet 3 of the works plans.

Work No. 2F — A new central pond access, 393 metres in length, commencing at its junction with the realigned B4082 (Work No. 2A) and circulating around Work No. 2D, as shown on sheet 4 of the works plans.

Work No. 2G — A new southern detention basin access, 283 metres in length, commencing at a location approximately 140 metres from the existing Clifford Bridge Road roundabout and circulating around Work No. 2E, as shown on sheet 3 of the works plans.

Work No. 2H — A new ditch along the western side of the B4082 commencing from north of Work No. 2C and terminating adjacent to Work No. 1D, as shown on sheets 2 and 4 of the works plans.

Work No. 2I — A new signalised pedestrian crossing situated 20 metres east of the existing Clifford Bridge Road roundabout, as shown on sheet 3 of the Works Plans and the extension of existing footway between points 2/7 and 2/10 and points 2/12 and 2/13, as shown on sheet 3 of the rights of way and access plans.

Work No. 3A — Habitat creation including areas of woodland planting of native species, as shown on sheet 2 of the works plans.

Work No. 3B — A new badger crossing, as shown on sheet 4 of the works plans.

Work No. 3C — Reinstatement of existing timber fence where required and vegetation removal, as shown on sheet 2 of the works plans.

Work No. 4A — A temporary construction compound, as shown on sheet 4 of the works plans.

Other associated development

For the purposes of or in connection with the construction of any of the works and other development mentioned above, ancillary or related development within the Order limits which does not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, consisting of —

- (a) alteration to the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of any street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; and altering the level of any such kerb, footpath, footway, cycle track or verge;
- (b) works required for the strengthening, improvement, protection, repair, maintenance or reconstruction of any street;
- (c) the strengthening, alteration, refurbishment, or demolition of any building or highway bridge or structure;
- (d) the remediation of any carriageway made redundant by the stopping up of any highway or means of access;
- (e) ramps, means of access (including private means of access), non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;
- (f) embankments, cuttings viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, barriers (including road restraint, safety barriers), parapets, wing walls, new and replacement highway lighting, roadside signage, fencing and drainage works (including carrier drains, filter drains, outfalls, culvert headwalls, ditches, attenuation earthwork ditches, soakaways, pollution control devices and catch pits);
- (g) the erection of highway boundary fencing, including gates, anti-dazzle fencing and the realignment of existing highway fencing;
- (h) settlement monitoring and mitigation measures for the benefit or protection of, or in relation to, any land, building or structure, including monitoring and safeguarding of existing infrastructure, utilities and services affected by the authorised development;
- (i) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;

- (j) processing, deposition or use of excavated materials;
- (k) works to place, alter, divert, relocate, protect, maintain, decommission or remove street furniture, apparatus, services, plant, traffic signals and other equipment in a street, or in other land, including mains, sewers, drains, tanks, pipes, hydrants, cables, ducts and associated cabinets, connections, conduits, CCTV, radar, traffic detection equipment and lights;
- (l) works to alter the course of or otherwise interfere with a watercourse;
- (m) landscaping, environmental and 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;
- (n) works for the benefit or protection of land and apparatus affected by the authorised development;
- (o) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths);
- (p) earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (q) the felling of trees and hedgerows;
- (r) the establishment of construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, hoarding and perimeter enclosure, security fencing, construction-related buildings, welfare facilities, for vehicles recovery crew, vehicle recovery, construction lighting, haulage roads, protective works to apparatus, and other buildings, machinery, apparatus, works and conveniences;
- (s) ground investigation works and remedial work in respect of any contamination or other adverse ground condition, including the installation and monitoring of associated apparatus;
- (t) the provision of other works including pavement works, carriageway surfacing, kerbing and paved areas works, signing, signals, modification or demolition of existing gantries, new and replacement highway safety barriers, road markings, traffic management measures including temporary roads, temporary earthworks and construction site accesses and such other works as are associated with the construction of the authorised development;
- (u) pumping for the purposes of dewatering excavations and the management of surface water flows and temporary storage, settlement and treatment of surface water flows;
- (v) removal of surfaces for closed or redundant carriageways, accesses or streets; and
- (w) 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 and maintenance of the authorised development.

SCHEDULE 2

REQUIREMENTS

Article 3

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

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

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

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

“Ecological Clerk of Works” means the individual appointed as such by the undertaker;

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

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

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

“Outline Traffic Management Plan” means the Outline Traffic Management Plan referred to in Schedule 10 (documents to be certified);

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

“Third Iteration EMP” means the third iteration of the environmental management plan produced in accordance with the DMRB containing detailed plans relating to the operational and maintenance phase of the authorised development substantially in accordance with the First Iteration EMP and Second Iteration EMP; and

“REAC” means the register of environmental actions and commitments contained in the First Iteration EMP.

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.

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

(b) S.I. 2017/1012.

(c) 1981 c. 69.

Detailed design

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

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

Second Iteration Environmental Management Plan

4.—(1) No part of the authorised development is to commence until the Second Iteration EMP for that part, substantially in accordance with the First Iteration EMP, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

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

- (a) Carbon Management Plan;
- (b) Construction Air Quality and Dust Management Plan;
- (c) Construction Communication Strategy;
- (d) Construction Noise and Vibration Management Plan;
- (e) Detailed Historical Building Recording Written Scheme of Investigation;
- (f) Invasive Non-native Species Management Plan;
- (g) Landscape and Ecology Management Plan;
- (h) Materials Management Plan;
- (i) Operational Unexploded Ordnance Emergency Response Plan;
- (j) Site Waste Management Plan;
- (k) Soil Handling Management Plan;
- (l) Water Monitoring and Management Plan; and
- (m) Unexpected Archaeological Finds Protocol.

(3) The authorised development must be carried out in accordance with the Second Iteration EMP.

Third Iteration Environmental Management Plan

5.—(1) Following completion of construction of the authorised development the Third Iteration EMP must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) The authorised development must be carried out in accordance with the Third Iteration EMP.

Landscaping

6.—(1) No part of the authorised development is to commence until a landscaping scheme for that part 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 functions.

(2) The landscaping scheme for each part must reflect the relevant mitigation measures set out in the First Iteration EMP and the landscaping principles set out in the environmental masterplan.

(3) The authorised development must be landscaped in accordance with the approved landscaping scheme for that part.

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

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

(5) 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.

Contaminated land and groundwater

7.—(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 by the undertaker with the relevant planning authority on matters related to its function and the Environment Agency.

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

Protected species

8.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must—

- (a) cease the relevant parts of the relevant works and report it immediately to the Ecological Clerk of Works; and
- (b) prepare a written scheme for the protection and mitigation measures of such protected species or nesting birds when carrying out the authorised development.

(2) The undertaker must implement the written scheme prepared under paragraph (1)(b) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

Surface water drainage

9.—(1) No part of the authorised development is to commence until for that part written details of the surface water drainage system, reflecting the relevant 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 by the undertaker with the relevant planning authority and relevant highway authority on matters related to its function.

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

Archaeological remains

10.—(1) No part of the authorised development is to commence until a Historical Building Recording Written Scheme of Investigation has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority to the extent that it relates to matters relevant to its functions.

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

Traffic management

11.—(1) No part of the authorised development comprising the construction, alteration or improvement of the A46 is to commence until a traffic management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant highway authority on matters related to its function.

(2) The traffic management plan prepared under sub-paragraph (1) must be substantially in accordance with the Outline Traffic Management Plan and reflect the relevant mitigation measures set out in the REAC.

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

Fencing

12. Any permanent and temporary fencing and other means of enclosure for the authorised development, except noise barriers, must be constructed and installed in accordance with Manual of Contract Documents for Highway Works maintained by or on behalf for the undertaker except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development, following consultation by the undertaker with the relevant highways authority to the extent that it relates to matters relevant to its function.

Pre-commencement works

13. Any pre-commencement works must be carried out in accordance with the Pre-Commencement Plan.

Approvals and amendments to approved details

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

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

15.—(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 15 (further information); or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

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

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

Further information

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

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

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

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 14 (applications made under requirements) and in this paragraph.

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

(a) 1970 c.80.

Register of requirements

17.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in a form suitable for inspection by members of the public an online register of the documents to be certified under Schedule 11 and those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

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

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

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

Details of consultation

19. In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 28 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 including copies of any representations made by a consultee about the proposed application and the undertaker's response to those representations.

SCHEDULE 3

Article 17

PERMANENT STOPPING UP OF STREETS AND PRIVATE MEANS OF ACCESS

PART 1

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

<i>(1)</i> <i>Highway to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be provided</i>
A46 at the approach to and through the at-grade roundabout	Existing section of public road to be stopped up between point 1/W and, point 1/Z and between point 1/X, point 2/Z and point 1/Y, as shown on sheet 2 of the rights of way and access plans.	A new and altered existing road (Work No. 1A) between point 1/2 and point 1/7, as shown on sheets 1, 2 and 4 of the rights of way and access plans.
B4082 at the approach to at-grade roundabout	Existing section of public road to be stopped up between point 2/Y and point 2/Z, as shown on sheets 2 and 3 of the rights of way and access plans.	A new road (Work No. 2A) between point 2/1 and point 2/8, as shown on sheets 2, 3 and 4 of the rights of way and access plans.

PART 2

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

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New private means of access to be substituted or provided</i>
Private means of access from Hungerley Hall Farm accommodation overbridge towards Hungerley Hall Farm buildings	Existing private means of access to be stopped up between point 2/W and point 2/X, as shown on sheet 2 of the rights of way and access plans.	A new access is to be provided between point 2/2 and point 2/3 and between point 2/4 and point 2/5, along Works Nos. 2B and 2C, as shown on sheet 2 of the rights of way and access plans.

SCHEDULE 4
CLASSIFICATION OF ROADS, ETC.

Article 18, 19 and 20

PART 1
TRUNK ROADS

<i>(1)</i> <i>Highway</i>	<i>(2)</i> <i>Extent</i>
A46	Between point 1/1 and point 1/8 as shown on sheets 1, 2, 4 and 5 of the classification of roads plans
A46 Northbound off-slip	Between point 1/3 and point 1/4 as shown on Sheet 4 of the classification of roads plans
A46 Northbound on-slip	Between point 1/5 and point 1/6 as shown on Sheet 4 of the classification of roads plans
A46 Southbound off-slip	Between point 1/9 and point 1/10 as shown on Sheet 4 of the classification of roads plans
A46 Southbound on-slip	Between point 1/11 and point 1/12 as shown on Sheet 4 of the classification of roads plans
A46 Dumb-bell Link road	Between point 1/13 and point 1/14 as shown on Sheet 4 of the classification of roads plans

PART 2
CLASSIFIED ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Coventry City Council	B4082 Between point 2/11 and point 2/8 as shown on sheets 2, 3 and 4 of the classification of roads plans

PART 3
FOOTWAY

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Length of footway</i>
Wyken Parish	Extension of existing footway by 16 metres on the northern side of the B4082 between points 2/7 to 2/10, as shown on sheet 3 of the rights of way and access plans
Wyken Parish	Extension of existing footway by 16 metres on the south side of the B4082 between points 2/12 to 2/13, as shown on sheet 3 of the rights of way and access plans

PART 4

PRIVATE MEANS OF ACCESS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Access track (Work No. 2C)	Between point 2/2 and point 2/3, as shown on sheet 2 of the rights of way and access plans
Access track (Work No. 2B)	Between point 2/4 and point 2/5 as shown on sheet 2 of the rights of way and access plans
Maintenance access (Work No. 1M)	A private access, 810 metres in length, commencing at point 2/14, circulating around the northern pond (Work No. 1L) and terminating at point 2/14, as shown on sheets 2 and 4 of the rights of way and access plans
Maintenance access (Work No. 2F)	A private access, 393 metres in length, commencing at point 2/6, circulating around the central pond (Work No. 2D) and terminating at point 2/6, as shown on sheet 4 of the rights of way and access plans
Maintenance access (Work No. 2G)	A private access, 283 metres in length, commencing at point 2/9, circulating around the southern detention basin (Work No. 2E) and terminating at point 2/9, as shown on sheet 3 of the rights of way and access plans

PART 5

SPEED LIMITS

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Speed Limit</i>
A46	The length of existing A46 northbound and southbound between point 1/1 and point 1/2 as shown on sheet 1 of the traffic regulation plans	National Speed Limit
A46	The length of the realigned A46 northbound and southbound between point 1/2 and point 1/8 as shown on sheets 1, 2, 4 and 5 of the traffic regulation plans	50 mph Speed Limit
A46 Northbound off-slip	Along the length of the new slip road, from its diverge from the A46 northbound carriageway for a total distance of 260 metres between point 1/3 and point 1/4 as shown on sheet 4 of the traffic regulation plans	50 mph Speed Limit
A46 Northbound on-slip	Along the length of the new slip road, from new western roundabout junction for a total	50 mph Speed Limit

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Speed Limit</i>
	distance of 290 metres between point 1/5 and point 1/6 as shown on sheet 4 of the traffic regulation plans	
A46 Southbound off-slip	Along the length of the new slip road, from its diverge from the A46 southbound carriageway for a total distance of 290 metres between point 1/9 and point 1/10 as shown on sheet 4 of the traffic regulation plans	50 mph Speed Limit
A46 Southbound on-slip	Along the length of the new slip road, from new eastern roundabout junction for a total distance of 270 metres between point 1/11 and point 1/12 as shown on sheet 4 of the traffic regulation plans	50 mph Speed Limit
B4082	New B4082 link road for a total distance of 894 metres between point 2/11 and point 2/8 as shown on sheets 2, 3 and 4 of the traffic regulation plans	40 mph Speed Limit

PART 6

TRAFFIC REGULATION MEASURES (CLEARWAYS)

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent of Regulation</i>	<i>(3)</i> <i>Measures</i>
A46	The whole length of the realigned A46 northbound and southbound between point 1/1 and point 1/8 as shown on sheets 1, 2, 4 and 5 of the traffic regulation plans	Clearway (to include verge and hard strips)
A46 Northbound off-slip	Along the length of the new slip road, from its diverge from the A46 northbound carriageway for a total distance of 260 metres between point 1/3 and point 1/4 as shown on sheet 4 of the traffic regulation plans	Clearway (to include verge and hard strips)
A46 Northbound on-slip	Along the length of the new slip road, from new western roundabout junction for a total distance of 290 metres between point 1/5 and point 1/6 as shown on sheet 4 of the	Clearway (to include verge and hard strips)

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent of Regulation</i>	<i>(3)</i> <i>Measures</i>
	traffic regulation plans	
A46 Southbound off-slip	Along the length of the new slip road, from its diverge from the A46 southbound carriageway for a total distance of 290 metres between point 1/9 and point 1/10 as shown on sheet 4 of the traffic regulation plans	Clearway (to include verge and hard strips)
A46 Southbound on-slip	Along the length of the new slip road, from new eastern roundabout junction for a total distance of 270 metres between point 1/11 and point 1/12 as shown on sheet 4 of the traffic regulation plans	Clearway (to include verge and hard strips)

SCHEDULE 5
HEDGEROWS AND TREES

Articles 25 and 26

PART 1
REMOVAL OF HEDGEROWS

<i>(1)</i> <i>Reference No.</i> <i>(location of</i> <i>hedgerow)</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the</i> <i>authorised</i> <i>development</i>	<i>(4)</i> <i>Important hedgerow</i>
H2 (Running parallel to and to the north of the B4082 and west of the A46) as shown on sheets 2, 3 and 4 of the hedgerow and trees plans	Partial removal	Works Nos. 1A, 1B, 1C, 1D, 1M, 2A, 2B, 2H	No
H3 (Between A46 and Hungerley Hall Farm) as shown on sheet 2 of the hedgerow and tree plans	Removal	Work No. 2A.	No
H4 (South-west of Hungerley Hall Farm) as shown on sheet 2 of the hedgerow and tree plans	Partial removal	Work No. 2A	No
H5 (North-west of Hungerley Hall Farm), as shown on sheet 2 of the hedgerow and tree plans	Partial removal	Work No. 2C	Yes
H6 (West of the A46, north-east of Hungerley Hall Farm) as shown on sheet 4 of the hedgerow and tree plans	Partial removal (the existing hedge extends beyond surveyed extents)	Works Nos. 1C and 2A.	Yes
H7 (West of the A46, north-east of Hungerley Hall Farm) as shown on sheet 4 of the hedgerow and tree plans	Partial removal	Works Nos. 1L and 1M	Yes
H13 (Running parallel to and to the east of the A46) as shown on sheets 2 and 4 of the hedgerow and tree plans	Partial removal	Works Nos. 1A, 1B, 1E, 1F and 3A	No

<i>(1)</i> <i>Reference No.</i> <i>(location of</i> <i>hedgerow)</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the</i> <i>authorised</i> <i>development</i>	<i>(4)</i> <i>Important hedgerow</i>
H16 (East of the A46) as shown on sheet 4 of the hedgerow and tree plans	Partial removal	Works Nos. 1A and 1E	Yes
H17 (East of the A46, north-east of Hungerley Hall Farm) as shown on sheet 4 of the hedgerow and tree plans	Partial removal (the existing hedge extends beyond surveyed extents)	Works Nos. 1F and 1H	Yes

PART 2

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the</i> <i>authorised</i> <i>development</i>	<i>(4)</i> <i>TPO reference</i>
T46 to T55, east of the existing roundabout on the boundary with Coombe Country Park	To facilitate the construction of an environmental bund and fence replacement; raising of the western/north-western side canopies to allow a five metre clearance over the highway embankment works within the root protection area	Work No. 1K	TPO No. 82

SCHEDULE 6

Article 30

LAND IN WHICH NEW RIGHTS ONLY ETC. MAY BE ACQUIRED

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Relevant part of the authorised development</i>
Land plans – Sheet 2 of 5		
2/3d	Required to operate, access and maintain the authorised development. Right to pass and repass with or without plant and vehicles and access highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	Work No. 2G
2/3e	Required to operate, access and maintain the authorised development. Right to pass and repass with or without plant and vehicles and access highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	Work No. 2G

SCHEDULE 7

Articles 30(4) and (5)

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 limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

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

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights) to the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[] (“the 202[] Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 to the 202[] Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

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

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) 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 or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

Application of the 1965 Act

4. 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 35 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 27 (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 30 (compulsory acquisition of rights and imposition of restrictive covenants)—

(a) 1973 c. 26.

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

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

(2) References in the 1964 Act to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or 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 restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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

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

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

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 24 (authority to survey and investigate the land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(b) (powers of entry; further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent

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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), section 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning act 2016 (c. 22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 - (c) Section 11B was inserted by section 187(2) of the Housing and Planning act 2016 (c. 22).
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30(4) (compulsory acquisition of rights and imposition of restrictive covenants) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

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

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(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 as applied by article 31 (application of the 1981 Act) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[] in respect of the land to which the notice to treat relates.

(2) But see article 33(3) (acquisition of subsoil and airspace only) of the A46 Coventry Junctions (Walsgrave) Junction Development Consent Order 202[] which excludes the acquisition of subsoil or airspace only from this Schedule.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

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

6. The acquiring authority must serve notice of 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) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the proposed use of the right or the imposition of the covenant, 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.”.

Application of the 2017 Regulations

6. References in Schedule 1 to the 2017 Regulations to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

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

SCHEDULE 8

Article 39

LAND OF WHICH TEMPORARY POSSESSION ONLY 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 1 of 5		
1/6b	Temporary access and working area to facilitate the improvement and realignment of the A46 southbound carriageway	Work No. 1A
1/7b	Temporary access and working area to facilitate the improvement and realignment of the A46 southbound carriageway	Work No. 1A
1/9b	Temporary access and working area to facilitate the improvement and realignment of the A46 southbound carriageway	Work No. 1A
Land plans – Sheet 2 of 5		
2/1b	Temporary access and working area to facilitate the improvement and realignment of the A46 northbound and southbound carriageway	Work No. 1A
2/1d	Temporary access and working area to facilitate the reinstatement of existing timber fence where required and vegetation removal	Work No. 3C
2/1e	Temporary access and working area to facilitate the reinstatement of existing timber fence where required and vegetation removal	Work No. 3C
2/1f	Temporary access and working area to facilitate the improvement and realignment of the A46 northbound and southbound carriageway	Work No. 1A
2/1g	Temporary access and working area to facilitate the reinstatement of existing timber fence where required and vegetation removal	Work No. 3C
2/2	Temporary access and working area to facilitate the reinstatement of existing timber fence where required and vegetation removal	Work No. 3C
2/3a	Temporary access and working area to facilitate the improvement and realignment of the A46 northbound and southbound carriageway	Work No. 1A
2/3f	Temporary access and working area to facilitate the new private means of access between the realigned B4082 road (Work No. 2A) and Hungerly Hall Farm buildings. Temporary access and working area to facilitate the new southern detention basin access. Temporary access and working area to facilitate the new southern detention basin.	Works Nos. 2C, 2G and 2E
2/4	Temporary access and working area to facilitate the improvement and realignment of the A46 northbound and southbound carriageway	Work No. 1A

<i>(1) Plot Reference Number shown on Land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
2/7	Temporary access and working area to facilitate the new signalised pedestrian crossing situated 20 metres east of the existing Clifford Bridge Road roundabout and the extension of existing footway.	Work No. 2I
2/8	Temporary access and working area to facilitate the new signalised pedestrian crossing situated 20 metres east of the existing Clifford Bridge Road roundabout and the extension of existing footway.	Work No. 2I
Land plans – Sheet 3 of 5		
3/2d	Temporary access and working area to facilitate the new roundabout to the east of the A46	Work No. 1H
3/2e	Temporary access and working area to facilitate the northern pond access. Temporary access and working area to facilitate the new ditch along the western side of the B4082.	Work No. 1M and 2H
3/4c	Temporary access and working area to facilitate the new roundabout to the east of the A46	Work No. 1H
3/4e	Temporary access and working area to facilitate the new northern pond. Temporary access and working area to facilitate the new northern pond access. Temporary access and working area to facilitate the new ditch along the western side of the B4082. A temporary construction compound.	Works Nos. 1L, 1M, 2H and 4A
Land plans – Sheet 4 of 5		
4/2a	A temporary construction compound	Work No. 4A
4/2d	Temporary access and working area to facilitate the new southbound off-slip	Work No. 1E

SCHEDULE 9

PROTECTIVE PROVISIONS

Articles 42 and 49

PART 1

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

Application

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

Interpretation

2. In this Part of this Schedule—

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

“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(b)), 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(c) 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(d); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

“functions” includes powers and duties;

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

(a) 1991 c. 22.

(b) 1989 c. 29.

(c) 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).

(d) 1991 c. 56.

“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—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
 - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
 - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

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

Apparatus in stopped up streets

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

(2) Regardless of the temporary alteration, diversion or restriction of a street under the powers conferred by article 15 (temporary closure, alteration, diversion 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 23 (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 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 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 and the undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) The utility undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 54, 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 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.

(7) If the utility undertaker fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved.

(8) For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

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, maintenance of the utility 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 or in default of agreement settled by arbitration in accordance with article 56 (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 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 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 the utility undertaker 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 56 (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 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 for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker.

(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) unless a utility undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

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

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

Co-operation

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

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

15. In this Part of this Schedule—

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

“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 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

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

16. The exercise of the powers conferred by article 42 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

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

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

(b) there is any interruption in the supply of the service provided by an operator,

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

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

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

(a) 2003 c. 21.

(b) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

(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 56 (arbitration).

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

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

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

SCHEDULE 10

Article 50

DOCUMENTS TO BE CERTIFIED

The reference to a document in the table with a numbered regulation is a reference to the regulation as numbered in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Book of reference	TR010066/APP/4.3	1
Classification of roads plans	TR010066/APP/2.10	0
Engineering drawings and sections	TR010066/APP/2.5	0
Environmental masterplan	Figure 2.4 in TR010066/APP/6.2	0
Environmental statement	TR010066/APP/6.1	0
Environmental statement Figures	TR010066/APP/6.2	0
Environmental statement Appendices (except those below)	TR010066/APP/6.3	0
Environmental statement Appendix 7.1	TR010066/APP/6.3	1
Environmental statement Appendix 8.11	TR010066/APP/6.3	1
Environmental statement Appendix 13.1	TR010066/APP/6.3	1
First Iteration EMP	TR010066/APP/6.5	0
General arrangement plans	TR010066/APP/2.6	1
Hedgerow and trees plans	TR010066/APP/2.11	0
Land plans	TR010066/APP/2.2	1
Location plan	TR010066/APP/2.1	0
Pre-commencement plan	TR010066/APP/6.7	0
Outline traffic management plan	TR010066/APP/7.5	0
Rights of way and access plans	TR010066/APP/2.4	0
Statement relating to statutory nuisance	TR010066/APP/6.6	0
Traffic regulation plans	TR010066/APP/2.9	0
Works plans	TR010066/APP/2.3	0

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises National Highways to undertake works to alter the Walsgrave junction of the A46 near Coventry and carry out all associated works.

The Order permits National Highways 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 Book of Reference, Plans, Engineering Drawings and Sections, the Environmental Statement and the First Iteration EMP mentioned in this Order and certified in accordance with article 50 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at National Highways, Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.

STATUTORY INSTRUMENTS

202[] No. 0000

INFRASTRUCTURE PLANNING

The A46 Coventry Junctions (Walsgrave) Development Consent
Order 202[]

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