ANNEX 1

21 July 2021

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Dear Mr Bartkowiak

Applicant: North Somerset District Council
Development Consent Order application for Portishead Branch Line – MetroWest Phase 1
Application Reference: TR040011

Applicant's Post-Examination Update and Submissions

I write to provide documents and updates for the Secretary of State to take into consideration when determining North Somerset District Council's application for development consent.

You will find attached:

1. Validated Development Consent Order (in Word format)
2. PDF showing changes made to the Order since the close of the Examination
3. Validation Report
4. Schedule of Changes to the Development Consent Order
5. PDF of agreement with Bristol City Council under S278 Highways Act 1980
6. Commentary on revised protective provisions for Bristol Port Company – Schedule 16 part 5 of the draft Order
7. Exchanges of emails regarding Mr Stuart Tarr's post examination representation to the Planning Inspectorate

I set out below further updates regarding certain S127 parties, with whom discussions continue, as well as a brief update on negotiations with the National Trust.

Item 1: Validated Development Consent Order and Validation Report

Following the close of examination, a final Validation Report for the draft Development Consent Order was delayed in the validation system. The Validation Report was received a few days after the close of the Examination. The Applicant understands the validated draft Order has been supplied to the Secretary of State by the Planning Inspectorate.

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As you will see from Item 2 below, the Order has been changed subsequently – albeit the changes are minor. The Validation Report enclosed relates to the latest draft of the Order. The Validation Report from April 2021 can be provided if required.

Item 2: Schedule of Changes to the Development Consent Order

Two further changes have been made to the draft Order.

Revised protective provisions include for the protection of Bristol Port Company – Schedule 16, part 5 (see further Item 4 below).

In addition a certified document – the Bridleway Extension under the Elevated M5 Plan – was omitted from the schedule of certified documents and this has now been rectified.

Item 3: Section 278 Agreement with Bristol City Council

The Applicant encloses for information an agreement made with Bristol City Council as local highway authority under Section 278 of the Highways Act 1980 relating to highway works in the administrative area of Bristol City Council.

Item 4: Bristol Port Company

Discussions have continued with Bristol Port Company with a view to settling both protective provisions and a suite of agreements. Those discussions have progressed well but continue.

The parties have therefore agreed to settle revised protective provisions, which are provided in the revised draft Order and are set out at Appendix 1 to Enclosure 6 as part of the commentary on the revised protective provisions.

The document forming Enclosure 6 provides a summary of the parties' positions on protective provisions which are now largely, but not wholly agreed. Bristol Port Company expressly does not agree the provisions incorporated at Part 5 of Schedule 16 to the draft Order.

The appendices to Enclosure 6 provide a version of the protective provisions now in the revised draft Order (Appendix 1), a comparison showing changes made (Appendix 1) and then at Appendix 3 a version of the protective provisions showing (in bold type) Bristol Port Company's additional requested protective provisions. The Applicant does not agree to the additional wording being included in the Order.

The Applicant understands that Wedlake Bell on behalf of Bristol Port Company will be providing comments on the form of protective provisions direct to the Secretary of State via the Planning Inspectorate.

The Applicant submits that the protective provisions included in the current draft Order are appropriate and no further amendments are necessary. The Applicant does not agree the additional wording proposed by Bristol Port Company and represented in Appendix 3 to the document forming Enclosure 6. The Applicant does not accept that the additional protections requested regarding the crossing at Court House Farm, nor preventing compulsory acquisition of Bristol Port Company's land are necessary. The reasons the Applicant does not agree to the additional wording being included in Schedule 17 part 5 of the draft Order is in each case set out in red font in the fourth column of Enclosure 6.

The Applicant can provide additional submissions to the Secretary of State if required and reserves its ability to do so on the basis it has not yet seen the submissions that may be provided by Bristol Port Company.

Item 5: National Grid Electricity Transmission plc and Western Power Distribution (South West) plc

Since the close of the Examination the Applicant and Network Rail Infrastructure Limited have met several times with representatives of National Grid Electricity Transmission plc and Western Power

Distribution (South West) plc regarding the inter-relationship between the Hinkley Point C Connection Development Consent Order and the Applicant's scheme. A conclusion to those negotiations has not yet been reached but discussions continue.

On this basis the Applicant proposes that it provides a further update to the Secretary of State on or before 1 September 2021, with a final position, if this is needed, set out by the parties on or before 20 September 2021.

Item 6: Western Power Distribution (South West) plc

In addition to discussions regarding the Hinkley Point C Connection Development Consent Order, separate protective provisions are still being discussed between Western Power Distribution (South West) plc and the Applicant. The Applicant is hopeful that the conclusion to those negotiations will be reached very soon. As with National Grid Electricity Transmission plc the Applicant proposes to provide a further update on or before 1 September 2021, together with a final submission, should this be needed, on 20 September 2021.

Item 7: Exolum Pipeline System Limited

Subsequent to the close of the Examination discussions have continued with Exolum Pipeline System Limited. Documents for execution are now settled and it is anticipated that this will lead to Exolum Pipeline System Limited withdrawing its representation to the Secretary of State. It is anticipated that this will occur in the next few weeks. The Applicant will provide an update to the Secretary of State on or before 1 September 2021 and, should it proved to be necessary, a final submission will be provided on or before 20 September 2021.

Item 8: National Trust

Since the close of the Examination a number of meetings have taken place between Network Rail Infrastructure Limited, National Trust and the Applicant. Discussions have proceeded very well and an agreement between the parties is shortly to be circulated for execution by the parties.

On this basis again the Applicant suggests that it sets a deadline of 1 September 2021 to provide further updates to the Secretary of State, albeit it is hoped that an update can be provided well before this time. Should it prove to be necessary then a final submission would be made by the parties on or before 20 September 2021.

Item 9: Freightliner

The discussions between Freightliner Limited and Network Rail Infrastructure Limited have continued and should lead to an agreement for lease being concluded shortly. As with the other updates above, the Applicant proposes that it provides a further update by 1 September 2021 and a final submission by 20 September 2021.

Item 10: Response to Mr Tarr's post-Examination representation

After the close of the Examination Mr Stuart Tarr, who acts on behalf of the Ham Green Residents, raised further concerns in relation to the Applicant's proposed works 24 and 24A and their relationship with a proposal for development by the Pill and District Community Land Trust.

The Applicant has provided a response to Mr Tarr. Mr Tarr's submission and the Applicant's responses form Enclosure 7.

Update regarding Compulsory Acquisition

The Applicant proposes to provide a revised schedule of updates regarding compulsory acquisition on or before 1 September 2021. A number of agreements are about to be engrossed and good progress has been made towards negotiations generally.

The Applicant has secured one additional freehold plot – this is plot 01/299 on sheet 1 of the Land Plans. The freehold of this land, to the south of the Portishead Branch Line and north of the highway of Sheepway in Portishead has been secured by North Somerset Council.

In addition, agreement has been concluded with Mrs Freestone and Mr Bullock regarding their land at Easton in Gordano. It is anticipated that Mrs Freestone will inform the Secretary of State in the next few days that her representations are withdrawn.

Proposed next steps for updating the Secretary of State

As has been indicated above, the Applicant proposes to provide a further update on general progress on or before 1 September 2021. Where matters remain outstanding at that point then a further update will be provided on or before 20 September 2021.

The updates will include the positions regarding the remaining Section 127 representations and an update on the compulsory acquisition. It is not anticipated at this time that there will be further changes to the draft Development Consent Order albeit it is possible that there could be further changes to Schedule 16 of the draft Order.

The Applicant will endeavour to provide updates just as soon as it possibly can in relation to the remaining matters and is grateful to both the Planning Inspectorate and the Department for their patience and understanding in this regard.

Yours sincerely

Kevin Gibbs
Senior Counsel - Head of Strategic Planning
Womble Bond Dickinson (UK) LLP

Enclosures

1. Validated draft Development Consent Order (in Word format)
2. PDF showing changes made to the draft Order since the close of the Examination
3. Validation Report
4. Schedule of Changes to the draft Development Consent Order
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ENCLOSURE 1

STATUTORY INSTRUMENTS

202X No. 0000

INFRASTRUCTURE PLANNING

The Portishead Branch Line (MetroWest Phase 1) Order 202x

Made - - - -	***
Laid before Parliament	***
Coming into force - -	***

CONTENTS

PART 1
Preliminary

1.	Citation and commencement	5
2.	Interpretation	5
3.	Incorporation of the Railway Clauses Acts	8

PART 2
Principal powers

4.	Application and modification of legislation	9
5.	Development consent etc. granted by the Order	10
6.	Planning permission	10
7.	Limits of deviation	10
8.	Maintenance of authorised development	10
9.	Benefit of Order	11
10.	Consent to transfer benefit of Order	11
11.	Agreements with Network Rail	11

PART 3
Streets, Highways and Level Crossings

12.	Application of the 1991 Act	12
13.	Street works and power to alter the layout etc. of streets	13
14.	Permanent stopping up of streets	14
15.	Temporary stopping up of streets and public rights of way	14
16.	Bridleways, cycle tracks and footpaths	15
17.	Access to works	15
18.	Agreements with street authorities	15
19.	Construction and maintenance of new or altered streets	16

20. Closure of level crossings and crossings over disused railway 16
21. Accommodation and occupation crossings 17

PART 4
Supplemental powers

22. Discharge of water 17
23. Authority to survey and investigate land 18

PART 5
Powers of acquisition

24. Compulsory acquisition of land 19
25. Modification of Part 1 of the 1965 Act 19
26. Time limit for exercise of authority to acquire land compulsorily or take land temporarily 19
27. Compulsory acquisition of rights or imposition of covenants 20
28. Private rights over land subject to compulsory acquisition or temporary possession 21
29. Power to override easements and other rights 22
30. Application of Compulsory Purchase (Vesting Declarations) Act 1981 23
31. Acquisition of subsoil or airspace only 23
32. Rights under or over streets 24
33. Temporary use of land for carrying out the authorised development 24
34. Temporary use of land for maintaining the authorised development 26
35. Disregard of certain interests and improvements 27
36. Set-off for enhancement in value of retained land 27
37. Statutory undertakers and electronics communications code network operators 27
38. Recovery of costs of new connections 28

PART 6
Operations

39. Operation and use of railways 28
40. Operational land for purposes of the 1990 Act 28

PART 7
Miscellaneous and general

41. No double recovery 29
42. Apparatus and rights of statutory undertakers in stopped up streets 29
43. Felling or lopping of trees 30
44. Hedgerows 31
45. Defence to proceedings in respect of statutory nuisance 31
46. Traffic regulation 32
47. Application of the Land Compensation Act 1973 33
48. Application of landlord and tenant law 33
49. Procedure in relation to further approvals, etc. 33
50. Service of notices 34
51. Crown rights 35
52. Amendment of local byelaws 35

53. Protective provisions 36
54. Special category land 36
55. Documents to be certified 36
56. Arbitration 36

SCHEDULES

SCHEDULE 1 — Authorised development 37
SCHEDULE 2 — Requirements 42
PART 1 — Requirements 42
PART 2 — Procedure for discharge of requirements 58
SCHEDULE 3 — Streets subject to street works 61
SCHEDULE 4 — Streets to be stopped up 62
PART 1 — Street for which a substitute is to be provided 62
PART 2 — Streets for which no substitute is to be provided 63
SCHEDULE 5 — Streets to be stopped up temporarily 63
PART 1 — Street to be stopped up temporarily for which a substitute is to be provided 63
PART 2 — Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension 63
SCHEDULE 6 — Bridleways, cycle tracks and footpaths 64
PART 1 — Footpath to be diverted 64
PART 2 — New public rights of way to be created 64
SCHEDULE 7 — Access to works 65
SCHEDULE 8 — Closure of crossings 67
PART 1 — Crossings: works required 67
PART 2 — Crossings: temporary suspension 67
PART 3 — Crossings: No works required 68
SCHEDULE 9 — Accommodation and occupation crossings 68
PART 1 — Crossings extinguished: works required 68
PART 2 — Crossings for which no substitute is to be provided 69
SCHEDULE 10 — Land in which only new rights, etc., may be acquired 70
SCHEDULE 11 — Modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictions 73
SCHEDULE 12 — Land of which temporary possession may be taken 76
SCHEDULE 13 — Hedgerows 86
PART 1 — Hedgerows to be removed 86
PART 2 — Important Hedgerow 87
SCHEDULE 14 — Traffic Regulation 87
SCHEDULE 15 — Amendment of Local Legislation 89
SCHEDULE 16 — Protective Provisions 89
PART 1 — Protection for Network Rail Infrastructure Limited 89
PART 2 — Protection for Electricity, Gas, Water, Petroleum and Sewerage Undertakers 96
PART 3 — Protection for Operators of Electronic Communications Code Networks 100
PART 4 — Protection for the Environment Agency 101

PART 5 — Protection for First Corporate Shipping Limited 102
PART 6 — Protection for Exolum Pipeline System Ltd 112
PART 7 — For the protection of Western Power Distribution Limited (South West) Plc 115
PART 8 — For the mutual protection of National Grid and the Railway Undertaker 119
PART 9 — For the protection of Wales and West Utilities ("WWU") 127
PART 10 — For the protection of the National Trust 131
SCHEDULE 17 — Documents to be Certified 133

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 in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**), by a Panel appointed as an Examining authority appointed by the Secretary of State in accordance with Chapter 3 of Part 6 of the 2008 Act.

The Panel appointed as an Examining authority, having considered the representations made and not withdrawn has, in accordance with Section 74 (2) of the 2008 Act, made 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 appointed as an Examining authority, has decided to make an Order granting development consent for the development described in the application and consent for ancillary works with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.

In accordance with section 131(5) of the 2008 Act, the Secretary of State is satisfied, that where this Order authorises the compulsory acquisition of land forming part of an open space being the cycle track special category land (as defined in article 54 of this Order) that land is less than 200 square metres in extent and the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

In accordance with section 132(3) of the 2008 Act, the Secretary of State is satisfied, that where this Order authorises the compulsory acquisition of a right over other land forming part of an open space that land, when burdened with the order right, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights in the land, and the public.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 24, 26, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

(**a**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/752 and S.I. 2018/378.
(**c**) S.I. 2010/103 amended by S.I. 2012/635.

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Portishead Branch Line (MetroWest Phase 1) Order 202X and comes into force on [●] 202[*].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**b**);

"the 1980 Act" means the Highways Act 1980(**c**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**d**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**e**);

"the 1990 Act" means the Town and Country Planning Act 1990(**f**)

"the 1991 Act" means the New Roads and Street Works Act 1991(**g**)

"the 2003 Act" means the Communications Act 2003(**h**);

"the 2008 Act" means the Planning Act 2008(**i**);

"the 2009 Regulations" means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009;

"the 2017 Act" means the Neighbourhood Planning Act 2017(**j**);

"address" includes any number or address used for the purposes of electronic transmission;

"authorised development" means the development and associated 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;

"authorised railway works" means those parts of the authorised development that are on land that is or will become operational railway land;

"Avon Gorge Woodlands SAC" means the Avon Gorge Woodlands Special Area of Conservation (EU Code UK0012734);

"Avon Gorge Vegetation Management Plan" means the management plan for the management of the construction of the authorised development within the Avon Gorge Woodlands SAC agreed by Network Rail and the undertaker in consultation with Natural England and certified as such by the Secretary of State;

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

"bridleway" has the same meaning as in the 1980 Act;

(**a**) 1961 c. 33.
(**b**) 1965 c. 56.
(**c**) 1980 c. 66.
(**d**) 1981 c. 66.
(**e**) 1984 c. 27.
(**f**) 1990 c. 8.
(**g**) 1991.c. 22.
(**h**) 2003 c. 21. The relevant provisions of the Communications Act 2003 amended by section 4 of the Digital Economy Act 2017 (2017 c. 30).
(**i**) 2008 c. 29. The relevant provisions of the Planning Act 2008 are amended by the following: Chapter 6 of Part 6 of, and Schedules 13 and 25(21) to the Localism Act 2011 (c. 20); sections 22 to 27 of the Growth and Infrastructure Act 2013 (c. 27); S.I. 2013/1883; Schedule 16 to the Housing and Planning Act 2016 (c. 22); S.I. 2017/1285 and S.I. 2009/1307.
(**j**) 2017 c. 20.

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"COCP" means the document certified as the Code of Construction Practice by the Secretary of State for the purposes of this Order;

"commence" means beginning to carry out any material operation (as defined in section 155 (when development begins) of the 2008 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, archaeological investigations, receipt and erection of construction plant and equipment, utility diversions, laying out of compounds, works to clear watercourses, erection of any temporary means of enclosure, erection of protective fencing, the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;

"the compounds, haul roads and access to works plan" means the document certified by the Secretary of State as the compounds, haul roads and access to works plan for the purposes of this Order;

"compulsory acquisition notice" means a notice served in accordance with section 134 (notice of authorisation of compulsory acquisition) of the 2008 Act;

"crossings to be extinguished plans" means the plan certified as the crossings to be extinguished plans by the Secretary of State for the purposes of this Order;

"CTMP – Construction Traffic Management Plan" means the document certified as such by the Secretary of State for the purposes of this Order;

"cycle track" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(**a**);

"the design drawings" means the drawings described as such in Schedule 17 (documents to be certified) and certified as the design drawings by the Secretary of State for the purposes of this Order;

"electronic transmission" means a communication transmitted—

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

(b) by other means provided it is in electronic form;

"the environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

"first open for use" means—

(a) in respect of railway related activities, the date on which Works Nos. 1, 1A and 1B are first used for revenue earning purposes by the passage of passenger carrying railway vehicles; and

(b) in respect of highway related activities, the date the new highway is first available for the public to pass and repass;

"footpath" has the same meaning as in the 1980 Act;

"hedgerow location plan" means the plan certified as the hedgerow location plan by the Secretary of State for the purposes of this Order;

"highway" has the same meaning as in the 1980 Act;

"IDB" means the North Somerset Levels Internal Drainage Board;

"the important hedgerow plan" means the plan certified as the important hedgerow plan by the Secretary of State for the purposes of this Order;

"the land plan" means the plans certified as the land plan by the Secretary of State for the purposes of this Order;

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

"lead local flood authority" means North Somerset District Council as lead local flood authority and any successor flood authority;

"limits of deviation" means the limits of deviation for Work Nos 1, 1A, 1B and 1C, shown on the works plans;

"limits of land to be acquired or used" means the limits of land to be acquired or used shown on the land plan;

"maintain" includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, remove, reconstruct, replace or improve in relation to the authorised development and any derivative of "maintain" is to be construed accordingly;

"Master CEMP" means the document certified as the Master Construction Environmental Management Plan" by the Secretary of State for the purposes of this Order;

"Network Rail" means Network Rail Infrastructure Limited, company number 02904587 registered at 1 Eversholt Street, London, NW1 2DN and includes any successor in function to Network Rail authorised to operate that part of the national rail network that the authorised development is or will be included in;

"New highways plan" means the plan certified as the new highways plan by the Secretary of State for the purpose of this Order;

"operational railway land" means—

(a) land required permanently for the construction and operation of Works Nos. 1, 1A and 1B;

(b) any part of the existing railway corridor owned by Network Rail between Ashton Junction and Portbury Junction; and

(c) land forming permanent maintenance compounds held by Network Rail for the maintenance of the railways referred to in sub-paragraphs (a) and (b)

and includes associated works, structures, embankments, cuttings, stations, bridges and culverts;

"Order land" means the land shown on the land plan which is within the limits of land to be acquired or used and described in the book of reference;

"the Order limits" means the Order limits shown on the works plans;

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

"the permanent and temporary stopping up and diversion plan" means the plan certified as the permanent and temporary stopping up and diversion plan by the Secretary of State for the purposes of this Order;

"permanent traffic regulation order plans" means the documents certified by the Secretary of State as the permanent traffic regulation order plans for the purposes of this Order;

"Portishead Railway Acts" means the Bristol and Portishead Pier and Railway Act 1863(**b**) and the Bristol and Portishead Pier and Railway Act 1866(**c**);

"private means of access" means a private access to the highway network from neighbouring land;

"relevant highway authority" means North Somerset District Council for highways within the administrative area of North Somerset District Council and Bristol City Council for highways within the administrative area of Bristol City Council or any successor highway authority to those authorities;

"relevant planning authority" for land within the administrative area of North Somerset District Council means North Somerset District Council or for land within the administrative area of Bristol City Council means Bristol City Council or any successor planning authority to those authorities;

(**a**) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

(**b**) 26 & 27 Vict. c. cvii.

(**c**) 29 & 30 Vict. c. lxxxviii.

"the section drawings" means the drawings certified as the section drawings by the Secretary of State for the purposes of this Order;

"statutory undertaker" has the same meaning as in 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 (traffic authorities) of the 1984 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means—

(a) North Somerset District Council; and

(b) subject to articles 9 (benefit of Order), 10 (consent to transfer benefit of Order) and 11 (agreements with Network Rail) any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person;

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

"the works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

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

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

(4) References in this Order to points identified by letters, with or without numbers, are to be construed as references to points so lettered on the relevant plans.

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

Incorporation of the Railway Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**a**) are incorporated in this Order—

(a) section 46 (crossing of roads – level crossings), subject to paragraph (4);

(b) section 58 (company to repair roads used by them), except for the words from "and if any question" to the end;

(c) section 61 (company to make sufficient approaches and fences to highways crossing on the level);

(d) section 68 (accommodation works by company);

(**a**) 1845 c. 20. Section 46 was amended by sections 109(1) and (3) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39). Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101). Section 78 was amended by section 39(3) of, and Schedule 7 to, the Compulsory Purchase Act 1965 (c. 56) and articles 5(1) and (2) of, and paras 1 and 3 of Schedule 1 to, S.I. 2009/1307. Section 105 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101), and section 31(6) of the Criminal Law Act 1977 (c. 45), and sections 37 and 49 of the Criminal Justice Act 1982 (c. 48). There are other amendments to the 1845 Act not relevant to this Order.

(e) section 71 (additional accommodation works by owners), except for the words "or directed by such justices to be made by the company" and "or, in case of difference, as shall be authorised by two justices";

(f) sections 72 and 73 (supplementary provisions relating to accommodation works);

(g) section 77 (presumption that minerals excepted from acquisition of land);

(h) sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(**a**); and

(i) section 105 (carriage of dangerous goods on railway), except for the words from "and if any person" to "for every such offence".

(2) The following provisions of the Railways Clauses Act 1863(**b**) are incorporated in this Order—

(a) sections 5 and 7 (level crossings); and

(b) section 12 (signals, watchmen etc.).

(3) In those provisions, as incorporated in this Order—

"the company" means the undertaker and, for land that is within that part of the Order limits which is either existing operational railway or which will become operational railway, Network Rail;

"goods" includes anything conveyed on the railway authorised to be constructed by this Order;

"lease" includes an agreement for a lease;

"prescribed" in relation to any such provision means prescribed by this Order for the purposes of that provision;

"the railway" means any railway authorised to be constructed by this Order and any other authorised development; and

"the special Act" means this Order.

(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order, for the proviso there is substituted "provided always that, with the consent of the relevant highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level".

PART 2

Principal powers

Application and modification of legislation

4.—(1) The provisions of Chapter 1 of Part 2 of the 2017 Act do not apply as regards the temporary possession or use of land under articles 33 and 34 of this Order or to anything else done under this Order.

(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of Regulation 6 of the Community Infrastructure Levy Regulations 2010(**c**) any building comprised in the authorised development is deemed 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.

(**a**) 1923 c. 20. Section 15 was amended by section 10(1) of the Decimal Currency Act 1969 (c. 19).
(**b**) 1863 c. 92.
(**c**) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant.

Development consent etc. granted by the Order

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

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 development authorised by this Order,

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

(2) The provisions of this Order do not preclude or apply to any development, or any part of a development, which is carried out by, or used by, Network Rail on any land (whether or not within the Order limits)—

(a) that is or will become operational railway land and is carried out in accordance with any planning permission granted under the 1990 Act including a planning permission granted under article 3 and Class A of Part 8 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(**a**); or

(b) that is carried out in accordance with any planning permission granted under the 1990 Act including a planning permission granted under article 3 and Class A of Part 18 of Schedule 2 to that Order.

Limits of deviation

7.—(1) In constructing or maintaining Works Nos. 1, 1A, 1B and 1C the undertaker may deviate—

(a) laterally from the lines or situations shown on the works plans to the extent of the limits of deviation so shown for the work; and

(b) vertically from the levels shown on the section drawings—

(i) to any extent upwards not exceeding 0.5 metres; and

(ii) to any extent downwards not exceeding 0.5 metres.

(2) In constructing or maintaining any other work comprised in the authorised development the undertaker must construct any such work within the extents of work shown on the works plans for the relevant work.

Maintenance of authorised development

8.—(1) 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.

(2) Paragraph (1) does not authorise any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

(**a**) S.I. 2015/596.

Benefit of Order

9. Subject to article 10 (consent to transfer benefit of Order), article 11 (agreements with Network Rail) and article 27 (6) (compulsory acquisition of rights or imposition of covenants) the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

10.—(1) The undertaker may—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

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

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

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

(4) The consent of the Secretary of State and the consent of Network Rail are required for a transfer or grant under this article unless such transfer or grant is to Network Rail in accordance with an agreement made under article 11 (agreements with Network Rail).

Agreements with Network Rail

11.—(1) The undertaker and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

(a) the authorised development or any part of the authorised development; and

(b) any works required for the purposes of or in connection with the authorised development

by Network Rail or by the undertaker, or by the undertaker and Network Rail jointly.

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be agreed, including (but without limitation on the scope of paragraph (1)), provisions—

(a) with respect to the defraying of, or the making of contributions towards, the cost of such construction, maintenance, use and operation as are referred to in paragraph (1) by the undertaker or by Network Rail or by the undertaker and Network Rail jointly;

(b) for the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of all or any of the powers and rights of Network Rail and the undertaker (as the case may be) in respect of any of the authorised development and any works required for the purposes of, or in connection with, those works; and

(c) without limitation on the scope of sub-paragraph (b), for the exercise by Network Rail, or by Network Rail and the undertaker jointly, of all or any of the powers under this Order for, or relating to, the compulsory acquisition or the taking of temporary possession of any land or rights over land.

(3) The exercise by the undertaker or Network Rail or by the undertaker and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (1) is subject to all statutory and contractual provisions relating to it as would apply if such powers and rights were exercised by the undertaker or Network Rail (as the case may be) alone, and accordingly such provisions, with any necessary modifications, apply to the exercise of such powers and rights by the undertaker or Network Rail or by the undertaker and Network Rail jointly, as the case may be.

(4) The undertaker and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the undertaker, or the undertaker and Network Rail jointly of—

(a) any of the authorised development or any part of that development; or

(b) any works, lands or other property required for the purposes of the authorised development or in connection with such development,

together with any rights and obligations (whether or not statutory) of Network Rail or the undertaker relating to them.

PART 3

Streets, Highways and Level Crossings

Application of the 1991 Act

12.—(1) Works carried out 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 of the 1991 Act (street works in England and Wales) as major transport works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (highway authorities, highways and related matters) of that Act (which defines what highway authority works are major highway works); or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts)(**a**).

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

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

(a) section 56 (directions as to timing)(**b**);

(b) section 56A (power to give directions as to placing of apparatus)(**c**);

(c) section 58 (restrictions following substantial road works)(**d**);

(d) section 58A (restriction on works following substantial street works)(**e**);

(e) section 73A (power to require undertaker to re-surface street);

(f) section 73B (power to specify timing etc. of re-surfacing);

(g) section 73C (materials, workmanship and standard of re-surfacing);

(h) section 78A (contributions to costs of re-surfacing by undertaker); and

(i) Schedule 3A (restriction on works following substantial street works)(**f**).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the carrying out 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 the carrying out of works under article 13 (street works and power to

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(**a**) 1980 c. 66. Section 64 was amended by Schedule 17 to the Local Government Act 1985 (c. 51) and Schedule 9 to the New Roads and Street Works Act 1991 (c. 22).

(**b**) 1991 c. 22. Section 56(1), (1A) and (3A) were amended by section 43 of the Traffic Management Act 2004 (c. 18). Section 56(3) was amended by Schedule 1 to the Traffic Management Act 2004 (c. 18).

(**c**) 1991 c. 22. Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).

(**d**) 1991 c. 22. Sections 58(1) (2) (4) (7) and (7A) were amended by section 51 of the Traffic Management Act 2004 (c. 18). Section 58(3) was amended by section 51(4) of the Traffic Management Act 2004 (c. 18). Section 58(6) was amended by Schedule 1 to the Traffic Management Act 2004 (c. 18).

(**e**) 1991 c. 22. Section 58A was inserted by section 52(1) of the Traffic Management Act 2004 (c. 18).

(**f**) 1991 c. 22. Schedule 3A was amended by Schedule 4 of the Traffic Management Act 2004 (c. 18).

alter the layout etc. of streets) whether or not the carrying out of such works constitutes street works within the meaning of that Act or any stopping up, alteration or diversion of a street under article 15 (temporary stopping up of streets and public rights of way).

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

(a) section 54 (advance notice of certain works), subject to paragraph (4)(**a**);

(b) section 55 (notice of starting date of works), subject to paragraph (4)(**b**);

(c) section 57 (notice of emergency works)(**c**);

(d) section 59 (general duty of street authority to co-ordinate works)(**d**);

(e) section 60 (general duty of undertakers to co-operate)(**e**);

(f) section 68 (facilities to be afforded to street authority)(**f**);

(g) section 69 (works likely to affect other apparatus in the street);

(h) section 76 (liability for cost of temporary traffic regulation)(**g**); and

(i) 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 included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Street works and power to alter the layout etc. of streets

13.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

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

(b) tunnel or bore under the street or carry out any works to strengthen or repair the carriageway;

(c) remove or use all earth and material in or under the street;

(d) place and keep apparatus under the street;

(e) maintain, alter or renew apparatus in the street or change its position;

(f) demolish, remove, replace and relocate any street furniture within the street;

(g) execute any works to 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;

(k) make and maintain crossovers and passing places;

(l) execute any works of surfacing or re-surfacing of the highway; and

(m) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (l).

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to paragraph (4), the undertaker may, for the purposes of constructing and maintaining any part of the authorised development, alter the layout of any street within the Order limits and the layout of

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(**a**) 1991 c. 22. Section 54 was amended by sections 40(1) and (2) and 49 of and Schedule 1 to the Traffic Management Act 2004 (c. 18).
(**b**) 1991 c. 22. Section 55 was amended by sections 40(1) and (2), 49 and 51 of and Schedule 1 to the Traffic Management Act 2004 (c. 18).
(**c**) 1991 c. 22. Section 57 was amended by section 52 of and Schedule 1 to the Traffic Management Act 2004 (c. 18).
(**d**) 1991 c. 22. Section 59 was amended by section 42 of the Traffic Management Act 2004 (c. 18).
(**e**) 1991 c. 22. Section 60 was amended by Schedule 1 to the Traffic Management Act 2004 (c. 18).
(**f**) 1991 c. 22. Section 68 was amended by Schedule 1 to the Traffic Management Act 2004 (c. 18).
(**g**) 1991 c. 22. Section 69 was amended by Schedule 1 to the Traffic Management Act 2004 (c. 18).

any street having a junction with such a street; and, without limitation on the scope of that power, the undertaker may—

(a) increase the width of the carriageway of the street by reducing the width of any kerb, splitter island, footpath, footway, cycle track or verge within the street;

(b) alter the level or increase the width of any such kerb, splitter island, footpath, footway, cycle track or verge; and

(c) reduce the width of the carriageway of the street.

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

(4) The powers conferred by paragraph (2) are not to be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.

Permanent stopping up of streets

14.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

(a) stop up the street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets to be stopped up) to the extent specified in column (3) of that part of that Schedule; and

(b) stop up the streets specified in columns (1) and (2) of Part 2 of Schedule 4 to the extent specified in column (3) of that part of that Schedule.

(2) The street specified in columns (1) and (2) of Part 1 of Schedule 4 is not 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 (4) of that Part of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or

(b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the relevant highway 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 extinguishment of any private right of way or private means of access under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Temporary stopping up of streets and public rights of way

15.—(1) Subject to paragraph (4) the undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street or public right of way or any part of a street or public right of way within the Order limits and may for any reasonable time—

(a) divert the traffic from the street or public right of way; and

(b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

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

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

(4) The street specified in columns (1) and (2) of Part 1 of Schedule 5 (streets to be stopped up temporarily) is not to be wholly or partly stopped up under this article to the extent specified, by reference to the letters and numbers shown on the permanent and temporary stopping up and diversion plan, in column (3) of that Schedule, unless the temporary alternative route to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use.

(5) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up the public rights of way described in Part 2 of Schedule 5 (streets to be stopped up temporarily) to the extent specified in column (3) of that part of that Schedule.

(6) The undertaker may not temporarily stop up, alter, divert or use as a temporary working site—

(a) any street or public right of way specified as mentioned in Schedule 3 (streets subject to street works) or paragraphs (4) or (5) without first consulting the street authority; and

(b) any other street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent in relation to the placing of street notices and traffic signs.

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

Bridleways, cycle tracks and footpaths

16.—(1) With effect from the date of coming into force of this Order, the public right of way (being a footpath) specified in columns (1) and (2) of Part 1 of Schedule 6 (bridleways, cycle tracks and footpaths) and all private rights of way (if any) are stopped up to the extent specified in column (3) of that Part of that Schedule.

(2) With effect from the date of coming in to force of this Order the section of footpath specified in column (4) of Part 1 of Schedule 6 is created.

(3) Unless otherwise agreed with the relevant planning authority, the new public rights of way set out in Part 2 of Schedule 6 and identified on the new highways plan are to be constructed by the undertaker in the specified locations and open for use from the date that part of the authorised development consisting of the new railway is first open for use.

Access to works

17. The undertaker may, for the purposes of the authorised development—

(a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 7 (access to works) and shown on the compounds, haul roads and access to works plan; and

(b) with the approval of the relevant planning authority after consultation with the relevant highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

18.—(1) A street authority and the undertaker may enter into agreements with respect to—

(a) the construction of any new street, including any structure carrying the street over or under a railway authorised by the Order;

(b) the strengthening, improvement, repair or reconstruction of any street under the powers of this Order;

(c) the maintenance of the structure of any bridge or tunnel carrying a street over or under any authorised railway;

(d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or

(e) the carrying out in the street of any of the works referred to in article 13(1) (street works and power to alter the layout etc. of streets);

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

Construction and maintenance of new or altered streets

19.—(1) Any street to be constructed under this Order must be completed to the reasonable satisfaction of the street authority and unless otherwise agreed with the street authority, must be maintained by and at the expense of the undertaker for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(3) The date of completion of any works referred to in paragraphs (1) and (2) is to be agreed between the undertaker and the street authority, acting reasonably.

Closure of level crossings and crossings over disused railway

20.—(1) Subject to paragraph (3), the crossings specified in columns (1) and (2) of Part 1 of Schedule 8 (closure of crossings) are to be permanently stopped up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of any crossing referred to in paragraph (1), all public or private rights of way (if any) over the part of the crossing specified in relation to it in column (3) of Part 1 of Schedule 8 are extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to the permanent stopping up and discontinuance of a crossing specified in columns (1), (2) and (3) of Part 1 of Schedule 8 until the replacement specified in relation to it in column (4) of that Part of that Schedule has been constructed and completed to the reasonable satisfaction of the street authority and is open for use.

(4) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily stop up the crossing specified in columns (1), (2) and (3) of Part 2 of Schedule 8 in accordance with paragraph (5).

(5) Any temporary stopping up of the crossing specified in columns (1), (2) and (3) of Part 2 of Schedule 8 must not take place until a temporary alternative route is first provided by the undertaker in relation to it as specified in column (4) of that Part of that Schedule, to the reasonable satisfaction of the relevant highway authority, and such replacement route (or any subsequently agreed variation or substitute for that route) must be maintained and available for use at all reasonable times (unless the temporary alternative route is closed because it cannot be used safely) until Work No. 7 is completed and open for use.

(6) The crossings specified in columns (1) and (2) of Part 3 of Schedule 8 (closure of crossings) are permanently stopped up and discontinued to the extent specified in column (3) of that part of that Schedule on the date this Order comes in to force.

(7) Upon the permanent closure of each of the crossings referred to in paragraph (6), all public or private rights of way (if any) over the part of the crossings specified in relation to it in column (3) of Part 3 of Schedule 8 are extinguished.

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

(9) In this article and in Schedule 8 "crossing" includes a level crossing, a former level crossing and a permissive crossing of the railway or disused railway.

Accommodation and occupation crossings

21.—(1) Subject to paragraph (2) and regardless of anything in section 68 (accommodation works by Company) of the Railways Clauses Consolidation Act 1845 as incorporated in the Portishead Railway Acts or any other enactment or instrument, all public or private rights of way (if any) afforded by means of the accommodation or occupation facilities specified in columns (1) and (2) of Parts 1 and 2 of Schedule 9 (accommodation and occupation crossings), including those specified in column (3) of Parts 1 and 2 of that Schedule, are extinguished.

(2) Paragraph (1) does not take effect with respect to the extinguishment of the public or private rights of way (if any) by means of a facility specified in columns (1) and (2) of Part 1 of Schedule 9 (accommodation and occupation crossings) until the works specified in relation to it in column (4) of Part 1 of that Schedule have been provided.

(3) Paragraph (1) takes effect with respect to the extinguishment of the public or private rights of way (if any) specified in column (3) of Part 2 of Schedule 9 by means of the facilities specified in column (1) and (2) of Part 2 of that Schedule 9 on the date this order comes into force.

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

PART 4

Supplemental powers

Discharge of water

22.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, operation 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 pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**b**) (right to communicate with public sewers).

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

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(**a**) 1961 c. 33. Section 1 was amended by S.I. 2009/1307.

(**b**) 1991 c. 56. Section 106 was amended by section 35(1) and (8) and section 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43) and 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 2016 (c. 29).

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(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 under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(**a**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991(**b**) have the same meaning as in that Act.

Authority to survey and investigate land

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

(a) survey or investigate the land;

(b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

(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 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.

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

(a) on land located within the highway boundary without the consent of the relevant highway authority; or

(b) in a private street without the consent of the street authority.

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

(**a**) S.I. 2016/1154. There are amendments to regulation 12 which are not relevant to this Order.
(**b**) 1991 c. 57.

PART 5

Powers of acquisition

Compulsory acquisition of land

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

(2) This article is subject to paragraph 27(3) of article 27 (compulsory acquisition of rights or imposition of covenants) article 31 (acquisition of subsoil or airspace only) and paragraph 33(8) of article 33 (temporary use of land for carrying out the authorised development).

Modification of Part 1 of the 1965 Act

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

(2) In section 4A(1) (extension of time limit during challenge)(**b**) 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 4" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily or take land temporarily) of the Portishead Branch Line (MetroWest Phase 1) Order 202*".

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

(a) in subsection (1)(a), after "land" insert "under that provision";

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 24 of the Portishead Branch Line (MetroWest Phase 1) Order 202*".

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

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

"(2) But see article 31(3) (acquisition of subsoil, etc., only) of the Portishead Branch Line (MetroWest Phase 1) Order 202* , which excludes the acquisition of subsoil or airspace only from this Schedule;"

and

(b) after paragraph 29, end insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the Portishead Branch Line (MetroWest Phase 1) Order 202*."

Time limit for exercise of authority to acquire land compulsorily or take land temporarily

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

(a) no notice to treat may be served under Part 1 of the 1965 Act; and

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(**a**) 2008 c. 29. Section 125 is amended by Schedule 16 to the Housing and Planning Act 2016 (c. 22).
(**b**) 1965 c. 56. Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
(**c**) 1965 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
(**d**) 1965 c. 56. Schedule 2A was amended by Schedule 17 to the Housing and Planning Act 2016 (c. 22).

(b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act(**a**) as applied by article 30 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights or imposition of covenants

27.—(1) Subject to paragraphs (3) and (4) the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) The undertaker may impose restrictive covenants affecting any part of the Order land which—

(a) adjoins or will, on completion of the authorised railway works, adjoin Works Nos. 1, 1A, 1B or 1C or as may be required for the purpose of protecting the authorised railway works; or

(b) is required for the purposes of ecological or other mitigation.

(3) In the case of the Order land specified in column (1) of Schedule 10 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights in the land for the purpose specified in relation to that land in column (2) of that Schedule or the imposition of restrictive covenants in accordance with paragraph (2).

(4) Subject to Schedule 2A (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5 of Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictions)) where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 11 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(6) In any case where the acquisition of new rights under paragraph (1) or the imposition of a restriction under paragraph (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, then

(a) the undertaker or,

(b) where the land acquisition powers are exercisable by Network Rail pursuant to an agreement made under article 11 (agreements with Network Rail), Network Rail,

may transfer the power to acquire such rights or impose such restrictions to the relevant statutory undertaker.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (6) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(8) Subject to paragraph (9), where any power is transferred to a statutory undertaker in accordance with a transfer under paragraph (6) and the statutory undertaker—

(a) is liable to pay compensation for the exercise of that power, and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(**a**) 1981 c. 66. Section 4 was amended by sections 184,185 and 199(2) of, and paragraphs 1 and 2 of Part 1 of Schedule 13 to, the Housing and Planning Act 2016 (c. 22).

(9) Nothing in this article affects any agreement between the undertaker or Network Rail and any statutory undertaker receiving the benefit of any power transferred under paragraph (6).

Private rights over land subject to compulsory acquisition or temporary possession

28.—(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 onto the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act(**a**)

whichever is the earlier.

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

(a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker , whether compulsorily or by agreement; or

(b) on the date of entry 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 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.

(4) Any person who suffers loss by the extinguishment or suspension of any private right 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 does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act(**b**) or article 37 (Statutory undertakers and electronics communications code network operators) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person

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(**a**) 1965 c. 56. Section 11(1) was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of the Housing and Planning Act 2016 (c. 22), Schedule 4 to the Acquisition of Land Act 1981 (c. 67) and section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2206 No. 1).

(**b**) 2008 c. 29. Section 138 was amended by section 23(4) of the Growth and Infrastructure Act 2013 (c. 27) and regulation 2 of, and paragraph 12 of, Part 1 of Schedule 1 to S.I. 2017/1285.

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

(8) 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

29.—(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) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or Network Rail or by any person authorised by them) 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

(3) The interests and rights to which this article applies 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 includes restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraphs (1) or (2) compensation—

(a) is payable under section 10 (further provision as to compensation for injurious affection) of the 1965 Act as applied by section 152 (compensation in cases where no right to claim in nuisance) of the 2008 Act(**a**); 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.

(5) Where a relevant person—

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) 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 paragraphs (1) or (2) of this article.

(7) Nothing in paragraph (6) affects any agreement between the undertaker and the relevant person receiving the benefit of the authorisation under paragraphs (1) or (2).

(8) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers and electronic communications code network operators) applies.

(9) In this article—

"authorised activity" means—

(i) the erection, construction or maintenance of any part of the authorised development;

(**a**) 2008 c. 29. Section 152 was amended by paragraph 293 of Schedule 1 to S.I. 2009/1307.

(ii) the exercise of any power authorised by this Order; or

(iii) the use of any Order land (including the temporary use of land) for the purposes of the authorised development.

"relevant person" means—

(iv) a person deriving title under the undertaker;

(v) Network Rail; or

(vi) a person deriving title under Network Rail.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

(5) In section 5B (extension of time limit during challenge)(**c**) 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 26 of the Portishead Branch Line (MetroWest Phase 1) Order 202*".

(6) In section 6 (notices after execution of declaration)(**d**), 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".

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

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

"(2) But see article 31 (3) (acquisition of subsoil, etc., only) of the Portishead Branch Line (MetroWest Phase 1) Order 202* , which excludes the acquisition of subsoil or airspace only from this Schedule."

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

31.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 24(1) (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 under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(**a**) 1981 c. 66. Section 5 was amended by section 183 of, and Schedule 15 to, the Housing and Planning Act 2016 (c. 22).
(**b**) 1981 c. 66. Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
(**c**) 1981 c. 66. Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).
(**d**) 1981 c. 66. Section 6 was amended by section 183 of, and paragraphs 4 and 7 of Schedule 15 to, the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).
(**e**) 1981 c. 66. Section 7 was amended by section 199(2) of, and paragraphs 1 and 3 of Part 1 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).
(**f**) 1981 c. 66. Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(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 25 of this Order;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act(**a**).

(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

32.—(1) The undertaker may enter upon 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 air-space for the purposes of the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker 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 by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing of 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.

Temporary use of land for carrying out the authorised development

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

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 12 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

(ii) any of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act(**b**) (other than in connection with the acquisition of rights or the imposition of covenants) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

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

(**a**) 1990 c. 8. Section 153(4A) was inserted by section 200(2) of the Housing and Planning Act 2016 (c. 22).

(**b**) 1965 c. 56. Section 11(1) was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of the Housing and Planning Act 2016 (c. 22), Schedule 4 to the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and articles 5(1) and (2) of, and paragraphs 59 and 64 of Schedule 1 to, S.I. 2009/1307.

(c) construct temporary works (including the provision of means of access), security fencing and buildings on that land;

(d) construct any works as are mentioned in Schedule 1 (authorised development);

(e) carry out any other mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works on that land; or

(f) provide any temporary car parking or storage facilities on that land.

(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)(i).

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

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 12; or

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

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but 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 statutory undertakers' apparatus or connections to such apparatus or any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or

(d) remove any mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works which have been placed on the land to

(i) facilitate construction of the authorised development;

(ii) protect any existing operational railway; or

(iii) mitigate the effects of the authorised development.

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

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

(7) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

(a) acquiring new rights over or imposing restrictive covenants affecting any part of that land under article 27 (compulsory acquisition of rights or imposition of covenants); or

(b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil or of airspace over) that land under article 31 (acquisition of subsoil or airspace only).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority)(**a**) 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.

Temporary use of land for maintaining the authorised development

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

(a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Unless paragraph (4) applies, the undertaker must serve notice of the intended entry on the owners and occupiers of the land not less than 28 days before entering upon and taking temporary possession of land under this article and that notice must state the purpose for which the undertaker intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be 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 one or more of—

(a) the authorised development or any of its parts;

(b) the public; or

(c) the surrounding environment,

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

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

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

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

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

(9) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

(**a**) 1965 c. 56. Section 13 was amended by section 139(4)-(9) and section 62(3) of, paragraphs 27 and 28(1)-(3) of Schedule 13 to, and Part 13 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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

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

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

Disregard of certain interests and improvements

35.—(1) In assessing the compensation payable to any person on the acquisition from that person of 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 executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration 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 executed or the improvement or alteration made, directly or indirectly concerned.

Set-off for enhancement in value of retained land

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

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

(a) any increase in value of the land over which the new rights are acquired or restrictive covenants are imposed; and

(b) any increase in the 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.

Statutory undertakers and electronics communications code network operators

37.—(1) Subject to Schedule 16 (protective provisions), and paragraph (2) the undertaker may—

(a) exercise the powers conferred by articles 24 (compulsory acquisition of land) and 27 (compulsory acquisition of rights or imposition of covenants) in relation to so much of the Order land as belongs to statutory undertakers; and

(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

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

(a) Part 3 (street works in England and Wales) of the 1991 Act; or

(b) article 42 (apparatus and rights of statutory undertakers in stopped up streets).

Recovery of costs of new connections

38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 37 (statutory undertakers and electronic communications code network operators) 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 37 (statutory undertakers and electronic communications code network operators), 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) In this article—

"public communications provider" has the same meaning as in section 151(1) (interpretation of chapter 1) of the 2003 Act(**a**); and

"public utility undertaker" has the same meaning as in the 1980 Act.

PART 6

Operations

Operation and use of railways

39.—(1) Network Rail may operate and use the railway authorised by this Order as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 of the Railways Act 1993(**b**) (the provision of railway services).

Operational land for purposes of the 1990 Act

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

(**a**) 2003 c. 21. There are amendments to section 151(1) which are not relevant to this Order.
(**b**) 1993 c. 43.

PART 7

Miscellaneous and general

No double recovery

41. 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 or different provisions of this Order.

Apparatus and rights of statutory undertakers in stopped up streets

42.—(1) Where a street is stopped up under articles 14 (permanent stopping up of streets) or 15 (temporary stopping up of streets and public rights of way), 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 permanently stopped up under article 14 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

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

(a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

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

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

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

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

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

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

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

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

time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

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

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (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 1990 Act or a public communications provider as defined in section 151(1) (interpretation) of the 2003 Act.

Felling or lopping of trees

43.—(1) The undertaker may fell, prune, coppice, pollard, reduce in height or width 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) subject to paragraph (4), from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to passengers or other persons using the authorised development.

(2) The powers in paragraph (1) may be exercised in relation to any tree or shrub which is situated within a conservation area (designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990)(**a**).

(3) Action may not be taken under paragraph (2) unless the undertaker has given written notice to the relevant planning authority of the intended action (with sufficient particulars to identify the tree), and either—

(a) the relevant planning authority has indicated in writing that it has no objection to the works or that they fall within an exemption in paragraph (4) or (5), or

(b) six weeks have elapsed from the date of the notice and a tree preservation order has not been made in respect of the tree or shrub.

(4) Paragraph (3) does not apply where consent would not be needed for the proposed action if the tree or shrub were subject to a tree preservation order.

(5) Paragraph (3) shall not apply to any action which would be exempt in accordance with regulations under section 212 of the 1990 Act (disapplication of tree preservation offences).

(6) The duty contained in section 213(1) of the 1990 Act (replacement of trees) does not apply to the undertaker in carrying out any activity authorised by paragraphs (2) and (3).

(7) The authority given by paragraphs (2) and (3) constitutes an authorisation by an order granting development consent for the purposes of section 211(1A) of the 1990 Act.

(8) In carrying out any activity authorised by paragraph (1) or paragraphs (2) and (3), the undertaker must not unnecessarily damage any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(9) Any dispute as to a person's entitlement to compensation under this article, or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(**a**) 1990 c.9.

(10) The undertaker must not exercise the powers under paragraph (2) of this article after completion of construction.

(11) Nothing in paragraph (1)(a) authorises works to any tree or shrub within the Avon Gorge Woodlands SAC in contravention of the Avon Gorge Vegetation Management Plan.

Hedgerows

44.—(1) The undertaker may, for the purposes of the authorised development—

(a) subject to requirement 6 of Schedule 2 (landscaping scheme – disused railway) and paragraph (2) below, remove those hedgerows specified in Part 1 of Schedule 13 (hedgerows to be removed);

(b) remove any other hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development where it is demonstrated by the undertaker to the relevant planning authority, and the relevant planning authority certifies accordingly, that the removal of the hedgerow would not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.; and

(c) remove the important hedgerow within the Order limits and specified in Part 2 of Schedule 13 (important hedgerow).

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not unnecessarily damage the hedgerow 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, must be determined under Part 1 of the 1961 Act.

(4) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerows Regulations 1997(**a**).

Defence to proceedings in respect of statutory nuisance

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

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974(**d**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

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

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(**a**) 1997 S.I. 1160

(**b**) 1990 c. 43. There are amendments to this section which are not relevant to this Order

(**c**) 1990 c. 43. Section 79(1) was amended by section 101 and 102 of the Clean Neighbourhood and Environment Act 2005 (c. 16). There are other amendments to the Act which are not relevant to this Order.

(**d**) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55). Section 61(9) was amended by Schedule 24 to the Environment Act 1995 (c. 25), and section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1974 Act which are not relevant to this Order

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.

Traffic regulation

46.—(1) Subject to the provisions of this article, the undertaker may at any time for the purposes of the construction, operation or maintenance of the authorised project permanently regulate traffic as described in Schedule 14 (traffic regulation), in the manner specified in column (3) on those roads specified in column (1) and along the lengths and between the points specified, or to the extent otherwise described in column (2) of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to the opening of the authorised development for use—

(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, parking, 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 undertaker must not exercise the powers in paragraph (1) unless it has—

(a) given not less than 12 weeks' notice in writing of its intention to do so 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 7 days of its receipt of notice of the undertaker's intention in the case of sub–paragraph (a).

(4) Any prohibition, restriction or other provision made by the undertaker under paragraphs (1) or (2)—

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

(i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act(**a**),

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 14) 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 to the Traffic Management Act 2004(**b**) (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time.

(6) Before exercising the provisions of paragraph (2) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.

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

(**a**) 1984 c. 27. Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51). There are other amendments to section 32 which are not relevant to this Order.

(**b**) 2004 c. 18.

Application of the Land Compensation Act 1973

47.—(1) Any regulations made by the Secretary of State under section 20 (sound proofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973(**a**) which apply to a railway provided or used in the exercise of statutory powers apply to the railway comprised in the authorised development as if that railway was provided or used in the exercise of statutory powers.

(2) Section 28 (power to pay expenses) of the Land Compensation Act 1973 has effect as if any works comprised in the authorised development were public works for the purposes of that section.

Application of landlord and tenant law

48.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Procedure in relation to further approvals, etc.

49.—(1) Where any application is made to a relevant authority, the consent, agreement, certification or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application 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 received, the relevant authority is deemed to have given its consent, agreement, certification or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) If before this Order comes into force the undertaker or any other person has taken any step in relation to an application to which this article applies, that step may be taken into account to determine whether the consent, agreement, certification or approval concerned should be granted provided that step would have been a valid step for the purpose of the application if it had been taken after this Order came into force.

(**a**) 1973 c. 26. Section 20 was amended by subsection (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984 (c. 27). Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highway Act 1980 (c. 66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c. 42). Section 20A was inserted by Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1973 Act which are not relevant to this Order.

(5) Where any application is made to a relevant authority and the application includes submissions relating to the discharge of an obligation under Part 3 of Schedule 16 (protective provisions) at the same time, paragraph (2) does not apply to that application.

(6) Where a consent, agreement or approval is required or requested by the undertaker from a relevant planning authority under a requirement in Schedule 2 (requirements) then the procedure set out in Part 2 of Schedule 2 (requirements) for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, applies.

(7) In this article—

"application" means an application or request for any consent, agreement, certification or approval required or contemplated by articles 13 (street works and power to alter the layout etc. of streets), 15 (temporary stopping up of streets and public rights of way), 17 (access to works), 19 (construction and maintenance of new or altered streets), 22 (discharge of water), 23 (authority to survey and investigate land) and 46 (traffic regulation); and

"relevant authority" means the owner of a watercourse, public sewer or drain, a local authority, a traffic authority, a highway authority or a street authority.

Service of notices

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

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) 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 may 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;

(**a**) 1978 c. 30.

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

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

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

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

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article must 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.

Crown rights

51.—(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 Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or

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

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is 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.

Amendment of local byelaws

52.—(1) The local byelaws specified in Schedule 15 (amendment of local legislation) are hereby excluded and do not apply insofar as inconsistent with a provision of, or a power conferred by, this Order.

(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 the power;

(b) action taken in pursuance of the power 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;

(c) action taken in pursuance of a power or duty under the provision 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) 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.

Protective provisions

53. Schedule 16 (protective provisions) has effect.

Special category land

54.—(1) On the exercise by the undertaker of the relevant Order power, the cycle track special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article—

"the relevant Order power" means the powers exercisable over the cycle track special category land by the undertaker under article 24 (compulsory acquisition of land);

"the cycle track special category land" means the land numbered 01/213 and 01/223 in the book of reference and on the land plan and forming part of an open space which may be acquired compulsorily under this Order.

Documents to be certified

55.—(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 17 (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 17 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) The undertaker must, following certification of the plans and documents in accordance with paragraph (1), make those plans and documents available in electronic form for inspection by members of the public.

Arbitration

56. 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Head of the Infrastructure Planning Unit
Department for Transport

Date

SCHEDULES

SCHEDULE 1

Article 5

Authorised development

A nationally significant infrastructure project as defined in sections 14 and 25 of the 2008 Act comprising—

In the district of North Somerset:

Work No. 1 – a railway of 2,264 metres in length shown on sheets 1, 1A, 2, and 3 of the works plans commencing at a point 96 metres north of the junction of Quays Avenue and Galingale Way, Portishead, using the track bed of the disused Portishead Branch Line railway, and terminating at a point 57 metres to the east of the bridge carrying Station Road (Portbury) over the disused Portishead Branch Line railway;

Work No. 1A – a railway of 2,498 metres in length shown on sheets 3, 4, 5 and 6 of the works plans commencing at a junction with the termination of Work No. 1 at a point 57 metres to the east of the bridge carrying Station Road (Portbury) over the disused Portishead Branch Line railway, using the track bed of the disused Portishead Branch Line railway and terminating at a point 49 metres to the west of the bridge carrying the Parson Street to Royal Portbury Dock railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill;

Work No. 1B – a railway of 796 metres in length shown on sheets 6 and 7 of the works plans commencing at a junction with the termination of Work No. 1A at a point 49 metres west of the bridge carrying the Parson Street to Royal Portbury Dock railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill and terminating at a junction with Work No. 1C, at a point 86 metres to the north of the junction of the highways of Ham Green and Westward Drive, Pill; and

Work No. 1C – a realignment of existing railway for a distance of 1,003 metres in length shown on sheets 6 and 7 of the works plans, commencing at a point 262 metres north west of the bridge carrying that railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill then terminating at a new junction with the Parson Street to Royal Portbury Dock railway, at a point 86 metres to the north of the junction of the highways of Ham Green and Westward Drive, Pill, being part of the existing railway between Parson Street and Royal Portbury Dock.

Associated development within the meaning of section 115(2) of the 2008 Act (development for which development consent may be granted)(**a**) and within Order limits comprising—

In the district of North Somerset:

Work No. 2 – diversion of the highway of Quays Avenue, Portishead, of 181 metres in length, shown on sheets 1 and 1A of the works plans, from the junction of Quays Avenue and Galingale Way to a point west of the existing gyratory junction of Quays Avenue, Harbour Road and Phoenix Way, Portishead, together with connections to existing highways, widening of the southern footway of Harbour Road, landscaping, new bus waiting facilities, signage, lighting, pedestrian crossing facilities, pipes, drains, cables, ducts, troughs, telecommunications apparatus, conduits and apparatus for utilities as well as footways, and a connection to the pedestrian and cycle track forming part of Work No. 4;

Work No. 2A – surface water drain, of 27 metres in length, shown on sheets 1 and 1A of the works plans north from Phoenix Way, Portishead into the watercourse known as the Cut;

(**a**) 2008 c. 29. Section 115(2) was amended by section 160(3) of the Housing and Planning Act 2016 (c. 22).

Work No. 3 – a foot and cycle track, of 63 metres in length, shown on sheet 1 of the works plans, commencing at a junction with Work No. 4 east of the watercourse known as the Portbury Ditch, to a point west of Portbury Ditch, together with associated landscaping, signage, fencing, lighting, cables, ducts, troughs, telecommunication apparatus, conduits and apparatus for utilities;

Work No. 4 – a car park of 4,841 square metres in area, foot and cycle track of 275 metres in length and a new vehicular access to the highway of Harbour Road, shown on sheets 1 and 1A of the works plans, south of Harbour Road, Portishead and east of the Portbury Ditch, together with landscaping, lighting, signage, fencing, drainage in to the adjacent Portbury Ditch, to the west of Quays Avenue, Portishead;

Work No. 5 – railway station, of 396 square metres in area, shown on sheets 1 and 1A of the works plans, to the south of Phoenix Way, Portishead, comprising platform, shelter, office, waiting area, storage and refuse area, seating, ticket vending machine, closed circuit television equipment, passenger help point, toilets, utilities connections, telecommunications equipment, public address system, information boards and displays, signage, lighting columns, fencing, acoustic barrier, landscaping, railway communications mast and surface water drain in to the adjacent watercourse known as the Cut;

Work No. 6 – car park, of 4,419 square metres in area, shown on sheets 1 and 1A of the works plans, to the south of Phoenix Way, Portishead, including mobility impaired spaces, drainage, lighting, fencing, landscaping, signage, cycle parking facilities and utilities apparatus, together with access from the highway of Phoenix Way;

Work No. 7 – public foot and cycle track bridge over Work No. 1 shown on sheets 1 and 1A of the works plans to the south west of Trinity Primary School, Portishead together with connections to cycle tracks, lighting, drainage, signage, fencing and hardstandings;

Work No. 7A – public foot and cycle track, of 273 metres in length, shown on sheets 1 and 1A of the works plans, from Phoenix Way, Portishead to connect with Works Nos.7 and 7C, to the south of Tansy Lane and north of Work No. 1, together with signage, drainage, lighting, fencing and landscaping;

Work No. 7B – public foot and cycle track, of 150 metres in length, shown on sheets 1 and 1A of the works plans, from the diverted Quays Avenue, Portishead, to connect with Work No. 7 to the north of Galingale Way and to the south of Work No. 1, together with signage, drainage, lighting, fencing and landscaping;

Work No. 7C – public foot and cycle track, of 18 metres in length, shown on sheets 1 and 1A of the works plans, from Work No. 7 north to Tansy Lane, Portishead, together with signage, drainage, lighting, fencing and landscaping;

Work No. 7D – temporary construction compound, of 2,876 square metres in area, shown on sheet 1 of the works plans, to the south of Tansy Lane, Portishead and to the north of Work No. 1;

Work No. 7E – underground electrical supply cables of 39.07 metres in length connecting from Work No. 7 to Tansy Lane, Portishead, shown on sheet 1 and 1A of the works plans;

Work No. 8 – temporary construction haul road of 486 metres in length, shown on sheets 1 and 2 of the works plans, to the south of, and parallel to, Work No. 1, from a point south of Fennel Road, Portishead, to the highway known as Sheepway, Portbury;

Work No. 9 – permanent vehicular compound of 1,862 square metres in area, road/rail vehicle access point and access road from the highway of Sheepway, shown on sheet 2 of the works plans, to the north-west of the bridge carrying the highway of Sheepway over Work No.1, a permanent diversion of the existing permissive cycle path and works to the existing car parking area to the north-west of Sheepway, together with fencing, drainage, communications apparatus, ducts, troughs, utilities apparatus, hardstanding and means of access to the highway of Sheepway;

Work No. 10 – temporary diversion of the existing permissive cycle path, of 156 metres in length, shown on sheet 2 of the works plans, on the north west side of the highway of Sheepway, opposite Shipway Gate Farm, Portbury;

Work No. 10A – temporary construction compound of 2,179 square metres in area shown on sheet 2 of the works plans, to the north-west of the highway of Sheepway opposite Shipway Gate Farm, Portbury;

Work No 10B – temporary construction haul road to the north of the highway of Sheepway of 125 metres in length shown on sheet 2 of the works plans opposite Shipway Gate Farm, Portbury;

Work No. 11 – improvements to the existing agricultural access from Shipway Gate Farm, Portbury to the highway of Sheepway, shown on sheet 2 of the works plans, south of the disused Portishead Branch Line railway, including hardstanding, gate and visibility splays;

Work No. 11A – temporary construction haul road, of 590 metres in length, shown on sheet 2 of the works plans, east from the highway of Sheepway, to the south of and parallel to the disused Portishead Branch Line railway to Work No. 12A together with temporary field accesses and hardstanding;

Work No. 11B – temporary construction haul road of 269 metres in length shown on sheet 2 of the works plans, to the south of the highway of Sheepway at Shipway Gate Farm, Portbury, together with temporary field accesses and hardstanding;

Work No. 12 – permanent vehicular access to the A369 classified road known as Portbury Hundred, shown on sheet 3 of the works plans, including hardstanding, gate and visibility splays;

Work No. 12A – temporary construction compound of 113,467 square metres in area, shown on sheets 2, 2B and 3 of the works plans, to the north of the A369 classified road known as Portbury Hundred and to the south of the disused Portishead Branch Line railway;

Work No. 13 – improvement of the existing access and parking area, shown on sheet 4 of the works plans, at The Drove, Portbury, to the north of the A369 classified road known as Portbury Hundred, including hardstanding and gates;

Work No. 13A – temporary vehicle turning space of 575.6 square metres in area, shown on sheet 4 of the works plans, south of the disused Portishead Branch Line railway, Portbury;

Work No. 14 – improvement to bridleway LA15/21/20, shown on sheet 4 of the works plans, at its junction with the highway of Royal Portbury Dock Road, Portbury;

Work No. 14A – improvement to bridleway LA8/66/10, shown on sheet 4 of the works plans, at its junction with the highway of Royal Portbury Dock Road, Portbury;

Work No. 14B – realignment of the existing permissive cycling route of 144.36 metres in length, shown on sheet 4 of the works plans, under Royal Portbury Dock Road, Portbury;

Work No. 15 – temporary path of 11 metres in length to connect bridleway LA8/66/10 with the highway of Marsh Lane, shown on sheet 5 of the works plans, on the western side of Marsh Lane, Easton in Gordano, and north of the disused Portishead Branch Line railway;

Work No. 16 – realignment of the existing permissive cycling route, shown on sheet 5 of the works plans, of 90.35 metres in length parallel to the disused Portishead Branch Line railway passing under the highway of Marsh Lane, Easton in Gordano, and connecting with bridleway LA8/67/10;

Work No. 16A – temporary construction compound of 7,509 square metres in area shown on sheet 5 of the works plans, beneath the Avonmouth Bridge of the M5 Special Road, Easton in Gordano;

Work No. 16C – road rail access point shown on sheet 5 of the works plans, west of the Avonmouth Bridge of the M5 Special Road, Easton in Gordano;

Work No. 17 – temporary construction compound of 89,293 square metres in area shown on sheets 5 and 6 of the works plans, at Lodway Farm, Pill, together with access to the highway of the Breaches, Easton in Gordano;

Work No. 17A – temporary construction haul road, of 1,078.35 metres in area shown on sheet 6 of the works plans between Work No. 17 and footpath LA8/5/40, Pill;

Work No. 18 – bridleway of 211 metres in length shown on sheet 5 of the works plans, commencing at a point to the west of the M5 Special Road and passing under the Avonmouth Bridge of the M5 to join National Cycle Way Network Route 41 between the Avonmouth Bridge of the M5 Special Road and Pill;

Work No. 19 – installation of new and alteration of existing railway signal equipment, troughs and cables, as shown on sheets 5 and 6 of the works plans, on the Bristol Port Company's railway from Portbury Junction and a new railway signal at the Bristol Port Company's Royal Portbury Dock;

Work No. 20 – temporary diversion of part of National Cycle Network Route 41 of 83 metres in length shown on sheet 6 of the works plans, north from its existing alignment on the street north of the Parson Street to Royal Portbury Dock railway, west of Avon Road, Pill to connect with the western turning head of Avon Road, Pill;

Work No. 20A – demolition of existing bridge carrying the Parson Street to Royal Portbury Dock railway over footpath LA8/5/40 and construction of new bridge and abutments, shown on sheet 6 of the works plans, south of Avon Road Pill and north of Lodway Close, Pill;

Work No. 20B – demolition of existing garages and temporary construction compound of 1,990 square metres in area, as shown on sheet 6 of the works plans, at Avon Road, Pill;

Work No. 21 – car park of 2,004 square metres in area, as shown on sheet 6 of the works plans, to the south of Severn Road and Monmouth Road, Pill, including landscaping, accesses to highway, drainage and attenuation tanks, signage, lighting, fencing, drainage, ducts, troughs, communications apparatus and utilities apparatus;

Work No. 21A – road/rail access point, permanent railway maintenance compound of 820 square metres in area and principal supply point building, as shown on sheet 6 of the works plans, south of Severn Road, Pill, including landscaping, lighting, fencing, drainage, ducts, troughs, communications apparatus, utilities apparatus and associated access;

Work No. 22 – railway station, shown on sheet 6 of the works plans, comprising platform, ramp, signage, seating, ticket vending machine, closed circuit television equipment, demolition of No. 7 Station Road, passenger help point, information boards and displays, passenger refuge area, car park drop off point (including mobility impaired spaces) and cycle parking facilities, lighting, fencing, landscaping, ground strengthening and stability works, communications apparatus, drainage and utilities apparatus, to the north west of Station Road, Pill;

Work No. 22A – improved bus waiting facility, shown on sheet 6 of the works plans, on the highways of Lodway and Heywood Road, Pill, north of the Pill Memorial Club, Pill, together with retaining wall, lighting, drainage and alteration of utilities apparatus;

Work No. 22B – temporary construction compound of 1,067 square metres in area shown on sheet 6 of the works plans, within the car park of Pill Memorial Club, Lodway, Pill;

Work No. 23 – temporary construction compound of 151 square metres in area, as shown on sheet 6 of the works plans, beneath and to the north of Pill Viaduct, Underbanks, Pill;

Work No. 24 – permanent vehicular compound of 2,011 square metres in area, shown on sheet 8 of the works plans, south of Ham Green Lake, together with a road rail vehicle access point, permanent access south from the highway of Chapel Pill Lane to the compound and new fencing, lighting, landscaping, utilities connections, laying of electricity, water, drainage and communications conduits and apparatus together with a new access to Ham Green Lake and improvements to Chapel Pill Lane;

Work No. 24A – temporary construction compound of 6,653 square metres in area, shown on sheet 8 of the works plans, accessed from the highway of Chapel Pill Lane, Ham Green, Pill; and

Work No. 25 – reconstruction of accommodation bridge known as Quarry Bridge No. 2, temporary construction compound and temporary ramp for construction access to the Parson Street to Royal Portbury Dock railway, shown on sheet 12 of the works plans.

In the City and County of Bristol:

Work No. 26 – permanent vehicular access, ramp, flood mitigation works and railway maintenance compound, of 2,948 square metres in area shown on sheet 15 of the works plans, east of the highway of the A369 classified road known as Clanage Road, Ashton, north of the Bedminster Cricket Club;

Work No. 26A – temporary construction compound of 3,346 square metres in area, shown on sheet 15 of the works plans, east of the highway of the A369 classified road known as Clanage Road, Ashton, north of the Bedminster Cricket Club,

Work No. 26B – permanent vehicular access to the highway of the A369 classified road known as Clanage Road, Ashton from the land to the north of the Bedminster Cricket Club, shown on sheet 15 of the works plans;

Work No. 27 – not used;

Work No. 28 – improvement of the highway of Winterstoke Road at its junction with Ashton Vale Road, as shown on sheet 16 of the works plans, including extension of existing left turn lane in to Ashton Vale Road, retaining wall, works to divert and install utility apparatus and installation of a new traffic signal control system, Ashton; and

Work No. 29 – temporary construction compound of 3,176 square metres within the rail freight facility at Liberty Lane, Bristol, shown on sheet 17 of the works plans.

And in connection with such works further associated development within the Order limits consisting of—

(a) permanent way (rail tracks) electrical equipment, power supply cubicles, cables, telecommunications apparatus, railway mobile communications masts and apparatus and signalling;

(b) ramps, means of access (including temporary haul roads) and construction compounds;

(c) embankments, aprons, abutments, shafts, foundations, retaining walls and structures, drainage, wing walls, fences, acoustic fences, catch fences, paths, access steps and culverts;

(d) works to alter, divert, maintain, replace and repair apparatus (including statutory undertakers' apparatus), including mains, sewers, pipes, drains and cables or for their protection;

(e) works to clear, maintain and interfere with water courses other than a navigable water course;

(f) landscaping and other works (including the creation of ponds) to mitigate any adverse effects of the construction, maintenance or operation of the authorised development described in the environmental statement;

(g) works for the benefit or protection of land affected by the authorised development;

(h) works required for the strengthening, improvement, maintenance or reconstruction of any streets;

(i) works to level crossings;

(j) works for the temporary diversion of public footpaths shown in the permanent and temporary stopping up and diversion plan;

(k) trenching and cabling associated with the new signalling and communications masts;

(l) strengthening earthworks and reconstructing retaining walls;

(m) vegetation clearance, rock bolting and rock dowels and safeguarding of unstable slopes or rock faces by stone-picking and removal of loose rocks;

(n) replacement or renewal of fencing;

(o) repairs to existing underbridges and overbridges, adding barriers to bridge parapets and raising of bridge parapets;

(p) alteration of the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by increasing or reducing the width of any kerb, footway, cycle track or verge within the street, extending any footway or removing replacing, altering or providing splitter islands in streets;

(q) works to place alter remove or maintain road furniture;

(r) works to place, alter, divert, relocate, protect, remove or maintain the position of apparatus (including statutory undertakers' apparatus), services, plant and other equipment in, under or above a street, or in other land, including mains, sewers, drains, pipes, lights, cables, cofferdams, fencing and other boundary treatments and to provide connections to adjoining land and buildings;

(s) landscaping, re-grading, re-profiling, contouring, noise barriers, works associated with the provision of ecological and archaeological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development:

(t) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling);

(u) establishment of site construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, drainage systems, temporary bridges over watercourses, storage ponds, processing plant, works and conveniences;

(v) pavement, kerbing and paved areas;

(w) signing, signals, street lighting, road markings, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and

(x) such other works, including working sites and works compounds, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which do not give rise to any materially new or materially worse adverse environmental effects to those assessed in the environmental statement.

SCHEDULE 2

Article 5 and 49

Requirements

PART 1

Requirements

1. In this Part—

"Ashton Vale Road and Winterstoke Road Highway Works Plan" means the plan to be certified as the Ashton Vale Road highway works plan by the Secretary of State for the purposes of this Order;

"Bridleway Extension under the Elevated M5 Plan" means the plan certified as the bridleway extension under the elevated M5 plan by the Secretary of State for the purposes of this Order;

"Cattle Creep Proposed General Arrangement drawing" means the plan certified at the Cattle Creep Proposed General Arrangement drawing by the Secretary of State for the purposes of this Order;

"Council's archaeologist" means the chief archaeologist for the relevant planning authority;

"currently operational railway land" means any part of the existing operational national railway network owned and managed by Network Rail that is within Order limits;

"environmental master plan" means the plans certified as the environmental master plan by the Secretary of State for the purposes of this Order;

"first commercial use" means the first use of Works Nos. 1, 1A and 1B for the carriage for fare paying passengers;

"fencing grades summary" means the summary of fencing types, based on plate 4.8 of the environmental statement and certified as the fencing grades summary by the Secretary of State for the purposes of this Order;

"general arrangement plans" means the plans certified as the general arrangement plans by the Secretary of State for the purposes of this Order;

"GSM-R mast" means Global System for Mobile Communications-Railway mast provided for the purposes of driver- signaller communications;

"Habitat impacted by construction works within the Avon Gorge Woodlands SAC plan" means the plans certified as the habitat impacted by construction works within the Avon Gorge Woodlands SAC plan by the Secretary of State for the purposes of this Order;

"MOVA" means a traffic control strategy designed to maximise the operational efficiency of a highway junction or crossing by adjusting the green time required for each approach and assessing the number of vehicles approaching the signals, whilst determining the impact that queuing vehicles would have on the overall operation of the junction;

"Portbury Hundred location of additional tree planting plans" means the plans certified as such by the Secretary of State for the purposes of this Order;

"preparatory activities" means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works;

"railway landscape plans (disused line)" means the plans certified as the railway landscape plans (disused line) by the Secretary of State for the purposes of this Order; and

"stage" means one of the stages of the authorised development and such other associated development as is connected with that stage as is described in paragraph 3.

Time limits

2. The authorised development must not commence after 5 years of the date of this Order.

Stages of authorised development

3.—(1) The following stages apply to the authorised development in the District of North Somerset—

(a) Stage 1 comprises Works Nos. 1, 1A, 5, 7, 7E, 9, 11, 11A, 12, 13, 14, 14A, 14B and 16C, being the new railway between Portishead and Station Road, Portbury; the new railway between old Portbury Station and Portbury Junction, the new Portishead Station; Trinity Primary School bridge; works at The Drove at Portbury; a road rail access point, at Easton in Gordano; works to bridleway at Royal Portbury Dock Road and Marsh Lane, Easton in Gordano, and flood attenuation works west of the M5 at Easton in Gordano;

(b) Stage 1A comprises Works Nos. 7D, 8, 10, 10A, 12A, 13A, 15, 16A, 17 and 17A being haul roads south of Work No. 1, cycle path diversions and compounds at Sheepway together with any use of neighbouring Order land as a temporary compound, a temporary construction compound north of the A369 at Portbury; construction haul roads; a permanent access from A369 at Portbury, temporary vehicle turning circle east of the Drove and north of the A369 Portbury Hundred, a temporary construction compound under the M5 Special Road Avonmouth Bridge; a temporary construction compound and haul road at Lodway;

(c) Stage 1B comprises Works Nos. 20, 20B, 23 and 24A and being demolition of garages at Avon Road, Pill, temporary diversion of bridleway to the west of Avon Road, Pill, temporary compound beneath Pill Viaduct, and a temporary construction compound at Chapel Pill Lane, Ham Green together with any use of neighbouring Order land as a temporary compound;

(d) Stage 1C comprises Works Nos. 10B and 11B, being temporary haul roads to the north and south of Shipway Gate Farm, Sheepway;

(e) Stage 2 comprises Works Nos. 2, 2A, 3, 4, 6, and 7A-C being the diversion of Quays Avenue, Portishead, highway works at Harbour Road and Quays Avenue, Portishead; new highway drain; footpaths parallel to the disused Portishead Branch Line railway; public realm works and car parks at Portishead;

(f) Stage 3 comprises Work No. 11, being improvements to the existing agricultural access from Shipway Gate Farm, Sheepway;

(g) Stage 4 comprises Works Nos. 1B, 1C, 19, 20A, 21, 21A and 22 being works to the existing railway and to construct a railway between Portbury Junction and Pill Junction, installation of signalling equipment on the Bristol Port Company's railway, works to replace an underbridge to the north of Avon Road, Pill; Pill Station; car park at Pill Station and permanent maintenance compound and road rail access point;

(h) Stage 4A comprises Work No. 18 being a bridleway from under the M5 Avonmouth Bridge to meet National Cycle Network route no. 41 on the east side of the M5 Special Road, Pill;

(i) Stage 4B comprises Work No. 24 being a permanent maintenance access at Ham Green;

(j) Stage 5 comprises Works Nos. 22A and 22B being modifications to an existing bus stop and temporary compound at Pill Memorial Club, Lodway;

(k) Stage 6 comprises Work No. 25 being the reconstruction of Quarry Bridge No. 2 and the associated temporary compound in the Avon Gorge, together with the minor works to the railway between Pill Tunnel and Clifton Overbridge.

or such other stages of the Works that are agreed in writing with the relevant planning authority.

(2) The following stages apply to the authorised development in the City and County of Bristol:

(a) Stage 7 comprises Works Nos. 26, 26A and 26B, being a permanent road rail access point and compound, temporary construction compound at Clanage Road and new permanent access to the highway of Clanage Road, at Bower Ashton in Bristol;

(b) Stage 8 – not used;

(c) Stage 9 comprises Work No. 28, being works to the public highway at the junction of Winterstoke Road and Ashton Vale Road, Bristol; and

(d) Stage 10 comprises Work No. 29 being a temporary construction compound at the rail freight facility at South Liberty Lane, Bristol;

or such other stages of the Works that are agreed in writing with the relevant planning authority.

(3) The undertaker may submit for approval such part or parts of a stage as may be agreed with the relevant planning authority, and with the approval of the relevant planning authority carry out the approved parts of a stage without securing approval of those elements of a stage that are agreed with the relevant planning authority as remaining to be determined.

(4) Any restriction in a requirement in this Schedule that prevents a stage from commencing until details regarding that stage have been approved by the relevant planning authority does not prevent

the undertaker carrying out any preparatory activities for that stage or the use of land within Order limits as a temporary construction compound.

Submission and approval of detail design

4.—(1) Those elements of the authorised development comprising the works listed in column (1) of the table in sub-paragraph (5) must not commence until the detail design for that element has been approved by the relevant planning authority.

(2) The detail designs submitted to the relevant planning authority in accordance with paragraph (1) must reflect the principles of the relevant design drawings listed in column (3) of the table in paragraph (5) unless otherwise agreed with the relevant planning authority.

(3) Any changes from the design drawings must be in accordance with the principles set out in the environmental statement.

(4) The relevant Work must be carried out in accordance with the detail designs approved by the relevant planning authority.

(5) The elements of the authorised development to which paragraph (1) applies are:

(1) *Work No(s)*	*(2)* *Description*	*(3)* *Design drawing(s)*	*(4)* *Relevant planning authority*
2, 2A, 3, 4, 6, 7A-7D	Portishead highways and car parks	467470.BQ.04.20-100 467470.BQ.04.20-101 467470.BQ.04.20-102	North Somerset District Council
5	Portishead Station	W1097B-ARP-DRG-EAR-300001 W1097B-ARP-DRG-EST-300003 W1097B-ARP-DRG-EST-300004 W1097B-ARP-DRG-EST-300005	North Somerset District Council
7	Trinity Primary School bridge and electrical connection	W1097B-ARP-DRG-EST-300006 W1097B-ARP-DRG-EST-300007 W1097B-ARP-DRG-EPT-300001	North Somerset District Council
9	Sheepway Compound	467470.BQ.04.20-400 467470.BQ.04.20-401	North Somerset District Council
12	Portbury Hundred Access	467470.BQ.04.20-600	North Somerset District Council
13	Wessex Water Compound Access	467470.BQ.04.20-570	North Somerset District Council
14, 14A	Works to bridleways at Royal Portbury Dock Road	467470.BQ.04.20-530	North Somerset District Council
14B, 16	Realignment of permissive cycle path at Royal Portbury Dock Road	467470.BQ.04.20-550 467470.BQ.04.20-551 467470.BQ.04.20-552	North Somerset District Council
21	Pill Station – Severn Road Car Park	467470.BQ.04.20-207	North Somerset District Council
22	Pill Station and Forecourt	467470.BQ.04.20-209	North Somerset District Council

		W1097B-ARP-DRG-EST-300011	
22A, 22B	Bus stop on Heywood Road and Lodway, Pill at Pill Memorial Club	467470.BQ.04.20-290 467470.BQ.04.20-291	North Somerset District Council
24	Pill Tunnel Eastern Portal Compound	467470.BQ.04.20-219 467470.BQ.04.20-220 467470.BQ.04.20-221	North Somerset District Council
26, 26B	Clanage Road Compound and replacement access	467470.BQ.04.20-621	Bristol City Council

Construction Environmental Management Plan etc.

5.—(1) A stage of authorised development must not commence until the written Construction Environmental Management Plan (CEMP) for that stage has been approved by the relevant planning authority.

(2) The CEMP for a stage must be in accordance with the principles set out in the environmental statement, the Master CEMP, the COCP and the CTMP - Construction Traffic Management Plan.

(3) The CEMP for a stage must, where relevant to that stage, in particular include the following—

(a) an external communications plan;

(b) a pollution incident prevention and control plan;

(c) a site waste management plan;

(d) a construction traffic management plan;

(e) a construction workers travel plan;

(f) a materials management plan;

(g) a plan for storage for reuse of stripped soils within land forming part of haul roads or temporary compounds;

(h) a construction flood plan and flood emergency preparedness plan for any construction site and compound located within undefended flood zone 2 or flood zone 3;

(i) a surface water management plan;

(j) measures for the protection of wildlife;

(k) a reptile and amphibian mitigation strategy; and

(l) nuisance management plans regarding noise and vibration, dust, air pollution and lighting;

(4) The construction traffic management plan when required for a stage under sub-paragraph (3) must in particular and where relevant address—

(a) construction traffic routes and operational hours;

(b) site accesses;

(c) the management of junctions to and crossings of the public highway and other public rights of way;

(d) the scheduling and timing of abnormal load movements;

(e) temporary warning signs;

(f) restrictions on vehicle turning movements in to and out of compounds on the A369 Portbury Hundred classified road; and

(g) measures to minimise dust and mud.

(5) The relevant stage must be carried out in accordance with the COCP and the approved CEMP and construction traffic management plan for that stage;

(6) Where a part of the authorised development—

(a) is not within a relevant stage or associated development connected with a relevant stage; or

(b) does not consist of preparatory activities

then that part of the authorised development must be carried out in accordance with the COCP, the Master CEMP and the CTMP - Construction Traffic Management Plan.

Landscaping scheme – disused railway

6.—(1) Work Nos. 1 and 1A must not commence until a written landscaping scheme for those works, prepared in accordance with the principles of the railway landscape plans (disused line), has been submitted to and approved by the relevant planning authority. Works Nos. 1 and 1A must be carried out in accordance with the approved scheme or any variation to the scheme that has been approved by the relevant planning authority.

(2) The submitted landscaping scheme must include details of—

(a) location, number, species, size and planting density of any proposed planting;

(b) cultivation, importing of materials and other operations to ensure plant establishment;

(c) vegetation to be retained;

(d) implementation timetables for all landscaping; and

(e) proposals to take account of the presence of trees with trunks of a diameter of 100 millimetres or more and to minimize the loss of such trees.

(3) The written landscaping scheme for Work No. 1A must also contain measures to limit the impacts of the authorised development on the important hedgerow located between Work Nos. 1A and 17 and for the restoration of the important hedgerow following the cessation of use of Work No. 17.

(4) Any tree or shrub planted as part of the approved railway landscaping scheme that, within a period of five years after the date that it is planted, is removed, uprooted, destroyed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives consent to any variation.

Landscaping – other works

7.—(1) All landscaping shown in principle on the relevant design drawings must be carried out in accordance with the landscaping details shown on the relevant drawing submitted to and approved by the relevant planning authority in accordance with requirement 4. The relevant work must not commence until an implementation timetable relevant to the approved landscaping has been submitted to and approved by the relevant planning authority. The landscaping must be carried out in accordance with the approved details and the approved implementation timetable.

(2) Any tree or shrub planted as part of the approved landscaping scheme that, within a period of five years after the date that it is planted is removed, uprooted, destroyed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives consent to any variation.

(3) This requirement does not apply to Work Nos. 1, 1A, 1B or 1C or works subject to the Avon Gorge Vegetation Management Plan.

Temporary fencing

8.—(1) Prior to the commencement of a stage of the authorised development (or such part of that stage as may be agreed with the relevant planning authority) the relevant planning authority must receive for its approval a plan indicating the extent of temporary fencing that must be erected for the authorised development, together with a timetable for its installation and removal.

(2) A part of the authorised development within a stage (or such part of that stage as may be agreed with the relevant planning authority) and being an area where temporary fencing is so indicated must not commence without the temporary fencing approved by the relevant planning authority having first been erected.

(3) The approved temporary fencing must be retained and maintained to the reasonable satisfaction of the relevant planning authority until the cessation of works in that area.

(4) The fencing must be removed in accordance with the approved removal timetable to the satisfaction of the relevant planning authority.

Highway accesses

9.—(1) A stage of the authorised development must not commence until details of the siting, design and layout of any new or altered, permanent or temporary, access, and any temporary haul roads for that stage have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The submitted details must also include a timetable for carrying out the relevant activities.

(2) The approved highway alterations and improvements, including any altered or new accesses and any temporary haul roads, for that stage must be implemented in accordance with the approved details and timetable.

(3) Where the details submitted under paragraph (1) include details of temporary accesses and haul roads, the submitted details for such temporary accesses and haul roads must also include details for the removal of the temporary access and haul road and restoration of the land used for such access together with a timetable for removal of the accesses and haul road upon cessation of its use for the purposes of the authorised development.

Archaeology

10.—(1) Work Nos. 5, 9, 10, 10A, 12A, 17, 24, 24A, 26, 26A and 26B must not commence until a written scheme of investigation (WSI) for a watching brief covering any areas of archaeological interest identified by the environmental statement relevant to that work has, after consultation with the Council's archaeologist, been submitted to and approved by the relevant planning authority.

(2) The WSI must identify areas where a watching brief is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Where a WSI is required it must include a programme for post-investigation assessment and reporting and make provision for the publication and dissemination and for the archive deposition of the analysis and records of the site investigation as appropriate and commensurate with the archaeological material recovered.

(4) The watching brief carried out under the WSI must be carried out by a suitably qualified person or body approved by the relevant planning authority.

(5) The watching brief and post-investigation assessment and reporting must be completed in accordance with the programme set out in the approved WSI and the provision made for analysis, publication and dissemination of results and archive deposition has been secured where appropriate.

(6) In addition to the WSI required for Work No. 17, any part of Work No. 17 must not commence until details of a temporary fence to be erected to protect the linear earthworks feature reference number HER47401 as identified on the environmental master plan has, after consultation with the Council's archaeologist, been submitted to and approved by the relevant planning authority.

(7) The fence approved pursuant to paragraph (6) must be erected in accordance with the approved details and in accordance with a programme specified by the relevant planning authority and must be maintained to the reasonable satisfaction of the relevant planning authority until the land is restored following cessation of use of Work No. 17.

Surface and foul water drainage

11.—(1) A stage of the authorised development must not commence until written details of the surface and (if any) foul water drainage system (including means of pollution control) have, after consultation with the lead local flood authority and the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The approved drainage systems for the relevant stage must be constructed in accordance with the approved details and thereafter managed and maintained in accordance with the approved details for the lifetime of the development unless otherwise agreed with the relevant planning authority after consultation with the lead local flood authority and the Environment Agency.

(3) This requirement does not apply to currently operational railway land.

Trees

12.—(1) A stage of the authorised development must not commence until the relevant planning authority has confirmed that it has approved an arboricultural method statement for that stage prepared in accordance with BS:5837:2012 and detailing the proposed methods for protecting trees proposed to be retained, including a timetable for the installation and removal of the proposed protective measures.

(2) The plan submitted must also identify areas of tree protective fencing to be erected prior to commencement of that stage of the authorised development.

(3) The fencing shown on the approved plan is to be erected in accordance with the relevant arboricultural method statement and thereafter maintained and retained in its approved position during the construction period to the reasonable satisfaction of the relevant planning authority.

(4) The protective fencing must be removed to the satisfaction of the relevant planning authority in accordance with the time period specified in the arboricultural method statement for that stage.

Control of invasive plants outside of Avon Gorge Woodlands SAC

13.—(1) A stage of the authorised development must not commence until, after consultation with the relevant planning authority, a written scheme to prevent the spread or emanation of invasive plant species from the authorised development has been submitted to and approved in writing by the relevant planning authority.

(2) The approved scheme to prevent the spread or emanation of invasive plant species must be implemented before and maintained during the construction of the relevant stage of the authorised development.

(3) This requirement does not apply to the Avon Gorge Woodlands SAC.

Avon Gorge Woodlands SAC

14.—(1) Any part of the authorised development within the Avon Gorge Woodlands SAC must be carried out in accordance with the Avon Gorge Vegetation Management Plan.

(2) Any part of the authorised development within the Avon Gorge Woodlands SAC consisting of—

(i) foot accesses and steps;

(ii) GSMR masts, antennae and associated equipment boxes;

(iii) signal and associated equipment box;

(iv) catch fences;

(v) works to retaining walls and structures; or

(vi) rock stabilization works

must not commence before details of the location, siting and design of the relevant work, together with any required site clearance, working space and lay down areas, have been submitted to and approved by the relevant planning authority in consultation with Natural England. The details

submitted for approval must be located within the areas shown for the relevant works on the general arrangement plans. The works must be carried out in accordance with the approved details.

(3) Work to remove, install or replace security fencing in the Avon Gorge Woodlands SAC must not commence before details of the location, siting, colour and design of the fencing, together with any required site clearance and working space, have been submitted to and approved by the relevant planning authority in consultation with Natural England. The details submitted for approval must be located within the areas shown for fencing in the habitat impacted by construction works within the Avon Gorge Vegetation Management Plan and any permanent security fencing to be installed must be of a nature substantially in accordance with the details set out in the relevant part of the general arrangement plans and the fencing grades summary. The works must be carried out in accordance with the approved details and the installed fencing thereafter retained unless alternative type fencing is required for railway operational safety reasons.

(4) Any temporary works within the Avon Gorge Woodlands SAC consisting of compounds or construction welfare facilities (including the temporary works that are part of Work No. 25) must not commence before the location, siting duration of use and details for the removal of the relevant facility has been approved by the relevant planning authority in consultation with Natural England.

(5) The facilities described in paragraph (4) must be carried out as approved and the relevant facility must at the conclusion of the temporary works be removed to the satisfaction of the relevant planning authority in consultation with Natural England and in accordance with the approved details.

(6) The mitigation and compensation measures specified in the Avon Gorge Vegetation Management Plan must be carried out in accordance with the timetables set out in that document. The measures must thereafter be managed in accordance with the Avon Gorge Vegetation Management Plan to the satisfaction of the relevant planning authority in consultation with Natural England.

(7) The undertaker must provide monitoring reports to the relevant planning authority and Natural England no later than 12 months following first commercial use in accordance with the provisions of the Avon Gorge Vegetation Management Plan. Thereafter monitoring reports must be provided as specified in the Avon Gorge Vegetation Management Plan.

External lighting and control of artificial light emissions during construction

15.—(1) A stage of the works (or such part of that stage as may be agreed with the relevant planning authority) must not commence until written details of any temporary external lighting to be installed in connection with the construction of that stage, including measures to prevent light spillage, have been submitted to and approved by the relevant planning authority; and any approved means of lighting must be installed in accordance with the approved details and retained for the duration of the construction period.

(2) Any means of construction lighting approved under sub-paragraph (1) must be removed on completion of the relevant stage.

Construction hours

16.—(1) Except for—

(a) works on any existing highway,

(b) works on currently operational railway land; or

(c) activities associated with such works within the compounds authorised by this Order

to which no restriction on working hours applies under this Order, works to construct the authorised development must not take place other than within normal daytime working hours (6.30am to 6pm Monday to Saturday) unless paragraph (2) applies.

(2) Construction work must not take place—

(a) on Sundays, Bank or Public Holidays; or

(b) outside the times specified in paragraph (1)

except for such working which has been notified to and approved by the relevant planning authority and communicated to affected residents by an agreed notification procedure.

(3) Nothing in this requirement prevents use of construction compounds for:

(a) necessary preparation, before and after each shift, for items such as the management of materials and machinery,

(b) staff briefings,

(c) maintenance and cleaning of site welfare facilities;

(d) Stockpile management and removal or redundant material; or

(e) arrival of personnel on site and parking

after 6am Monday to Saturday.

Contaminated land and groundwater

17.—(1) Any stage of the authorised development must not commence until a written scheme applicable to that stage to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The scheme must include an investigation and assessment report (including a desk based study), prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken with respect to any contaminants on the site.

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

(4) Where the scheme sets out remedial measures to be taken with respect to any contaminants on the site, a verification plan must also be submitted providing details of the data that will be collected in order to demonstrate that the remedial measures are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

(5) If, during development, contamination not previously identified is found to be present at the site, no further development (unless otherwise agreed in writing with the relevant planning authority) is to be carried out, until a remediation strategy detailing how this unsuspected contamination will be dealt with has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the relevant planning authority. The remediation strategy must be implemented as approved.

(6) Paragraphs (1) to (5) do not apply to any currently operational railway land.

Works to Winterstoke Road, Bristol

18.—(1) Work No. 28 (Winterstoke Road and Ashton Vale Road Junction) must not commence until the relevant planning authority, in consultation with the relevant highway authority, has approved the detail design for Work 28, to include—

(a) an extended left turn lane on Winterstoke Road for vehicles in to Ashton Vale Road; and

(b) details for the installation of a MOVA system or other traffic control measures designed to maximise the operational efficiency of the Winterstoke Road and Ashton Vale Road junction including provision for the movement of trains over the level crossing at Ashton Vale Road.

(2) The detail design required by paragraph (1) to be submitted to the relevant planning authority must be in substantial accordance with the Ashton Vale Road and Winterstoke Road Highway Works Plan.

(3) Work No. 28 must be carried out in accordance with the approved details to the satisfaction of the relevant planning authority in consultation with the relevant highway authority prior to first commercial use.

Temporary path south of Trinity Primary School, Portishead

19.—(1) Work to lay out a temporary path between the points T1 and T2 on sheet 1 of the crossings to be extinguished plans must not commence until—

(a) details of the siting, design and method of construction of the proposed temporary path; and

(b) a statement detailing the times at which the temporary path (or any replacement temporary path for which siting, design and method of construction has previously been approved by the relevant planning authority) will be available for use.

have been approved in writing by the relevant planning authority.

(2) The statement to be submitted in accordance with sub-paragraph (1)(b) must in particular explain that the temporary path (or any approved replacement)—

(a) will be available for use between the hours of 08:00-16:30 Monday to Friday; and

(b) will be available for use between daylight hours on Saturdays and Sundays.

(3) The temporary path (or any replacement temporary path approved by the relevant planning authority) must be constructed in accordance with the approved details and must, following its construction, be retained and maintained as approved and available for use in accordance with the approved statement to the satisfaction of the relevant planning authority.

(4) Any temporary path must be removed within a period of 6 months following the opening of Work No. 7 for public use.

Path at Marsh Lane, Easton in Gordano

20.—(1) Work No. 15 must not commence until written details of the levels and surfacing of the Work have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The Work must be carried out in accordance with the approved details.

(2) Following cessation of the construction haul road between Marsh Lane and the compounds located under the M5 Avonmouth Bridge and on Lodway Farm, Work No. 15 must be removed within 6 months to the satisfaction of the relevant planning authority in consultation with the relevant highway authority.

Temporary path at Avon Road, Pill

21.—(1) Work No. 20 must not commence until written details of the levels and surfacing of the Work have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The Work must be carried out in accordance with the approved details prior to commencement of Work No. 20A or 20B. Work No. 20 must thereafter be retained and available for use for the duration of the use of Work No. 20B as a construction compound.

(2) Following cessation of use of Work No. 20B, Work No. 20 must be removed within 6 months to the satisfaction of the relevant planning authority.

Restoration of land used temporarily for construction

22.—(1) Any land within the Order limits which is used temporarily for construction of the authorised development and not ultimately used for the purposes of the permanent works or approved landscaping, must be reinstated in accordance with such details the relevant planning authority in consultation with (if relevant) the relevant highway authority may approve, as soon as reasonably practicable and in any event within twelve months of completion of that part of the authorised development for which the land is used.

(2) Paragraph (1) does not apply to any mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works to which article 33(4)(d) (temporary use of land for carrying out the authorised development) applies and which have been placed on land which is used temporarily for the authorised development.

Watercourses

23.—(1) Work Nos. 1 and 1A must not commence until a scheme and programme (including timescale) for works proposed to any watercourse flowing under the authorised development has been submitted to and approved in writing by the relevant planning authority in consultation with, if relevant, the lead local flood authority, Environment Agency and IDB. The scheme submitted for approval must include details of the proposed clearance and repair works together with proposals for any temporary obstructions within the watercourse and any over pumping or other proposals for the maintenance of flow during the works.

(2) The works to a watercourse to which paragraph (1) applies must be carried out and the watercourse subsequently reinstated in accordance with the approved scheme and programme.

(3) Unless otherwise permitted under paragraph (1), throughout the period of construction, all watercourses must be maintained so that the flow of water is not impaired or the drainage on to and from adjoining land rendered less effective.

For the protection of bats

24.—(1) Work Nos. 1, 1A, 1B and 1C must not commence until written details of the proposed tree planting on the A369 Portbury Hundred classified road have been approved in writing by the relevant planning authority in consultation with the relevant highway authority and Natural England. The details submitted for approval must accord with the Portbury Hundred location of additional tree planting plans.

(2) The proposed tree planting on the A369 Portbury Hundred classified road must be carried out in accordance with the approved details to the reasonable satisfaction of the relevant planning authority in the first planting season after the details have been approved by the relevant planning authority unless the planting has already been carried out to the reasonable satisfaction of the relevant planning authority.

(3) The required planting must be maintained to the reasonable satisfaction of the relevant planning authority for five years following completion.

(4) No part of the authorised development must commence in the Avon Gorge Woodlands SAC until—

(a) five artificial bat roosts have been installed in the locations shown on sheets 14, 17, 18 and 19 of the environmental master plan; and

(b) a grille has been installed at the entrance to the cave known as Adit Cave 7 in the location shown on sheet 19 of the environmental master plan

to the satisfaction of the relevant planning authority.

Permanent fencing outside of Avon Gorge Woodlands SAC

25.—(1) Subject to paragraphs (2) and (3) and without affecting requirement 31(4), a stage of the works must not commence until written details of any permanent security fencing to be installed in connection with that stage, together with a timetable for its installation, have been submitted to and approved by the relevant planning authority.

(2) Where new fencing is to be provided that does not fall within a stage, and is outside of the Avon Gorge Woodlands SAC any permanent security fencing to be installed must be of a nature substantially in accordance with the details set out in the general arrangement plans and the fencing grades summary.

(3) Any new permanent security fencing must be installed in accordance with the approved details and thereafter retained unless alternative type fencing is required for railway operational safety reasons.

Permanent acoustic fencing

26.—(1) Work Nos. 1 and 1A must not commence until written details of the proposed permanent acoustic mitigation fences, to be located to the south of the proposed Portishead station and at the disused Portbury Station at the locations shown on the general arrangement plans have been submitted to and approved by the relevant planning authority.

(2) The dimensions of the acoustic mitigation fences must be—

(a) between 200 and 210 metres in length and 2 metres in height from track bed level for the fence to be located to the south of the proposed Portishead station; and

(b) between 35 and 55 metres in length and 2.4 metres in height from track bed level for the fence to be located at the former Portbury Station.

(3) The permanent acoustic fencing, or other means of enclosure, must be installed as approved prior to first commercial use of Work Nos. 1 and 1A and thereafter retained.

Portishead Station

27.—(1) Work No. 5 (Portishead Station) must not commence until written details of any permanent lighting to be installed in connection with that work, including measures to minimise light spillage, have been submitted to and approved by the relevant planning authority, the authority acknowledging the necessity for the lighting to comply with Railway Industry Standards.

(2) Work No. 5 must not commence until written details of any GSM-R mast to be located at Portishead Station have been submitted to and approved by the relevant planning authority. The GSM-R mast must not exceed 12 metres in height from the proposed track bed level of Work No. 1 at Portishead Station.

(3) Work No. 5 must not commence until written details of proposals for the inclusion of on-site energy generation to be incorporated within the detail design for Portishead Station have been submitted to and approved by the relevant planning authority.

(4) Work No. 5 must not commence until a Flood Risk Assessment (FRA) for this work has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency. If the FRA concludes that Work No. 5 is at risk of flooding then the FRA must include details of the mitigation, such as a flood emergency and evacuation plan, that would be required for the station and users to remain safe should a flood event occur.

(5) Work No. 5 must be carried out in accordance with the approved details.

(6) First commercial use must not occur prior to the approval of a station travel plan for Portishead Station by the relevant planning authority. The content of the station travel plan must substantially reflect the outline station travel plan for Portishead station submitted as part of the Environmental Statement, as Volume 4, Technical Appendices, Appendix 16.1 Transport Assessment (Part 17 of 18) – Appendix M, Outline Station Travel Plans.

Pill Station

28.—(1) Work No. 22 (Pill Station) must not commence until written details of any permanent lighting to be installed in connection with that Work, including measures to minimise light spillage, have been submitted to and approved by the relevant planning authority in consultation with Natural England, both acknowledging the necessity for the lighting to comply with Railway Industry Standards.

(2) The submitted details must demonstrate to the reasonable satisfaction of the relevant planning authority that the lighting levels on the northern platform of the former Pill Station will not be above 0.5 lux as a result of the permanent lighting proposed or the provision of lighting screens to restrict light spill on to the northern platform.

(3) Work No. 22 must not commence until written details of works to minimise light spill into the arches of the former stepped access to the northern platform of the former Pill Station have been submitted to and approved by the relevant planning authority in consultation with Natural England.

(4) The approved works must be installed in accordance with the approved details prior to first commercial use and thereafter maintained to the reasonable satisfaction of the relevant planning authority for ten years.

(5) First commercial use must not occur prior to the approval of a station travel plan for Pill Station by the relevant planning authority. The content of the station travel plan must substantially reflect the outline station travel plan for Pill station submitted as part of the Environmental Statement, as Volume 4, Technical Appendices, Appendix 16.1 Transport Assessment (Part 17 of 18) – Appendix M, Outline Station Travel Plans.

Operational lighting – highways, bridges, paths and car parks

29.—(1) Any part of the authorised development which includes—

(a) new highway lighting;

(b) new permissive paths or public rights of way including new lighting;

(c) lighting of Work No. 7; or

(d) new car parks at Portishead or Pill including new lighting

must not commence until written details of any permanent lighting to be installed in connection with the relevant work, including measures to prevent light spillage, have been submitted to and approved in writing by the relevant planning authority.

(2) Any approved means of lighting must be installed in accordance with the approved details.

Works affecting M5 Junction 19

30.—(1) Works Nos. 1- 24A must not commence until the undertaker has created a Traffic Management Working Group (J19 TMWG) to consider the impacts of the authorised development on Junction 19 of the M5 special road which must be organised by the undertaker and to which Highways England, Bristol Port Company, Network Rail and the relevant highway authority will be invited to participate. Unless agreed otherwise by the parties J19 TMWG will meet on a monthly basis for the duration of the construction period.

(2) Works Nos. 1- 24A must not commence until the local planning authority has approved in writing a construction traffic management plan having first consulted with Highways England in respect of those works as they affect Junction 19 of the M5 ("J19 CTMP") and detailing—

(a) construction traffic routes (including HGV routes, construction traffic profile (for the duration of construction period disaggregated by daily movements, vehicle type (including abnormal loads) and construction activity) and operational hours;

(b) the construction compounds to which the J19 CTMP will apply ("the J19 compounds");

(c) the management of junctions to and crossings of the public highway and other public rights of way;

(d) the scheduling and timing of abnormal load movements;

(e) temporary warning signs;

(f) a scheme to encourage the use of public transport amongst contractors;

(g) a monitoring strategy to include the provision of a monitoring report to be submitted to the J19 TMWG a minimum of one week in advance of the J19TMWG monthly meeting

(h) a change process (in the event that any changes to the J19 CTMP are proposed during the construction phase) and a process to implement corrective measures if required; and

(i) a construction worker travel plan, including car parking arrangements for staff and contractors.

(3) All morning shift construction staff arriving by private car at the J19 compounds will be told in advance not to arrive between the hours of 7.30am and 9am (Monday to Friday) ("the restricted hours").

(4) Except in exceptional circumstances morning shift construction staff arriving by private car at the J19 compounds must not arrive within the restricted hours.

(5) The undertaker must record and report to Highways England in the CTMP monitoring and reporting strategy the numbers of morning shift staff arriving by private car at the J19 compounds within the restricted hours together with the exceptional circumstances for such arrival;

(6) The numbers of staff arriving by private car within the restricted hours at the J19 compounds in the absence of any exceptional circumstances must be reported to Highways England in accordance with (5) above together with the proposed steps to be taken by the undertaker to avoid any further such arrivals within the restricted hours.

Clanage Road, Bristol

31.—(1) Works 26, 26A and 26B must not commence until a flood plan which details—

(a) the emergency and evacuation procedures for use of the temporary and permanent compound;

(b) the location, height above ground level and the duration on site of the welfare facility on the temporary compound; and

(c) the means to remove materials stored at the temporary and permanent compound in the event of flooding;

have been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency and the lead local flood authority. The approved flood plan must thereafter be complied with to the satisfaction of the relevant planning authority.

(2) The landscaping and planting forming part of Work No. 26 must be carried out in accordance with the relevant design drawing prior to first use of Work No. 26 as a permanent maintenance compound. Any tree or shrub planted as part of the landscaping that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives written consent to any variation.

(3) The regrading of the levels forming part of Work No. 26 must be carried out, in accordance with the Clanage Road, compound, landscaping and access plan prior to first use of Work No. 26 as a permanent maintenance compound. The levels must thereafter be maintained.

(4) Prior to the first use of Work No. 26 as a permanent maintenance compound details of the permanent paladin type fencing including colour height and location must be submitted to and approved by the relevant planning authority and once installed must be permanently maintained.

New bridleway east of M5 Avonmouth Bridge

32.—(1) Work No. 18 must not commence until the siting, design, landscaping and method of construction of the proposed bridleway have been submitted to and approved by the relevant planning authority. The submitted details must adhere to the principles shown on the Bridleway Extension under the Elevated M5 Plan.

(2) Work No. 18 must thereafter be carried out in accordance with the approved details.

Cattle Creep Bridge, Easton in Gordano

33.—(1) Work No. 1B must not commence before the undertaker has provided to the relevant planning authority and the Environment Agency a topographic survey setting out the existing ground levels at Cattle Creep bridge, Easton in Gordano.

(2) Works to Cattle Creep Bridge must be carried out and retained thereafter in accordance with the principles set out in the Cattle Creep Proposed General Arrangement drawing and in particular the arch of the Cattle Creep Underbridge must not be altered and the ground level beneath the Cattle Creep Underbridge must not be raised without the prior consent in writing of the relevant planning authority following consultation with the Environment Agency and (if relevant) the lead local flood authority.

Trinity Primary School Bridge

34.—(1) Work No 7 must not commence until details of any permanent lighting to be installed in connection with that work, including measures to minimise light spillage, have been submitted to and approved by the relevant planning authority.

(2) Work No 7 must not commence until details of the location, design and colour of privacy screens, if required by the relevant planning authority, have been submitted to and approved by the relevant planning authority.

(3) Work No7 must be carried out in accordance with the approved details and thereafter the required details must be permanently retained.

Perimeter Track between Marsh Lane and the compounds under the M5 Avonmouth Bridge and on Lodway Farm

35.—(1) Work Nos 16A and 17 must not commence until a pre-commencement survey of the perimeter track between Marsh Lane and Work Nos 16A and 17 (The Marsh Lane Track) has been undertaken and submitted to and approved by the relevant planning authority. The pre-commencement survey must include but not be limited to:

(a) details of the current surfacing material;

(b) details of the sub-structure; and

(c) an assessment of whether the Marsh Lane Track as currently constructed would be able to take the volume of construction traffic for the authorised development that will need to access these works.

(2) Based on the results of the pre-commencement survey a strategy (the Marsh Lane Track Strategy) must be submitted to and approved by the relevant planning authority. The Marsh Lane Track Strategy must include but not be limited to:

(a) details of what, if any, measures are required to minimise damage to the perimeter track by construction vehicles using the Marsh Lane Track to access Work Nos 16A and 17;

(b) a timescale for the implementation of any necessary measures;

(c) a strategy for on-going maintenance and management of the Marsh Lane Track during construction of the authorised development;

(d) a strategy for using the Marsh Lane Track in conjunction with the owner of the Marsh Lane Track and other parties permitted to use it by the owner; and

(e) details of management measures to minimise dust generation from construction traffic for the authorised development.

(3) Work Nos 16A and 17 must be carried out in accordance with the Marsh Lane Track Strategy.

(4) Within six months of the cessation of the use of Marsh Lane Track for construction traffic for the authorised development a post-construction survey must be submitted to the relevant planning authority for approval. The post-construction survey must include but is not limited to:

(a) details of the state of the Marsh Lane Track post construction;

(b) details of what measures/repairs, if any, are required to ensure that the Marsh Lane Track is returned in the same or similar state to pre-commencement; and

(c) a timetable for the implementation of any measures/repairs that would be required.

(5) Any measures/repairs (including, without limitation, any physical works required as a result of the pre-commencement strategy or the post-construction survey) must thereafter be carried out

as approved by the relevant planning authority unless the permission of the street authority (as street authority and as owner) for the relevant measures/repairs to the Marsh Lane Track is not forthcoming.

Pill Tunnel Eastern Portal Compound Access, Ham Green

36. Work No 24 must not commence until written details of the levels and surfacing of the Work have been submitted to and approved by the relevant planning authority. Work No 24 must thereafter be carried out and retained in accordance with the approved details.

Requirement for written approval

37. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

38.—(1) With respect to any requirement which requires the authorised development or any part of it to be carried out in accordance with the details, plans or schemes approved under this Schedule, the approved details, plans or schemes are taken to include any amendments that may subsequently be approved in writing by the relevant planning authority in consultation with any other consultee specified in the requirement in question, or approved in writing by the relevant planning authority or another approval authority.

(2) Any amendments to or variations from the approved detail, plans or schemes must be unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Anticipatory steps towards compliance with any requirement

39. If before this Order came into force the undertaker or any other person took 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.

PART 2

Procedure for discharge of requirements

Applications made under requirements

40.—(1) Where a valid application has been made to the relevant planning authority for any consent, agreement or approval required or contemplated by a requirement (including agreement or approval in respect of part of a requirement) included in this Order, the relevant planning authority 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 relevant planning authority acknowledge the application;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 41 (further information);

or such longer period as may be agreed between the undertaker and the relevant planning authority.

(2) Subject to sub-paragraphs (3) and (4), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority 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 relevant planning authority for any consent, agreement or approval required by a requirement included in this Order;

(b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and

(c) the application is accompanied by a report that considers it likely that the subject matter of the application is to give rise to any materially new or materially worse environmental effects in comparison with the authorised development as approved,

then the application is taken to have been refused by the relevant planning authority at the end of that period.

(4) Sub-paragraph (2) will only apply to an application made under requirements if—

(a) at least 6 weeks have elapsed since the application was received by the relevant planning authority,

(b) the undertaker has served on the relevant planning authority written notice that sub-paragraph (2) will apply from a date specified in the notice (such date not being less than 8 weeks from the date the application was received by the relevant planning authority), and

(c) by the date specified in the notice (or such later date as the relevant planning authority may agree with the undertaker) the relevant planning authority has not determined the relevant application.

Further information

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

(2) In the event that the relevant planning authority considers such further information to be necessary, the relevant planning authority must, within 20 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant planning authority does not give such notification within this 20 day period the relevant planning authority is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 40 (applications made under requirements) and in this paragraph.

Appeals

42.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required or contemplated by any of the provisions of this Order or grants it subject to conditions;

(b) the relevant planning authority does not give notice of its decision to the undertaker within the decision period specified in sub-paragraph 40(1) (applications made under requirements);

(c) on receipt of a request for further information under paragraph 41 (further information) the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(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 determination, or (where no determination has been made) expiry of the decision period as determined under paragraph (1);

(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 relevant planning authority and the requirement consultees;

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal ("the appointed person")(**a**) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person's attention should be sent;

(d) the relevant planning authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations 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 shall make any counter-submissions to the appointed person within 20 business days of receipt of written representations under paragraph (d).

(3) The appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(4) The appointment of the appointed person may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(5) If the appointed person considers that further information is necessary to enable consideration of 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.

(6) Any further information required under sub-paragraph (5) is to 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. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.

(7) 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 relevant planning 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.

(8) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person under this paragraph.

(9) The appointed person may proceed to a decision even though no written representations have been made within the prescribed 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.

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

(11) If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the Order or for the purpose of this Schedule as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing

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(**a**) Appointed by the Planning Inspectorate on behalf of the Secretary of State

but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person are to be met by the undertaker(**a**).

(13) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. 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 Planning Practice Guidance published by the Department for Communities and Local Government on 6th March 2014 or any circular or guidance which may from time to time replace it.

Interpretation of Part 2 of Schedule 2

43. In this part of this Schedule—

"the appeal parties" means the discharging authority, the undertaker and any requirement consultees;

"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(**b**);

"requirement consultee" means any body named in a requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that requirement.

SCHEDULE 3

Article 13

Streets subject to street works

(1) *Area*	*(2)* *Street subject to street works*
In the District of North Somerset	Harbour Road, Portishead
In the District of North Somerset	Haven View, Portishead
In the District of North Somerset	Phoenix Way, Portishead
In the District of North Somerset	Quays Avenue, Portishead
In the District of North Somerset	Tansy Lane, Portishead
In the District of North Somerset	Galingale Way, Portishead
In the District of North Somerset	Conference Avenue, Portishead
In the District of North Somerset	Sheepway, Portbury
In the District of North Somerset	Station Road, Portbury
In the District of North Somerset	The Portbury Hundred, Portbury
In the District of North Somerset	Royal Portbury Dock Road, Portbury
In the District of North Somerset	Marsh Lane, Easton in Gordano
In the District of North Somerset	Access road to the M5 Avonmouth Bridge east of Marsh Lane, Easton in Gordano
In the District of North Somerset	Severn Road, Pill
In the District of North Somerset	Access road to the M5 Avonmouth Bridge, west of Avon Road, Pill
In the District of North Somerset	Avon Road, Pill

(**a**) The costs of the appointed person are calculated based on the applicable day rate for a Single Inspector as if he or she were appointed under section 78 and section 79 of the 2008 Act. See the National Infrastructure Planning website for more information: https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/

(**b**) 1971 c. 80.

In the District of North Somerset	Monmouth Court, Pill
In the District of North Somerset	Monmouth Road, Pill
In the District of North Somerset	Newport Road, Pill
In the District of North Somerset	Crusty Lane, Pill
In the District of North Somerset	Back Lane, Pill
In the District of North Somerset	Station Road, Pill
In the District of North Somerset	Chapel Row, Pill
In the District of North Somerset	Myrtle Hill, Pill
In the District of North Somerset	Sambourne Lane, Pill
In the District of North Somerset	Heywood Road, Pill
In the District of North Somerset	Lodway, Pill
In the District of North Somerset	Underbanks, Pill
In the District of North Somerset	Watchhouse Road, Pill
In the District of North Somerset	Macrae Road, Pill
In the District of North Somerset	Fitzharding Road, Pill
In the District of North Somerset	Ham Green, Pill
In the District of North Somerset	The Green, Ham Green, Pill
In the District of North Somerset	Hart Close, Ham Green, Pill
In the District of North Somerset	Chapel Pill Lane, Ham Green, Pill
In the City and County of Bristol	Clanage Road, Bower Ashton
In the City and County of Bristol	Ashton Road, Ashton
In the City and County of Bristol	Ashton Gate Underpass, Ashton
In the City and County of Bristol	Winterstoke Road, Ashton
In the City and County of Bristol	Marsh Road, Ashton
In the City and County of Bristol	Ashton Vale Road, Ashton

SCHEDULE 4

Article 14

Streets to be stopped up

PART 1

Street for which a substitute is to be provided

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New Highway to be substituted*
District of North Somerset	Quays Avenue, Portishead	160 metres of Quays Avenue shown by vertical zebra stripes the points marked A-A and B-B on sheet 1 of the permanent and temporary stopping up and diversion plan	127 metres of new all-purpose highway shown by stipple hatch between the points marked C-C and D-D on sheet 1 of the permanent and temporary stopping up and diversion plan (Work No. 2)

PART 2

Streets for which no substitute is to be provided

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*
In the District of North Somerset, Portishead	All rights to use the former Moor Lane crossing south of Trinity Primary School Portishead	Between the points marked S7 and S8 on sheet 1of the permanent and temporary stopping up and diversion plan
In the District of North Somerset, Portbury	All rights to use crossing forming part of the Drove, north of the highway known as Portbury Hundred	Between the points marked S17 and S18 on sheet 4 of the permanent and temporary stopping up and diversion plan

SCHEDULE 5

Article 15

Streets to be stopped up temporarily

PART 1

Street to be stopped up temporarily for which a substitute is to be provided

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*	*(4)* *Replacement to be provided*
In the District of North Somerset, Pill	Unnamed street from Avon Road, Pill to the Avonmouth Bridge of the M5 Special Road	Between the points marked TS4 and TS5 on sheet 6 of the permanent and temporary stopping up and diversion plan	Temporary route for non-motorised users and motorised vehicles of less than 50 cc engine capacity between the points marked TS4 and TS4A shown on sheet 6 of the permanent and temporary stopping up and diversion plan

PART 2

Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension

(1) *Area*	*(2)* *Bridleways and footpaths to be temporarily suspended*	*(3)* *Extent of temporary suspension*
In the District of North Somerset, Easton in Gordano	Public bridleway LA8/67/10 from its junction with Marsh Lane to its termination point under the Avonmouth Bridge of the M5 Special Road	Between the points marked TS1 and TS2 on sheet 5 of the permanent and temporary stopping up and diversion plan

In the District of North Somerset, Easton in Gordano	Public footpath LA8/68/10 from its junction with public bridleway LA8/67/10 to its junction with public footpaths LA8/6/5 and LA8/6/10 under the Avonmouth Bridge of the M5 Special Road	Between the points marked TS2 and TS3 on sheet 5 of the permanent and temporary stopping up and diversion plan
In the District of North Somerset, Pill	Public footpath LA8/5/40 between Lodway Close and Avon Road, Pill	Between the points marked TS6 and TS7 on sheet 6 of the permanent and temporary stopping up and diversion plan
In the District of North Somerset, Pill	Public footpath LA8/4/10 between Avon Road and Severn Road, Pill	Between the points marked TS7 and TS8 on sheet 6 of the permanent and temporary stopping up and diversion plan

SCHEDULE 6

Article 16

Bridleways, cycle tracks and footpaths

PART 1

Footpath to be diverted

(1) *Area*	*(2)* *Footpath to be stopped up*	*(3)* *Extent of Stopping up*	*(4)* *New Footpath to be substituted*
City and County of Bristol, Ashton	Part of footpath BCC/422/10 known as Barons Close Level Crossing or Ashton Containers Crossing, Ashton, Bristol	Between the points marked S31 and S32 on sheet 16 of the permanent and temporary stopping up and diversion plan	507.50 metres of footpath BCC/422/10 shown on sheet 16 of the permanent and temporary stopping up and diversion plan

PART 2

New public rights of way to be created

(1)	*(2)*
Cycle track	Between points CT1 and CT2 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT2 and CT3 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT4 and CT5 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT5 and CT6 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT6 and CT8 shown on Sheet 1 of the new highways plan
Bridleway	Between points B1 and B2 shown on Sheet 5 of the new highways plan

SCHEDULE 7

Article 17

Access to works

(1) *Area*	*(2)* *Description of access*
In the District of North Somerset	Access from Harbour Road, Portishead shown as AW1.1 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Quays Avenue, Portishead shown as AW1.2 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Phoenix Way, Portishead shown as AW1.3 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Quays Avenue, Portishead shown as AW1.4 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway to field to the north of the highway, south of the disused Portishead branch line, shown as AW2.1 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway north of the disused Portishead branch line, shown as AW2.2 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway to field to the south of the highway, south of the disused Portishead branch line, shown as AW2.3 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Portbury Hundred, west of Station Road Portbury, shown as AW3.1 on sheet 3 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway, Portbury, shown as AW3.2 on sheet 3 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Station Road, Portbury, shown as AW3.3 on sheet 3 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Portbury Hundred, east of Station Road, Portbury, shown as AW4.1 on sheet 4 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch Line railway, shown as AW5.1 on sheet 5 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as the Breaches, Easton in Gordano, shown as AW5.2

	on sheet 5 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch Line railway, shown as AW5.3 on sheet 5 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Avon Road, Pill shown as AW6.1 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Monmouth Road, Pill shown as AW6.2 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Underbanks, Pill AW6.3 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Station Road, Pill AW6.4 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Lodway, Pill AW6.5 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Chapel Pill Lane to new maintenance compound (and temporary construction compound), Ham Green, Pill, shown as AW8.1 on sheet 8 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Chapel Pill Lane to the unadopted part of Chapel Pill Lane, Ham Green, Pill, shown as AW8.2 on sheet 8 of the access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW10.1 on sheet 10 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access on foot from the River Avon Tow Path, shown as AW11.1 on sheet 11 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the A369 classified road known as Abbots Leigh Road, shown as AW11C.1 on sheet 11C of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW12.1 on sheet 12 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW12.2 on sheet 12 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access on foot only from the River Avon Tow Path, shown as AW13.1 on sheet 13 of the

	compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Rownham Hill, shown as AW14.1 on sheet 14 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Clanage Road, Bower Ashton, shown as AW15.1 on sheet 15 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Clanage Road, Bower Ashton, shown as AW15.2 on sheet 15 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Winterstoke Road, Ashton, shown as AW16.1 on sheet 16 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as South Liberty Lane, Ashton, shown as AW17.1 on sheet 17 the compounds, haul roads and access to works plan

SCHEDULE 8

Article 20

Closure of crossings

PART 1

Crossings: works required

(1) *Area*	*(2)* *Crossing to be discontinued*	*(3)* *Street or way to be stopped up*	*(4)* *Replacement*
District of North Somerset, Portishead	Quays Avenue, Portishead	Crossing known as Quays Avenue Portishead between the points marked S1 and S2 on sheet 1 of the crossings to be extinguished plans	Work No. 2
District of North Somerset, Portishead	Pedestrian and cycle crossing between Galingale Way and Tansy Lane, Portishead at 129 miles, 16 chains	Crossing, between the points marked S5 and S6 on sheet 1 of the crossings to be extinguished plan	Work No. 7

PART 2

Crossings: temporary suspension

(1)	*(2)*	*(3)*	*(4)*

Area	*Crossing to be discontinued*	*Street or way to be temporarily stopped up*	*Temporary Replacement*
District of North Somerset, Portishead	Pedestrian and cycle crossing between Galingale Way and Tansy Lane, Portishead at 129 miles, 16 chains	Crossing, between the points marked S5 and S6 on sheet 1 of the crossings to be extinguished plans	Pedestrian and cycle crossing on any reasonably direct route previously agreed by the relevant highway authority between the points marked T1 and T2 on sheet 1 of the crossings to be extinguished plan

PART 3

Crossings: No works required

(1) *Area*	*(2)* *Level Crossing to be stopped up*	*(3)* *Extent of stopping up*
In the District of North Somerset, Portishead	The former Moor Lane crossing south of Trinity Primary School Portishead	Between the points marked S7 and S8 on sheet 1 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	The crossing forming part of The Drove, north of the highway known as Portbury Hundred	Between the points marked S17 and S18 on sheet 4 of the crossings to be extinguished plans

SCHEDULE 9

Article 21

Accommodation and occupation crossings

PART 1

Crossings extinguished: works required

(1) *Area*	*(2)* *Accommodation facility to be discontinued*	*(3)* *Rights to be extinguished*	*(4)* *Works to be provided*
In the District of North Somerset, Portbury	Crossing at 128 miles 46 chains at Shipway Gate Farm	All rights (if any) to use the crossing at Shipway Gate Farm between points S9 and S10 shown on sheet 2 of the crossings to be extinguished plans	New gate and works on the highway known as Sheepway marked N1 on sheet 2 of the crossings to be extinguished plan

In the District of North Somerset, Portbury	Crossing at 128 miles 39 chains at Shipway Gate Farm	All rights (if any) to use the crossing at Shipway Gate Farm between the points S11 and S12 shown on sheet 2 of the crossings to be extinguished plans	New gate and works on the highway known as Sheepway marked N1 on sheet 2 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 128 miles 17 chains at Elm Tree Farm, Portbury	All rights (if any) to use the crossing to the South of Sheepway and to the west of Elm Tree Farm between the points S13 and S14 shown on sheet 3 of the crossings to be extinguished plans	New gate and works on the highway known as Portbury Hundred marked N2 on sheet 3 of the crossings to be extinguished plans

PART 2

Crossings for which no substitute is to be provided

(1) *Area*	*(2)* *Crossing to be discontinued*	*(3)* *Right to be extinguished*
In the District of North Somerset, Portishead	Crossing at 129 miles 22 chains, south of the Wessex Water pumping station, east of Quays Avenue Portishead	All rights (if any) to use the crossing between the points marked S3 and S4 on sheet 1 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 71 chains north of the A369 Portbury Hundred classified road	All rights (if any) to use the crossing between the points marked S15 and S16 on sheet 3 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 41 chains north of the A369 Portbury Hundred classified road known as Portbury No.3 crossing	All rights (if any) to use the crossing between the points marked S19 and S20 on sheet 4 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 12 chains north of Court House Farm, Portbury	All rights (if any) to use the crossing between the points marked S21 and S22 on sheets 4 and 5 of the crossings to be extinguished plans
In the District of North Somerset, Easton in Gordano	Crossing at 126 miles 74 chains known as Manor Farm No.2 crossing, east of Marsh Lane, Easton in Gordano	All rights (if any) to use the crossing between the points marked S25 and S26 on sheet 5 the crossings to be extinguished plans
In the District of North Somerset, Easton in Gordano	Crossing at 126 miles 74 chains known as Manor Farm No.1 crossing, east of Marsh Lane, Easton in Gordano	All rights (if any) to use the crossing between the points marked S27 and 28 on sheet 5 the crossings to be extinguished plans

In the District of North Somerset, Pill	Crossing at 126 miles 56 chains, south east of M5 Avonmouth Bridge, Easton in Gordano	All rights (if any) to use the crossing between the points marked S29 and S30 on sheet 5 of the crossings to be extinguished plans

SCHEDULE 10

Article 27

Land in which only new rights, etc., may be acquired

(1) *Number of land shown on the land plan*	*(2)* *Purpose for which rights may be acquired*
01/97	To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, repair, cleanse, retain, renew, replace and remove a drainage pipe for the purpose of draining water from the adjoining highway.
01/215, 01/225	To access (with or without vehicles plant and machinery) and to install, maintain, use, retain, repair, inspect, cleanse, renew, replace and remove a drainage pipe for the purpose of draining water from adjoining land.
01/230, 01/231, 01/232	To access (with or without vehicles plant and machinery) and to install, maintain, use, repair, inspect, renew, replace and remove cables and other conduits for the purposes of the supply and distribution of electricity through the cables to adjoining land.
01/252, 01/255, 01/260, 01/270	To access, pass and repass and remain upon the land (with or without vehicles plant and machinery) for all purposes in connection with access to adjoining land.
02/19	To access and remain upon the land (with or without vehicles, plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
02/117	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
02/121	To access, pass and repass and remain upon the land (with or without vehicles plant and machinery) for all purposes in connection with access to adjoining land.
03/31	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.

03/69, 03/77, 03/78	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
05/75, 05/85, 05/86	To access, pass and repass and remain upon the land with or without vehicles, plant and machinery and for all purposes in connection with inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing, (a) an accommodation bridge and associated walls, embankments and structures; and (b) a culvert, watercourse and head wall.
05/100, 05/103, 05/105, 05/112	To access, pass and repass and remain upon the land with or without vehicles, plant and machinery (including road and rail vehicles) to access the national railway network and for all purposes in connection with access to neighbouring land.
05/104, 05/165, 05/171	(i) To access, pass and repass and remain upon the land with or without vehicles, plant and machinery; (ii) To install, lay, maintain, use, transmit, retain, renew, repair, replace, inspect and remove railway signalling and communications apparatus; and (iii) To pass and repass with or without vehicles, plant and machinery (including rail vehicles) to access the national railway network.
05/107, 05/108	To access, pass and repass and remain upon the land with or without vehicles, plant and machinery (including road and rail vehicles) and to access the national railway network, together with the right to use the land for the purpose of transferring road and rail maintenance vehicles onto the railway and removing road and rail maintenance vehicles from the railway.
06/25, 06/55	(i) To access, pass and repass and remain upon the land with or without vehicles, plant and machinery; (ii) To alter or remove existing railway and to install, lay, retain, renew, repair, inspect and replace railway track and apparatus; (iii) To install , lay, inspect, maintain, use, transmit, retain, renew, repair, replace and remove railway signalling and communications apparatus; and

	(iv) To pass and repass with or without vehicles, plant and machinery (including rail vehicles) to access the national railway network.
06/160, 06/280, 06/285, 06/290, 06/295, 06/300, 06/305, 06/310, 06/315 06/320, 06/325, 06/330, 06/335, 06/340, 06/345, 06/350, 06/355, 06/360, 06/365, 06/370, 06/375, 06/380, 06/385, 06/390, 06/395, 06/400, 06/405, 06/410, 06/415, 06/420, 06/425, 06/430, 06/435, 06/440, 06/445, 06/450, 06/455, 06/460, 06/465, 06/470, 06/475, 06/480, 06/485, 06/490, 06/495, 06/500, 06/510, 06/520	(i) To insert, inspect, maintain, adjust, repair, remove, retain and renew soil nails at a depth at least 1 metre below the current surface of the land together with access for all necessary workmen, vehicles, machinery and other apparatus at any time in, through and under the land for those purposes; (ii) To enter, with any necessary workmen, contractors or other authorised persons and bring necessary plant, equipment, materials and vehicles onto the land and to remain thereon for so long as is reasonably required for the purposes of— (a) carrying out site soil and environmental surveys and environmental mitigation measures and geotechnical ecological archaeological and site investigations; and (b) making trial holes in such positions to investigate the nature of the surface layer and subsoil and taking soil samples. (iii) To undertake works to upgrade, stabilise, repair, improve, install or replace fences; and (iv) A restrictive covenant not to do anything or allow anything to be done on the land which may cause damage to the soil nails or other subsoil works or affect their proper and efficient operation.
06/566	To install, lay, maintain, use, operate, retain, renew, repair, replace, inspect and remove electrical apparatus and to distribute electricity through the installed cables..
06/634, 06/644	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining renewing, replacing and removing railway and the abutment and arches of a viaduct on adjoining land.
06/640	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining, renewing, replacing and removing the abutment and arches of a viaduct on adjoining land.
06/641, 06/642, 06/643	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining renewing, replacing and removing

	a railway and the abutment and arches of a viaduct on adjoining land.
06/646	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining, renewing, replacing and removing a railway and the abutment and arches of a viaduct on adjoining land.
07/71, 07/73, 07/77, 07/78, 07/130	To access, pass and repass with or without vehicles (such vehicles being limited to no more than 3.5 tonnes laden in weight) to access the adjoining railway.
08/12, 08/13	To access, pass and repass and remain upon the land with or without vehicles to access adjoining land.
08/45	To access, pass and repass and remain upon the land with or without vehicles to access adjoining land.
09/12, 09/13, 09/14	To access, remain upon, pass and repass and access adjoining land for the inspection, construction, operation, use and maintenance of the authorised development.

SCHEDULE 11

Article 27

Modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictions

Compensation enactments

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

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

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

"(5A) If—

(a) the acquiring authority enters on land for the purpose 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 11 to Portishead Branch Line (MetroWest Phase 1) Order 202X(a) ("the 202X 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 11 to the 202X 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 where it entered on that land for the purpose of exercising that right."

(**a**) 1961 c. 33. Section 5A(5A) was inserted by paragraph 4(2) of Schedule 17(2) to the Housing and Planning Act 2016 (c. 22).

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 Part 1 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 25 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27(1) (compulsory acquisition of rights or imposition of covenants)—

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

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

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

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

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

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

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the 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 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 (powers of entry) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 19 (construction and maintenance of new or altered streets)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right

(**a**) 1973 c. 26.

or enforcing that restriction; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date)(**a**), 12 (penalty for unauthorised entry)(**b**) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) (modification of Part 1 of the 1965 Act) 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 to the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve 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 have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Portishead Branch Line (MetroWest Phase 1) Order 202X in respect of the land to which the notice to treat relates.

(2) But see article 31 (acquisition of subsoil or airspace only) of the Portishead Branch Line (MetroWest Phase 1) Order 202X 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 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.

(**a**) 1965 c. 56. Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c. 22).
(**b**) 1965 c. 56. Section 12 was amended by paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).
(**c**) 1965 c. 56. Section 20 was amended by paragraph 4 of Schedule 15(1) to the Planning and Compensation Act 1991 (c. 34) and paragraph 70 of Schedule 1 to S.I. 2009/1307.

6. The 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 authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve 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 use to be made of the right or covenant proposed to be acquired or imposed, and

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

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

13. If the Upper Tribunal determines that the 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 authority ought to be required to take some or all of the house, building or factory, the 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 they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

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

SCHEDULE 12

Article 33

Land of which temporary possession may be taken

(1) *Location*	*(2)* *Number of land shown on land plan*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*

In the District of North Somerset, Portishead	01/70, 01/75, 01/76, 01/77	Working space and access for construction	Work No. 2
In the District of North Somerset, Portishead	01/91	Working space and access for construction	Work No. 2A
In the District of North Somerset, Portishead	01/111, 01/112	Access, working space, materials storage, compound and lay down area for construction	Work Nos. 1, 7, 7A, 7C, 7D and 7E
In the District of North Somerset, Portishead	01/210	Access, working space for construction and ecological mitigation	Work Nos. 1, 7 and 7B
In the District of North Somerset, Portishead	01/211, 01/212, 01/216	Access, working space for construction and ecological mitigation	Work Nos. 1, 7 and 7B
In the District of North Somerset, Portishead	01/220, 01/221	Access, working space and materials storage, compound, lay down area for construction and diversionary route for path	Work Nos. 1, 7, 7C, 7D and 7E
In the District of North Somerset, Portishead	01/222	Access, working space for construction	Work Nos. 1, 5, 7, 7A and 7D
In the District of North Somerset, Portishead	01/226	Access, working space, and ecological mitigation for construction	Work Nos. 1, 5 and 7A
In the District of North Somerset, Portishead	01/240, 01/241, 01/250	Access, working space for construction and ecological mitigation	Work Nos. 1 and 7
In the District of North Somerset, Portishead	01/251, 01/265	Access, working space for construction and diversionary route for path	Work Nos. 1 and 7
In the District of North Somerset, Portishead	01/296, 01/297	Access, working space for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portishead	01/310	Access, haul road, materials storage and working space for construction	Work Nos. 1, 1A, 1B, 1C and 8
In the District of North Somerset, Portbury	02/05, 02/06, 02/07, 02/08, 02/10, 02/20 02/26, 02/27	Access and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/30	Access, working space for construction and ecological mitigation	Work Nos. 1 and 9

In the District of North Somerset, Portbury	02/31, 02/32	Access and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/35	Temporary construction compound and materials storage	Work Nos. 1, 9 and 10A
In the District of North Somerset, Portbury	02/36, 02/37	Temporary diversion of permissive cycle path	Work Nos .9 and 10A
In the District of North Somerset, Portbury	02/40, 02/41, 02/45, 02/46, 02/75, 02/76, 02/82	Access, construction haul road, material storage and ecological mitigation works	Work Nos. 1, 1A, 1B, 1C and 8
In the District of North Somerset, Portbury	02/60, 02/65, 02/120	Access, haul road, material storage and working space for construction	Work Nos. 1, 1A, 1B, 1C and 11A
In the District of North Somerset, Portbury	02/85, 02/122	Access, haul road, visibility splays and working space for construction	Work Nos. 1, 1A, 1B, 1C and 11A
In the District of North Somerset, Portbury	02/116	working space and access for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/118	working space and access for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/145	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22
In the District of North Somerset, Portbury	02a/10, 02a/15	Access, haul road visibility splays and working space	Work Nos. 8, 11 and 11A
In the District of North Somerset, Portbury	02b/05	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22
In the District of North Somerset, Portbury	03/10	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22
In the District of North Somerset, Portbury	03/21	Access, working space and environmental mitigation works	Work No. 1
In the District of North Somerset, Portbury	03/35, 03/36, 03/37, 03/38	Access and environmental mitigation works	Work No. 1

In the District of North Somerset, Portbury	03/47, 03/67, 03/68	Access, working space and environmental mitigation works	Work No. 1
In the District of North Somerset, Portbury	03/65	Working space and works to adjacent disused station platform	Work No. 1
In the District of North Somerset, Portbury	03/71, 03/76	Access, material storage, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	03/80	Access, working space and visibility splay	Work No. 1A
In the District of North Somerset, Portbury	04/06, 04/07, 04/08	Access, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	04/10, 04/13, 04/15	Access, material storage, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	04/20	Access, turning space, materials storage, working space and environmental mitigation	Work Nos. 1, 1A, 1B, 1C and 13
In the District of North Somerset, Portbury	04/25, 04/46	Access, visibility splays, working space and environmental mitigation	Work No. 13
In the District of North Somerset, Portbury	04/41	Access, visibility splays, working space and environmental mitigation	Work No. 13
In the District of North Somerset, Portbury	04/42	Access, working space, materials storage and environmental mitigation	Work Nos. 1, 1A, 1B, 1C and 13
In the District of North Somerset, Portbury	04/55	Working space and vegetation clearance	Work No.14
In the District of North Somerset, Easton in Gordano	04/90	Working space and vegetation clearance	Work Nos. 1A, 14A and 14B
In the District of North Somerset, Easton in Gordano	04/105	Working space and vegetation clearance	Work No. 1A
In the District of North Somerset, Easton in Gordano	05/10	Working space, access and vegetation clearance	Work Nos . 1A and 15

In the District of North Somerset, Easton in Gordano	05/17, 05/18	Access to works	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/25, 05/106	Access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/26, 05/28	Working space, access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/113	Working space, access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/150, 05/152	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 17, 17A, 18, 20A and 22
In the District of North Somerset, Easton in Gordano	05/170	Temporary construction compound, materials storage	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 18, 19, 20A and 22
In the District of North Somerset, Lodway	06/15	Working space, access and vegetation clearance	Work No. 1A
In the District of North Somerset, Lodway	06/30	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 17, 17A, 18, 20A and 22
In the District of North Somerset, Lodway	06/35,06/36, 06/40, 06/45, 06/50, 06/65	Working space and access to works	Work Nos. 1A, 1B, 1C, 17, 17A, 18 and 20A
In the District of North Somerset, Pill	06/60, 06/105	Working space , oversail for crane and access to works	Work Nos. 1B, 1C, 20, 20A and 20B
In the District of North Somerset, Pill	06/61, 06/62, 06/63	Temporary diversion of cycle path	Work Nos. 1B, 1C, 20, 20A and 20B
In the District of North Somerset, Pill	06/70, 06/75, 06/85, 06/90, 06/95, 06/100, 06/140, 06/145, 06/155	Working space and access to works	Work Nos. 1B, 1C, 20A and 20B
In the District of North Somerset, Pill	06/190	Access to works	Work Nos. 1B, 1C, 20A and 20B
In the District of North Somerset, Pill	06/532, 06/535	Working space and access to works	Work Nos. 22A and 22B
In the District of North Somerset, Pill	06/533	Temporary compound	Work Nos. 22A and 22B
In the District of North Somerset, Pill	06/550, 06/555, 06/556	Access to Works	Work Nos. 1B, 1C and 22
In the District of North Somerset, Pill	06/596, 06/597, 06/598	Access to Works, demolition and replacement of wall	Work Nos. 1B, 1C and 20A
In the District of North Somerset, Pill	06/632, 06/633, 06/636	Access to Works	Work Nos. 1B and 1C

In the District of North Somerset, Pill	06/647, 06/661, 06/666, 06/705, 06/710, 06/730	Working space and access to works	Work Nos. 1B and 1C
In the District of North Somerset, Pill	07/05, 07/10, 07/15, 07/20, 07/25, 07/30, 07/35, 07/36, 07/44, 07/46, 07/51, 07/52, 07/53, 07/55, 07/56, 07/58, 07/59, 07/60, 07/65, 07/70, 07/80, 07/85, 07/90, 07/100, 07/105, 07/110, 07/111, 07/112, 07/113, 07/114, 07/116, 07/117, 07/121	Working space access to works and embankment strengthening	Work Nos. 1B and 1C
In the District of North Somerset, Ham Green	08/11, 08/20, 08/26	Working space and access to works	Work Nos. 24 and 24A
In the District of North Somerset, Ham Green	08/21, 08/22, 08/23, 08/24	Access to works	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Pill	08/50, 08/60, 08/61	Access to works	Work Nos. 24 and 24A
In the District of North Somerset, Abbots Leigh	08/71	Access to works and materials storage	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/11	Access to works and materials storage	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/20	Access to works and materials storage	Storage of materials, installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/22, 09/23, 09/25	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/06	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway

In the City and County of Bristol, Abbots Leigh	10/11	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the City and County of Bristol, Abbots Leigh	10/25	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/30	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/35	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/06	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting, and rock picking for the protection of the adjacent Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works
In the District of North Somerset, Abbots Leigh	11/07	Access to works working space and environmental mitigation	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol, Abbots Leigh	11/10, 11/15	Access to works and working space	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation

In the City and County of Bristol, Abbots Leigh	11/20	Access to works and working space	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol, Abbots Leigh	11/25	Access to works and working space	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/41, 11/42	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent railway, installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation.
In the District of North Somerset, Abbots Leigh	11/61	Access to works	Vegetation clearance and rock picking for the protection of Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/65, 11/70, 11/75,	Access to works	Vegetation clearance and rock picking for the protection of Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/80	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent railway, installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11a/05	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of Parson Street to Royal Portbury Dock

			railway, ecological mitigation.
In the District of North Somerset, Abbots Leigh	11a/10, 11a/15	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11b/05, 11b/10, 11b/15, 11b/20, 11b/30, 11b/35	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11b/25	Access to works	Micro compound, access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11c/05, 11c/10, 11c/15	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	12/07 12/10, 12/20, 12/21, 12/30	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Work No. 25, vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the City and County of Bristol, Abbots Leigh	12/25	Access to works	Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access

			for minor works to railway.
In the District of North Somerset, Abbots Leigh	13/07, 13/31, 13/32	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the City and County of Bristol, Abbots Leigh	13/33, 13/36, 13/40	Access to works	Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the District of North Somerset, Abbots Leigh	13/55	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to existing railway
In the District of North Somerset, Abbots Leigh	14/05	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol	14/10, 14/25, 14/35	Access to works	Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway

In the City and County of Bristol	15/15	Temporary construction compound, materials storage and access to works	Work Nos. 26, 26A, installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway
In the City and County of Bristol	16/56, 16/57. 16/58, 16/61, 16/62, 16/63, 16/75, 16/80, 16/85	Access to works	Work No. 28
In the City and County of Bristol	17/05, 17/20	Temporary construction compound, materials storage and access to works	Work No. 29
In the City and County of Bristol	17/10, 17/15	Access to works	Work No. 29

SCHEDULE 13

Article 44

Hedgerows

PART 1

Hedgerows to be removed

(1) *Location of hedgerow*	*(2)* *Work to be carried out*	*(3)* *Relevant part of the authorised*
North of Sheepway and east of Fennel Way along the south side of the disused railway line shown marked H2/1 on sheet 2 of the hedgerow location plan.	Removal of part of a hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work no. 8
North side of Sheepway west of bridge over disused railway line shown marked H2/2 on sheet 2 of the hedgerow location plan.	Removal of part of a hedgerow to allow for the temporary construction haul road crossing over Sheepway. Hedgerow to be replanted on completion of works.	Work no. 8
South side of Sheepway west of bridge over disused railway line shown marked H2/3 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road east of Sheepway. Hedgerow to be replanted on completion of works.	Work no. 11A
South side of the disused railway line east of Shipway Gate Farm shown marked H2/4 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work no. 11A
South side of the disused railway line east of Shipway	Removal of end of the hedgerow to allow for the	Work no. 11A

Gate Farm shown marked H2/5 on sheet 2 of the hedgerow location plan.	temporary construction haul road. Hedgerow to be replanted on completion of works.	
South side of the disused railway line east of Shipway Gate Farm shown marked H2/6 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work no. 12A
South of the disused railway line and north of the Portbury Hundred, shown marked H3/1 on sheet 2 of the hedgerow location plan.	Removal of part of hedgerow for access within the construction compound. Hedgerow to be replanted on completion of works.	Work no. 12A
Lodway Farm on southern boundary of the disused railway line, shown marked H5/1 on sheets 5 and 6 of the hedgerow location plan.	Removal of part of hedgerow adjacent to the disused line. Hedgerow to be replanted on completion of works.	Works no. 1A and 17
Lodway Farm, shown marked H5/2 on sheets 5 and 6 of the hedgerow location plan.	Removal of part of hedgerow for access within the construction compound. Hedgerow to be replanted on completion of works.	Work no. 17
South side of Chapel Pill Lane, Ham Green, Pill, shown marked H8/1 on sheet 8 of the hedgerow location plan.	Removal of part of hedgerow for new access.	Work no. 24

PART 2

Important Hedgerow

(1) *Area*	*(2)* *Reference of hedgerow*
In the district of North Somerset, at Lodway, Pill	The important hedgerow marked 1 on the important hedgerow plan

SCHEDULE 14

Article 46

Traffic Regulation

In the district of North Somerset

(1) *Road*	*(2)* *Extent*	*(3)* *Measure*
Harbour Road, Portishead	Between the junction of Harbour Road with Harbour Road (leading to Harbour Road Trading Estate) and the junction of Harbour Road with re-aligned Quays Avenue, as shown coloured red on the	Prohibition of waiting at any time.

	permanent traffic regulation order plans (Portishead Station)	
Quays Avenue, Portishead	Between the junction of Quays Avenue with the realigned Harbour Road to the junction of Quays Avenue with Wyndham Way as shown coloured red on the permanent traffic regulation order plans (Portishead Station)	Prohibition of waiting at any time.
Phoenix Way, Portishead	Between the junction of Phoenix Way with the realigned Quays Avenue to a point 47 metres west of the junction of Phoenix Way with Marjoram Way as shown coloured red on the permanent traffic regulation order plans (Portishead Station)	Prohibition of waiting at any time (save for designated parking bays).
Portbury Hundred, Portbury	At a point 457 metres west of the junction of the A369 Portbury Hundred classified road and Station Road, Portbury, either on to or from the highway known as Portbury Hundred at the location shown on the permanent traffic regulation order plans (A369 Portbury Hundred)	Prohibition of right turn manoeuvres
Monmouth Road, Pill	From the junction of Monmouth Road with Crusty Lane to the junction of Monmouth Road with Station Road as shown coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
Station Road, Pill	From the junction of Station Road with Monmouth Road to the junction of Station Road with Heywood Road as shown in the locations coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
New Road, Chapel Row and Myrtle Hill, Pill	To the extent shown coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
Sambourne Lane, Pill	To the extent shown coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.

Macrae Road, The Sanctuary and Hart Close gyratory, Ham Green, Pill	At the junction of Macrae Road and Hart Close, as shown coloured red on the permanent traffic regulation order plans (Ham Green)	Prohibition of waiting at any time.
Junction of Ham Green and Macrae Road, Ham Green, Pill	At the junction of Ham Green and Macrae Road as shown coloured red on the permanent traffic regulation order plans (Ham Green)	Prohibition of waiting at any time.

SCHEDULE 15

Article 52

Amendment of Local Legislation

Byelaws

(1) *Title*	*(2)* *Byelaw to be disapplied*
North Somerset Levels Internal Drainage Board Land Drainage Byelaws 2004	Byelaw 3 (control of introduction of water and increases in flow or volume of water); Byelaw 7 (detrimental substances not to be put in watercourses); Byelaw 14 (vehicles not to be driven on banks); Byelaw 15 (banks not to be used for storage); Byelaw 17 (fences, excavations, pipes, etc.); Byelaw 24 (damage to property of the Board).

SCHEDULE 16

Article 53

Protective Provisions

PART 1

Protection for Network Rail Infrastructure Limited

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 (licences) of the Railways Act l993(**a**);

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the

(**a**) 1993 c. 43. Section 8 was amended by regulation 2(2) and Part 1 paragraph 1(d) of the Schedule to S.I. 2015/1682, sections 216 and 274 of and Schedule 17 to the Transport Act 2000 (c. 38), sections 1(1) and 59(6) of, and Schedule 1 and 13 to, the Railways Act 2005 (c. 14), section 16(5) of, and Schedule 2 to, the Railways and Transport Safety Act 2003 (c. 20).

purpose of this definition "associated company" means any company which is (within the meaning of section 1159 (meaning of "subsidiary" etc.) of the Companies Act 2006(**a**)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by articles 24 (compulsory acquisition of land) or 27 (Compulsory acquisition of rights or imposition of covenants) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act(**b**), as applied by article 37 (statutory undertakers and electronic communications code network operators), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

(**a**) 2006 c. 46.
(**b**) 1990 c. 8. Section 272 was amended by section 406(1) of and paragraph 103 of Schedule 17 to the Communications Act 2003 (c. 21).

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications sub-paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph (6).

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 56 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or the failure thereof or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail

must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the lands plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 10 (consent to transfer of benefit of order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must no later than 28 days from the date that the plans and documents submitted to and certified by the Secretary of State in accordance with article 55 (documents to be certified) are certified by the Secretary of State, provide a set of those plans and documents to Network Rail in the form of a computer disc with read only memory.

PART 2

Protection for Electricity, Gas, Water, Petroleum and Sewerage Undertakers

22. In this Part of this Schedule "North Somerset District Council" shall mean the undertaker and where relevant any person to whom the powers contained in this Order are conferred in so far as that person's activities in reliance on the powers in this Order affect the land and apparatus of the relevant statutory undertaker

23. For the protection of the undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between North Somerset District Council and the undertaker concerned, have effect.

24. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter 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(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act(**c**) or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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; and

"undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989(**d**);

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**e**);

(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.

(**a**) 1989 c. 29.
(**b**) 1991 c. 56.
(**c**) 1991 c. 56. Section 102(4) was amended by section 56 of and Schedule 7 to the Water Act 2014 (c. 21), and section 96(1) of the Water Act 2003 (c. 37).
(**d**) 1989 c. 29. A new section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and was further amended by sections 136 and 145(5) – (7) of and Schedules 19 and 23(1) to the Energy Act 2004 (c. 20), S.I. 2012/2400 and S.I. 2011/2704. There are other amendments to section 6 but none are relevant to this Order.
(**e**) 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).

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

26. Regardless of any provision in this Order or anything shown on the land plans, North Somerset District Council must not acquire any apparatus otherwise than by agreement.

27.—(1) If, in the exercise of the powers conferred by this Order, North Somerset District Council acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an 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 undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, North Somerset District Council requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) North Somerset District Council must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of North Somerset District Council 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 undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of North Somerset District Council under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56 (arbitration), and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by North Somerset District Council to be removed under the provisions of this Part of this Schedule.

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

(7) Nothing in sub-paragraph (6) authorises North Somerset District Council to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

28.—(1) Where, in accordance with the provisions of this Part of this Schedule, North Somerset District Council affords to an undertaker facilities and rights for the construction and maintenance in land of North Somerset District Council 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 North Somerset District Council and the undertaker in question or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway, the arbitrator must—

(a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway which forms or is to form part of Network Rail's network and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or North Somerset District Council or the traffic on the railway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by North Somerset District Council 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 undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by North Somerset District Council to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

29.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 27(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by North Somerset District Council under paragraph 27(2), North Somerset District Council must submit to the undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by an undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub–paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by North Somerset District Council, reasonably requires the removal of any apparatus and gives written notice to North Somerset District Council of that requirement, paragraphs 23 to 28 apply as if the removal of the apparatus had been required by North Somerset District Council under paragraph 27(2).

(5) Nothing in this paragraph precludes North Somerset District Council 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) North Somerset District Council is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

30.—(1) Subject to the following provisions of this paragraph, North Somerset District Council must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 27(2).

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

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

(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;

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 North Somerset District Council 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 undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) 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 undertaker 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.

31.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 27(2), any damage is caused to any 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 an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, North Somerset District Council must—

(a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

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

(3) An undertaker must give North Somerset District Council reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of North Somerset District Council which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

32. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between North Somerset District Council or Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to North Somerset District Council or Network Rail on the date on which this Order is made.

PART 3

Protection for Operators of Electronic Communications Code Networks

33.—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

(2) In this Part of this Schedule—

"conduit system" has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

"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(**a**);

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit 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 Secretary of State is providing or proposing to provide;

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

"operator" means the operator of an electronic communications code network.

34. The exercise of the powers of article 37 (statutory undertakers and electronic communications code network operators) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(**b**).

35.—(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 the works comprised in the authorised development—

(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 must—

(c) make reasonable compensation to an operator for loss sustained by it; and

(d) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator 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 may be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(**a**) See section 106.
(**b**) 1984 c. 12.

(4) Any difference arising between the undertaker and the operator under this paragraph is to be referred to and settled by arbitration under article 56 (arbitration).

36. 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 damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

PART 4

Protection for the Environment Agency

38.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

"the Agency" means the Environment Agency;

"emergency" means a situation which—

(a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;

(b) is a serious event presenting a risk of harm or damage to people, property or the environment; and

(c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation; and

"relevant watercourse" has the same meaning as in article (powers in relation to relevant watercourses).

(3) Where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Agency to a relevant watercourse, it must give the Agency 56 days' written notice of that requirement.

39.—(1) Where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Agency to a relevant watercourse, it must give the Agency 56 days' written notice of that requirement.

(2) Except in cases of emergency where the undertaker interferes with or obstructs access by the Agency to a relevant watercourse and it is not possible for the undertaker to give the Agency the notice required under sub-paragraph (1), a suitable alternative access must be provided prior to and for the duration of any such interference.

40. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest of the Agency in any land or proposes to interfere with, or remove, any of the Agency's apparatus it must give the Agency 56 days' written notice before any such interest is acquired or any apparatus is interfered with or removed.

41. The undertaker must indemnify the Agency in respect of all costs, charges and expenses which it may reasonably incur or which it may sustain in the examination of plans or other matters under this Part of this Schedule.

42. Any dispute arising between the undertaker and the Agency under this Part of this Schedule is to be determined by arbitration in accordance with article 56 (arbitration) of this Order.

PART 5

Protection for First Corporate Shipping Limited

43. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and BPC.

44. In this Part—

"access works" means works—

(a) on, over or under or otherwise affecting a private street or any public right of way on BPC's property, including the kerbs, splitter islands, footways, verges and carriageway of such street and any road markings, signing, signals, and other street furniture;

(b) to alter, modify, improve, create or provide any means of access (whether temporary or otherwise) on or across BPC's property or to or from any private street or any other part of BPC's property or to or from any dock public road;

(c) to alter the layout of any private street or any public right of way on BPC's property; and

(d) to position or install plant or equipment on or over any private street or any public right of way on BPC's property,

and includes, without limitation on the scope of the foregoing, any works under article 13 (street works and power to alter layout etc., of streets) or article 17 (access to works) in respect of or affecting any private street or any public right of way on BPC's property;

"ancillary works" means embankments, earthworks, retaining structures or works, planting, landscaping or other mitigation, fencing and all other works falling within the descriptions of the further associated development set out in paragraphs (a) to (x) (inclusive) of Schedule 1;

"BPC" means First Corporate Shipping Limited (registered company number 2542406), trading as The Bristol Port Company, being the statutory harbour authority and competent harbour authority for the Port;

"BPC's apparatus" means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil water, electricity, telephone, television, data and information transmission or any other service) on BPC's property;

"BPC's property" means the whole and each of every part of all the leasehold and freehold land and rights and the benefit of all covenants, owned by or vested in BPC at Avonmouth, Chittening and Portbury—

(a) upon, across, under, over or in respect of or affecting which any powers conferred by this Order may be exercised; or

(b) upon, across, under or over which there is situated anything over or in respect of which any such powers may be exercised,

and includes, without limitation on the scope of the foregoing, the Port's railway and any private street but does not include the Court House Farm terminable access;

"BPC's representative" means the person appointed by BPC from time to time to be its representative for the purposes of this Order;

"certified documents" means any and all of the plans and documents certified by the Secretary of State for the purpose of this Order;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"construction access rights" means any and all powers conferred on the undertaker by this Order to exercise temporary powers of access over any land with or without vehicles, plant and equipment including, without limitation on the scope of the foregoing, any ancillary powers to remove buildings and vegetation from that land and to construct works for the purpose of providing a means of access;

"Court House Farm easement" means a Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company;

"Court House Farm terminable access" means the existing crossing at grade over the disused Portishead Branch Line which is described in the Court House Farm easement;

"dock public road" means each of the streets known as Marsh Lane, Royal Portbury Dock Road (including the roundabout at its junction with Portbury Way and Gordano Way), Redland Avenue, Gordano Way, Garonor Way and Portbury Way to the extent that it is maintainable highway;

"drainage works" means works—

(a) to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on, over or under BPC's property or which drains water to or from BPC's property; and

(b) to make any opening or connection into any watercourse belonging to BPC or to lay down, take up or alter any pipes for that purpose;

"environmental protection works" means measures reasonably required to be carried out on or in respect of Work No. 18 to protect the scrub environment and water bodies established and managed by BPC;

"highway access land" means any and all of parcels 5/30, 5/61, 5/62, 5/65 and 5/70;

"maintainable highway" has the same meaning as in section 86(1) of the 1991 Act;

"Marsh Lane track" means the private street referred to in Schedule 3 and there described as Access Road to the M5 Avonmouth Bridge east of Marsh Lane, Easton-in-Gordano;

"Marsh Lane track land" means any and all of parcels 5/25, 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 and that part of parcel 5/28 which lies to the east of an imaginary line projected in a northerly direction across the disused railway at 126 miles 78 chains and includes the Marsh Lane track;

"plans" includes sections, elevations, designs and design data, drawings, calculations, specifications, programmes, method statements, assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work;

"Port" means the port and harbour of Bristol;

"Port's railway" means the railway owned by BPC leading from Portbury Junction, Pill to the Royal Portbury Dock;

"powers of temporary possession" means the powers conferred by article 33 (temporary use of land for carrying out the authorised development);

"preparatory activities" means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works but excluding any such activities carried out under article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property;

"private street" means any street on BPC's property which is not a maintainable highway;

"rail link land" means any and all of parcels 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55;

"railway rights land" means any and all of parcels 5/95, 5/100, 5/105, 5/122, 5/137, 5/140, 5/141, 6/10, 6/15, 6/20 6/55, 6/60 and 6/80;

"relevant works" means that part of Work 1C that is on the Port's railway and Works Nos. 14, 14A, 14B, 15, 16, 16A, 16C, 18, 19 and 20;

"specified work" means—

(a) that part of Work 1C that is on the Port's railway;

(b) the whole of Work Nos. 14, 14A, 15, 16, 16A, 16C, 18, 19 and 20;

(c) all access works and drainage works; and

(d) so much of all other parts of the authorised development and of any works to be carried out under the powers conferred by article 33 as is situated upon, across, under, over or within 5 metres of BPC's property, including all environmental mitigation and restoration measures;

(2) In this Part—

(a) references to the undertaker include references to any person to or in which any or all of the benefit of the provisions of this Order and any related statutory powers are transferred or are vested pursuant to any provision of this Order and any person which may by virtue of any agreement made pursuant to article 11 (agreements with Network Rail) whether alone or jointly with another exercise any or all of the powers contained in this Order;

(b) references to numbered parcels are to the parcels of land so numbered in the book of reference;

(c) references to a requirement to consult include that consultation must take place in good faith and in a timely manner with the provision of all reasonably necessary information and so that the party concerned must act reasonably in taking into account the reasonable comments made by the other party in response; and

(d) references to BPC's consent, agreement or approval are to BPC's prior consent, agreement or approval given in writing.

45. Nothing in this Order affects—

(a) any right of BPC to use the Court House Farm terminable access; or

(b) the provisions of the Court House Farm easement or any other agreement relating to the Court House Farm terminable access

and accordingly the following provisions of this Part of this Schedule do not apply as regards the Court House Farm terminable access.

46. The undertaker must give written notice to BPC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 10 (consent to transfer of benefit of order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

47.—(1) No agreement made under article 11 (agreements with Network Rail) may authorise or permit the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of any powers and rights of Network Rail and the undertaker (as the case may be) under any BPC contract or affecting any of BPC's property.

(2) In sub-paragraph (1), "BPC contract" means all and any contracts, licences, easements and other agreements, permissions and consents to which BPC is a party or of which it has the benefit.

Watercourses and drainage

48.—(1) No part of any impounded dock at the Port is included within the definition of "watercourse" for any purpose of this Order.

(2) The undertaker must not without BPC's consent (such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions) create any new discharges for water into any watercourse belonging to or used by BPC.

(3) Without limitation on the scope of sub-paragraph (2), any consent given by BPC under this paragraph—

(a) may be given subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse by the undertaker; and

(b) does not obviate the need for the undertaker to obtain any further consents required in relation to the activity concerned.

(4) In the exercise of any power under article 22 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse in, on, over or under BPC's property.

Surveys

49.—(1) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property—

(a) outside the Order limits except to the extent that BPC agrees for the purpose of carrying out non-intrusive surveys, investigations and monitoring only;

(b) other than to the extent that the exercise of such powers is necessary in connection with carrying out the authorised development; and

(c) other than by prior agreement with BPC on each and every occasion, such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions, and on at least 14 days' notice.

(2) When requesting BPC's agreement to access under sub-paragraph (1) the undertaker must provide to BPC full details of the property to which access is requested, the activities proposed (including risk assessments and method statements and intended duration of the activities), the identity of the persons who would undertake them and any apparatus that might be left on the affected property.

(3) BPC is, without limitation on the scope of sub-paragraph (1)(c)—

(a) entitled to refuse access as requested by the undertaker on any occasion for operational reasons, in which case BPC must act reasonably and without delay in seeking to offer alternative arrangements; and

(b) entitled as a condition of its agreement on any occasion to require the production of evidence of the existence of adequate insurance with insurers of repute, the proceeds of which will be available to cover all liability, costs, claims, expenses and demands which may arise as a result of that access.

(4) The undertaker must remove any equipment left on, over or under BPC's property as soon as reasonably possible after completion of the relevant surveys and investigations.

(5) The undertaker must, at its own expense, deliver to BPC as soon as reasonably practicable after their production on a non-reliance basis copies in an electronic format of all survey and ground investigation reports carried out in respect of BPC's property under the powers conferred by article 23 or the powers conferred by section 11(3) of the 1965 Act as applied by this Order, which reports BPC may use and provide to others (on a non-reliance basis) free of cost in connection with works and operations at the Port.

Streets, access and public rights of way

50.—(1) The undertaker must not in carrying out any works or exercising the powers conferred by this Order cause pedestrian or vehicular access to or across any of BPC's property (including access for cargo operations but excluding access over the Court House Farm terminable access) to be interfered with or obstructed, other than with the consent of BPC, not to be unreasonably withheld or delayed, or, if the carrying out of works or exercising the powers relate to a dock public road, unless the undertaker has first consulted with BPC.

(2) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under—

(a) article 13(1) (street works and power to alter layout etc., of streets) in respect of or so as to affect the Marsh Lane track other than by prior agreement with BPC such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions;

(b) article 13(1) in respect of or so as to affect any dock public road unless it has first consulted with BPC; or

(c) article 13(2) in respect of or so as to affect any private street on any part of BPC's property.

(3) With the exception of the locations specified in columns (1) and (2) of Schedule 7 and shown on sheet 5 of the compounds, haul roads and access to works plan as AW5.1 (access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch railway line) and AW5.3 (access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch railway line) the undertaker must not pursuant to any powers in this Order carry out any works to create or improve any means of access affecting any private street or any public right of way on BPC's property or any other part of BPC's property or any dock public road.

(4) In carrying out any access works, the undertaker must not so far as reasonably practicable interfere with or obstruct the free, uninterrupted and safe use by other traffic of any street or interfere with street furniture, signage and lighting masts.

(5) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under article 15(1) (temporary stopping up of streets and public rights of way) in respect of:

(a) the Marsh Lane track (except to the extent permitted by article 15(5)) or any other private street; or

(b) Royal Portbury Dock Road without BPC's consent, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

(6) Despite any provision in this Order, the undertaker must not, except with the agreement of BPC, exercise any power under article 15 or article 46 to use or to authorise the use of any private street or any dock public road or any public right of way on BPC's property as a temporary working site or as a parking place.

(7) The undertaker must exercise the power granted to it under paragraph (5) of article 15 to stop up public rights of way LA8/67/10 and LA/8/68/10 to the extent specified in column (3) of Part 2 of Schedule 5 (Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension), throughout the period of operation or use of the Lodway Farm construction compound to be constructed as Work No. 17 and the temporary construction compound located under the M5 Avonmouth Bridge.

(8) The undertaker must, before submitting any survey, proposed measures or strategy relating to the Marsh Lane track to the relevant planning authority for approval in accordance with requirement 35 of Schedule 2 (Requirements), consult with BPC in relation to the content of all such surveys, measures and strategies;

(9) Despite paragraphs (1) and (2) of article 19—

(a) any street constructed under this Order on BPC's property; and

(b) the altered or diverted part of any street altered or diverted under this Order on BPC's property

must be maintained by and at the expense of the relevant highway authority at all times from its completion.

(10) If the undertaker acquires, whether compulsorily or by agreement, any of BPC's property within the Order limits, or any right or interest in or over such property, which property is subject to a public right of way, from the date of the acquisition of the relevant land, right or interest or from 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, any liability or responsibility of BPC to the relevant highway authority for or in respect of the maintenance of that public right of way is extinguished and that public right of way shall after that date instead be maintained by and at the expense of the relevant highway authority.

(11) Without limitation on the scope of any other provision in this Part if any damage to any public right of way on BPC's property is caused in the exercise of any powers under this Order or by carrying out of, or in consequence of the construction of, any works under this Order, the undertaker must make good such damage and pay to BPC all reasonable expenses to which BPC may be put by reason of any such damage.

(12) The undertaker must not exercise any powers under article 13, article 15 or article 46 (traffic regulation) over or in respect of any part of BPC's property or any dock public road after completion of construction of the authorised development.

Acquisition and use of land

51.—(1) The undertaker must not exercise the powers conferred by section 271 (extinguishment of rights of statutory undertakers: preliminary notices) of the 1990 Act in relation to any rights of BPC over or in respect of the railway rights land or the highway access land; or any of BPC's apparatus.

(2) Despite any other provision of this Order, if the undertaker acquires any interest in the railway rights land or in the highway access land, whether compulsorily or by agreement, no rights of BPC over or in respect of the railway rights land or the highway access land so acquired must be extinguished.

Use of land and execution, maintenance and use of the authorised development

52.—(1) Despite any provision in this Order or anything shown on the land plan, the undertaker must not except with the agreement of BPC—

(a) exercise any powers of temporary possession over or in respect of parcel 5/75 or (if and to the extent they form part of BPC's property) parcel 5/85 or parcel 5/86 unless BPC fails, within 14 days of a request by the undertaker, to make available for exercise by the undertaker in substitution for the exercise of the relevant powers temporary rights of access over other land which are sufficient (whether alone or in conjunction with the exercise by the undertaker of other powers under this Order) to enable the undertaker to gain access in connection with the construction of the authorised development, with such vehicles, plant and equipment as may be necessary, from access point AW5.3 shown on the compounds, haul roads and access to works plan to the accommodation bridge (and associated walls, embankments and structures) on land adjacent to parcel 05/86 and to the culvert, watercourse and head wall situated on land adjacent to parcel 05/85; or

(b) other than any construction access rights which may be authorised by or pursuant to the terms of this Order over the Marsh Lane track, the rail link land or parcel 05/75, or over bridleways and footpaths that are open to the public, exercise any construction access rights over BPC's property or otherwise use any part of BPC's property for the purpose of gaining access to any part of the authorised development or to any other land or in connection with the construction or maintenance of the authorised development.

(2) Any exercise of powers of temporary possession by the undertaker in respect of the rail link land or the Marsh Lane track land which may be permitted pursuant to the terms of this Order is subject to, and in common with, the use of the rail link land and the Marsh Lane track land by BPC and by any other person acting with BPC's authority or which may have rights to use the rail link land and the Marsh lane track land.

53.—(1) If required to do so by BPC (acting reasonably), the undertaker must at its cost and expense procure that surveys are carried out to a specification approved by BPC (acting reasonably) to show the condition of any land of which temporary possession is taken under article 33 (together with all associated structures) before the undertaker's use of it begins and after that use ends.

(2) The undertaker must promptly after receipt of reasonable demand by BPC and at the undertaker's cost and expense make good any and all damage and wear and tear caused to any part of BPC's property which is used by the undertaker in connection with the construction or maintenance of the authorised development where in BPC's reasonable opinion the rectification of such damage, wear or tear is necessary in the interests of safety or security.

(3) If required to do so by BPC (acting reasonably), the undertaker must permit BPC to inspect the execution of all works of rectification being carried out under this paragraph in order to ensure compliance by the undertaker with the requirements of this paragraph.

54.—(1) The undertaker must present to BPC not less than three months before the intended date of commencing construction the draft programme for the execution of each part of the authorised development on BPC's property.

(2) The undertaker must consult with BPC in relation to the draft programme and must present its final programme for the execution of the authorised development on BPC's property to BPC not less than four weeks before the intended date of commencing construction.

(3) The undertaker must not enter on or take temporary possession of any part of BPC's property unless it has served at least 14 days' written notice on BPC of its intended entry onto that part.

(4) In this paragraph "intended date of commencing construction" means the first date on which the undertaker wishes to commence construction of any part of the authorised development on, under or over any part of BPC's property, including carrying out any preparatory activities.

(5) In the exercise of any powers of temporary possession in respect of any part of BPC's property and in the commencement and execution of the authorised development on BPC's property the undertaker must—

(a) proceed diligently with the works affecting each part of BPC's property; and

(b) notify BPC in writing of the completion of the relevant part of the authorised development affecting each part of BPC's property within fourteen days of its completion.

(6) In the exercise of any powers of temporary possession in respect of any part of BPC's property the undertaker must not—

(a) except with the agreement of BPC, provide or authorise the provision of car parking or storage (for materials or other items) facilities on any part of BPC's property other than within Work No. 16A;

(b) demolish or remove any buildings; or

(c) except as BPC agrees, construct or carry out on BPC's property any works comprising fencing, any mitigation works, ground or rock stability, geotechnical or strengthening works other than works which are of a temporary nature.

(7) In addition to and without limitation on the scope of the undertaker's other obligations under this Order (including those in article 33(4) and Schedule 2), before giving up possession of any part of BPC's property in respect of which any powers of temporary possession have been exercised the undertaker must remove any works constructed in contravention of sub-paragraph (6) or paragraph 55.

Works

55. Despite any provision of this Order or anything shown on the certified documents except as BPC may agree—

(a) no part of Work No. 14 or any ancillary works associated with Work No. 14 must be constructed or maintained on parcel 04/55; and

(b) other than works of a temporary nature, no ancillary works associated with any relevant works or with Work No. 1A or Work No. 1B must be constructed or maintained upon, across, under or over any of BPC's property of which only temporary possession is taken under this Order or over which the undertaker does not, under this Order, acquire rights authorising the retention of those ancillary works.

56.—(1) The undertaker must before commencing construction of any specified work supply to BPC proper and sufficient plans of that work for BPC's approval and the specified work must not be commenced or executed except in accordance with such plans as have been approved in writing by BPC.

(2) Subject to sub-paragraph (3), BPC's approval under sub-paragraph (1) must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions.

(3) BPC's approval to plans must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions—

(a) in respect of all or any of Work No. 1C on BPC's property and Work No. 19, if and in so far as the proposed works comprise and, following design development, are broadly consistent with the works shown on drawings W1097B-ARP-DRG-ECV-000305, W1097B-ARP-DRG-ECV-000330 and W1097B-ARP-DRG-ECV-000331;

(b) in respect of Work No. 18 if and in so far as the proposed works comprise and, following design development, are broadly consistent with the Bridleway Extension Under the Elevated M5 Plan, and

(c) in respect of Work No. 16C, if and in so far as the proposed works comprise only work necessary to renew the level crossing in modern equivalent form.

(4) Where under sub-paragraph (2) or (3) BPC's approval to plans submitted by the undertaker under sub-paragraph (1) cannot be unreasonably withheld or delayed if by the end of the period of 28 days beginning with the date on which such plans have been supplied to BPC, BPC has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon BPC written notice requiring BPC to intimate approval or disapproval within a further period of 28 days beginning with the date upon which BPC receives written notice from the undertaker. If by expiry of the further period of 28 days BPC has not intimated approval or disapproval, BPC is deemed to have approved the plans as submitted.

(5) When signifying approval of plans submitted under sub-paragraph (1), BPC may specify any protective works (whether temporary or permanent) which in BPC's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of BPC's property or the continuation of safe and efficient operation of the Port (including the Port's railway) and such protective works as may be reasonably necessary for those purposes are to be constructed by BPC but at the expense of the undertaker, or if BPC so desires such protective works must be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that the protective works have been completed to BPC's reasonable satisfaction.

(6) When signifying approval of plans submitted under sub-paragraph (1) in relation to Work No. 18, BPC may specify any environmental protection works which in BPC's reasonable opinion should be implemented before the commencement of, or during, the construction of Work No. 18 and such environmental protection works as may be reasonably necessary for those purposes are to be implemented by BPC but at the expense of the undertaker, or if BPC so desires such environmental protection works must be implemented by the undertaker at its own expense with all reasonable dispatch, and except to the extent BPC may agree the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that any and all relevant environmental protection works have been implemented to BPC's reasonable satisfaction.

57.—(1) Any specified work and any protective works (and any environmental protection works connected with Work No. 18) to be constructed or implemented by virtue of paragraph 56(5) or 56(6) must, when commenced, be constructed and implemented with all reasonable dispatch in accordance with the plans approved or deemed to have been approved under paragraph 56—

(a) under BPC's supervision (where appropriate and if given) and to BPC's reasonable satisfaction;

(b) in such manner as to cause as little damage as is possible to BPC's property; and

(c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe and efficient operation of the Port (including use of the Port's railway or the traffic on it).

(2) If any damage to BPC's property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph 56(1), make good such damage and pay to BPC

all reasonable expenses to which BPC may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

(a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of BPC or its servants, contractors or agents; or

(b) any liability on BPC with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

58. The undertaker must—

(a) at all times afford reasonable facilities to BPC's representative (or to a person nominated by BPC's representative) for access to a specified work during its construction; and

(b) supply BPC with all such information as BPC's representative may reasonably require with regard to a specified work or the method of constructing it.

59. BPC must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by BPC under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

60.—(1) If any permanent or temporary alterations or additions to BPC's property, or any protective works under paragraph 56(5), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by BPC and if BPC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to BPC all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by BPC in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing BPC's property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against-any sum payable by the undertaker to BPC under this paragraph.

61. The undertaker must repay to BPC all fees, costs, charges and expenses reasonably and properly incurred by BPC—

(a) in constructing any protective works under the provisions of paragraph 56(5) and in implementing any environmental protection works under the provisions of paragraph 56(6) including, in respect of any permanent protective works or permanent environmental protection works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of BPC's representative's approval of plans submitted by the undertaker and the supervision by BPC of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;

(c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting, watching and lighting BPC's property (including the Port's railway) and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work; and

(d) in respect of any additional temporary lighting of BPC's property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

62. If at any time after the completion of a specified work BPC gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation or use of any of BPC's property (including the Port's railway) in

connection with carrying on BPC's statutory undertaking, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to adversely affect the operation or use of such property in that connection.

63. Any additional expenses which BPC may reasonably incur in altering, reconstructing, working, or maintaining under any powers existing at the making of this Order any of BPC's property in connection with carrying on BPC's statutory undertaking by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, working or maintenance has been given to the undertaker, are to be repaid by the undertaker to BPC.

64.—(1) The undertaker must pay to BPC all costs, charges, damages and expenses not otherwise provided for in this Part (but subject to article 41 (no double recovery)) which may be occasioned to or reasonably and properly incurred by BPC—

(a) by reason of the construction, working, maintenance of a specified work or the failure of such a work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work

and the undertaker must indemnify BPC from and against all costs, claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done BPC on behalf of the undertaker or in accordance with plans approved by BPC or in accordance with any requirement of BPC's representative or under BPC's representative's supervision will not (if it was done without negligence on the part of BPC or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) BPC must give the undertaker reasonable notice of any such claim or demand made by a third party as soon as reasonably practicable after BPC becomes aware of it and must make no settlement or compromise of such a claim or demand in excess of £10,000 without the prior consent of the undertaker (such consent not to be unreasonably withheld or delayed).

65. BPC must, on receipt of a request from the undertaker, from time to time provide free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

66. In the assessment of any sums payable to BPC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by BPC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

BPC's apparatus

67. Despite any provision of this Order or anything shown on the land plan—

(a) the undertaker must not acquire any of BPC's apparatus other than by agreement;

(b) any right of BPC to maintain and use any of BPC's apparatus in land must not be extinguished, suspended or interfered with other than with BPC's agreement; and

(c) the undertaker must not alter, divert, remove, replace, reposition, relocate or repair any of BPC's apparatus other than with BPC's consent (not to be unreasonably withheld or delayed in respect of any specified work).

The Port's railway

68. For the purpose of this Order—

(a) no part of the Port's railway is, or will become by virtue of this Order or the execution of the authorised development, existing operational railway or operational railway; and

(b) no part of BPC's property or of any other land over which the Port's railway is located (whether or not that land is owned by BPC) is, or will become by virtue of this Order or the execution of the authorised development, operational railway land or currently operational railway land or form part of the railway authorised by this Order to which article 39 (operation and use of railways) applies.

Trees and other vegetation

69.—(1) Despite any provision in this Order and anything shown on the certified documents, in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development the undertaker must not—

(a) plant new or replacement trees, hedges, hedgerows, shrubs or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed; or

(b) remove, cut back, fell or lop, prune or reduce in any way any other hedge, tree, shrub or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed.

General

70. The undertaker must in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development secure compliance with and implementation of all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part.

71. Article 49 (procedure in relation to further approvals, etc) will not apply in relation to any consent, agreement or approval from BPC required under this Order.

PART 6

Protection for Exolum Pipeline System Ltd

72. The provisions of this Part have effect for the protection of the Exolum undertaker referred to in this Part unless otherwise agreed in writing between the undertaker and the Exolum undertaker.

73. In this Part—

"alternative apparatus" means alternative apparatus adequate to enable the Exolum undertaker to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means the pipeline, or any part of it, belonging to or maintained by the Exolum undertaker, which is within the Order limits, and includes any structure in which that apparatus is or is to be lodged or which gives or will give access to apparatus;

"Exolum undertaker" means Exolum Pipeline System Ltd (registered company number 09497223) or any successor in title to the Exolum undertaker in respect of the apparatus;

"functions" includes powers and duties; and

"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.

74. Despite any provision of this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

75.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which the apparatus is placed, that apparatus must not be removed under this Part and any right of the Exolum 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 Exolum undertaker.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the Exolum undertaker written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed in the land referred to in sub-paragraph (2), the Exolum 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 other land in which the alternative apparatus is to be constructed.

(4) The Exolum undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56 (arbitration), and after the grant to the Exolum undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the Exolum undertaker that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the Exolum undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the Exolum undertaker.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

76.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 75(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the Exolum undertaker a plan, section and description of the works to be executed.

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

(3) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of the apparatus or (wherever situated) will impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the information to be submitted to the Exolum undertaker under sub-paragraph 76(1) shall be submitted not less than 35 days before the works are started and shall include a method statement describing:

(a) the exact position of the works;

(b) the level at which the works are to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus

to permit the Exolum undertaker to assess whether any protective works or monitoring of adjoining activities or works are necessary, acting reasonably.

(4) Any requirements made by the Exolum undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) re-submitted to it.

(5) If the Exolum undertaker in accordance with sub-paragraph (4) 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, paragraph 75 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph (2) of that paragraph.

(6) 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the Exolum undertaker notice as soon as is reasonably practicable and a plan, section and description of the works referred to in sub-paragraph (1) as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) and sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(8) Where, in the reasonable opinion of the Exolum undertaker or the undertaker, anything done in the exercise of the powers conferred by this Order might interfere with the cathodic protection forming part of apparatus or any apparatus might interfere with the proposed or existing cathodic protection forming part of the undertaker's works, the Exolum undertaker and the undertaker must co-operate in carrying out any tests which they consider reasonably necessary for ascertaining the nature and extent of such interference, and measures reasonably necessary for providing or preserving such cathodic protection.

77.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the Exolum undertaker the proper and reasonable expenses reasonably incurred by the Exolum undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus.

(2) The value of any apparatus removed under the provisions of this Part of the Schedule is to be deducted from any sum payable under paragraph (1), that value being calculated after removal.

78.—(1) If in accordance with the provisions of this Part—

(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, 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 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 Exolum undertaker by virtue of paragraph 77(1) is to be reduced by the amount of that excess.

(2) For the purposes of sub-paragraph (1), the extension of the apparatus to a length greater than the length of the existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

(3) An amount which apart from this sub-paragraph would be payable to the Exolum undertaker in respect of works by virtue of paragraph 77(1) 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 Exolum undertaker 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.

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

PART 7

For the protection of Western Power Distribution Limited (South West) Plc

Application

80. For the protection of Western Power Distribution Limited (South West) plc as referred to in this Part 7 of Schedule 16 the following provisions, unless otherwise agreed in writing between the undertaker and Western Power Distribution Limited (South West) plc have effect.

Interpretation

81. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously;

"alternative rights" means all and any necessary legal easements, consents, or permissions required by WPD in order to permit or authorise a diversion;

"apparatus" means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by WPD;

"diversion" means an alteration to the WPD network in order to enable or facilitate the authorised development;

"functions" includes powers and duties;

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

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

"specified work" means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

"WPD" means Western Power Distribution (South West) plc (company number 02366894) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB;

"WPD network" means WPD's distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the Electricity Act 1989; and

for the avoidance of doubt, all other terms as defined in article 2 (interpretation) of this Order.

Precedence of 1991 Act in respect of apparatus in streets

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

No acquisition or extinguishment except by agreement

83. 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

84.—(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 WPD's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD in accordance with sub-paragraphs (2) to (11).

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

(a) If, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed.

(b) Should the undertaker not be able to obtain the alternative rights required under sub-paragraph (a) then the undertaker and WPD shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights.

(c) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (a) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph (b), WPD shall on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(3) Any alternative apparatus required pursuant to sub-paragraph (2) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 87.

(4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 87, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (2), 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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

(7) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 87.

(8) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent

alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.

(9) 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 expert less favourable on the whole to WPD than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

(10) If in accordance with the provisions of this Part of this Schedule WPD require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WPD must deduct the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph 86(1).

(11) For the purposes of sub–paragraph (10)—

(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.

85.—(1) Not less than 28 days before the undertaker intends to start the execution of any specified work, the undertaker must submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3).

(2) Subject to sub-paragraph (3) the undertaker must not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the plan so submitted, and identified any reasonable requirements it has in relation to the carrying out of the works such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it shall be deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by WPD and WPD is entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker must comply with WPD's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Edition) (2014) as the same may be replaced from time to time.

(6) If WPD, in accordance with sub–paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement subject to sub-paragraph (3), paragraphs 84(1) to (6) apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 84(2).

(7) Nothing in this paragraph 85 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub–paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub–paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

86.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any alternative apparatus arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

(a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and

(b) reimburse WPD for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by WPD of such damage, by reason or in consequence of any such damage or interruption.

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

(4) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) WPD shall not be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

87.—(1) Article 56 (arbitration) applies to any difference as to the legal interpretation of this Schedule and as provided for in sub–paragraph (7).

(2) Save as provided for in sub–paragraph (1) or sub–paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;

(c) issue a decision within 28 days of receipt of the submissions under sub-paragraph (5)(a); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 56.

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

89. The provisions of Part 2 of this Schedule do not apply in relation to WPD or any apparatus of WPD.

PART 8

For the mutual protection of National Grid and the Railway Undertaker

Preliminary

Application

90. For the protection of National Grid and the railway undertaker referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the railway undertaker and National Grid, have effect.

Interpretation

91. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"2016 Order" means the National Grid (Hinkley Point C Connection Project) Order 2016 as amended;

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable it to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 of this Order and includes any associated development authorised by the Order and for

the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

"existing apparatus" means apparatus which is sited in, over, or under land on 19 April 2021 and belonging to or maintained by National Grid on that date "existing electricity tower" shall be construed accordingly;

"functions" includes powers and duties;

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

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

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

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

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid" means National Grid Electricity Transmission plc (registered company number 2366977);

"parent company" means a parent company of the railway undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

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

"railway property" means—

(a) any railway belonging to the railway undertaker;

(b) any stations, land, works, apparatus and equipment belonging to the railway undertaker and connected with any such railway; and

(c) any easement or other property interest held or used by the railway undertaker for the purposes of such railway or works, apparatus or equipment;

"railway undertaker" means the undertaker as defined in article 2 of this Order and, in relation to property owned by Network Rail, Network Rail;

"the relevant 2016 Order development" means so much of any of the development authorised under the 2016 Order as will or may be situated under, over or within 15 metres of, or which may in any way adversely affect, railway property;

"the relevant authorised development" means so much of any of the authorised development or activities undertaken in association with the authorised development as will or may be situated under, over, or within 15 metres measured in any direction of any apparatus proposed to be constructed or installed by National Grid under the powers of the 2016 Order; and

"specified railway works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any existing apparatus the removal of which has not been required by the railway undertaker under paragraph 99(2) or otherwise; and/or

(b) may in any way adversely affect any existing apparatus the removal of which has not been required by the railway undertaker under paragraph 99(2) or otherwise.

92. Except for paragraphs 96 (apparatus of National Grid in stopped up streets), 100 (retained existing apparatus), 101 (expenses) and 102 of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the railway undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the railway undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

93. The provisions of the 2016 Order take effect subject to the provisions of this Part.

94. The provisions of Part 2 of this Schedule do not apply in relation to National Grid or any apparatus of National Grid.

Duty to co-operate

95.—(1) The railway undertaker and National Grid will co-operate and work together to secure that the works proposed to be carried out by National Grid under the powers of the 2016 Order and the authorised works to be carried out by the railway undertaker under this Order will so far as reasonably possible be programmed, and arrangements for the carrying out of those works will be made, so as, so far as reasonably possible, to avoid undue delay or any conflict arising between the carrying out of those proposed works and the implementation of the authorised development.

(2) Any consent, agreement or approval by National Grid or the railway undertaker under this Part of this Schedule must not be unreasonably withheld or delayed.

Provisions for the protection of National Grid

Apparatus of National Grid in stopped up streets

96.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 14 (permanent stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the railway undertaker will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to it in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (temporary stopping up of streets and public rights of way), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as 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.

Acquisition of land

97.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the railway undertaker may not acquire or extinguish any land interest or apparatus or override any easement and/or other interest of National Grid, including any rights contained in the 2016 Order, otherwise than by agreement.

(2) The railway undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of existing apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(3) Any agreement or consent granted by National Grid under paragraph 100 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under paragraph (1).

Provisions relating to existing apparatus

Removal of existing apparatus

98.—(1) If, in the exercise of the agreement reached in accordance with paragraph 97 or in any other authorised manner, the railway undertaker acquires any interest in any land in which any apparatus is placed or requires that National Grid's existing apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that existing apparatus in that land must not be extinguished, until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the railway undertaker requires the removal of any existing apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the railway undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 99(1) below) the necessary facilities and rights for the construction of alternative apparatus in other land of or land secured by the railway 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 or land secured by the railway undertaker, or the railway undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, as soon as is reasonably possible and on receipt of a written notice to that effect from the railway undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the railway undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the railway undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the railway undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

99.—(1) Where, in accordance with paragraph 98 of this Part of this Schedule, the railway undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the railway undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the railway undertaker and agreed with National Grid under paragraph (1) above in respect of any alternative apparatus, and the terms and conditions

subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter will be referred to arbitration in accordance with article 56 (arbitration) and the arbitrator shall make such provision for the payment of compensation by the railway undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained existing apparatus

100.—(1) Not less than 56 days before the commencement of any specified railway works that are near to, or will or may affect, any existing apparatus the removal of which has not been required by the railway undertaker under paragraph 98(2) or otherwise, the railway undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to specified railway works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any existing apparatus, or (ii) involve embankment works within 15 metres of any existing apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all existing apparatus as provided by National Grid under sub-paragraph (1);

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an existing electricity tower or between any two or more existing electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub- paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The railway undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted or they have been settled by arbitration under article 56 (arbitration).

(5) Any approval of National Grid required under sub-paragraphs (2) or (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any existing apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the railway undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the railway undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the railway undertaker, reasonably requires the removal of any existing apparatus and gives written notice to the railway undertaker of that requirement, paragraphs 90 to 92 and 94 to 96 apply as if the removal of the apparatus had been required by the railway undertaker under paragraph 98(2).

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

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

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the railway undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

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

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such existing apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 98(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the railway 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 National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the railway undertaker.

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

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

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

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

102.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the railway undertaker or in consequence of any act or default of the railway undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the railway undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the railway undertaker will—

(a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and

(b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker.

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

(3) Nothing in sub-paragraph (1) shall impose any liability on the railway undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents.

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

Enactments and agreements

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

Co-operation

104. Where in consequence of the proposed construction of any of the authorised works, the railway undertaker or National Grid requires the removal of apparatus under paragraph 98(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 100, the railway undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the railway undertaker for that purpose.

Access

105. If in consequence of the agreement reached in accordance with paragraph 97(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the railway undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction

Provisions for the protection of National Grid's proposed works and for the railway undertaker

106. As soon as reasonably practicable after the coming into force of this Order, and in any event no later than 70 days before commencing a part of the relevant 2016 Order development, National Grid will give the railway undertaker plans of the works to be carried out including in particular a method statement and the exact position of the works and sufficient details to enable the engineer to ascertain the impact of the works on railway property and on the carrying out of the authorised works and for the railway undertaker to give the details set out in paragraph 107.

107.—(1) As soon as reasonably practicable after the coming into force of this Order, and in any event no later than 56 days before commencing any of the relevant authorised development, the

railway undertaker will give National Grid plans of the works to be carried out comprised in that development which must include a method statement and describe the position of the proposed apparatus as provided by National Grid under sub-paragraph (1) and the matters set out in paragraph 100(2)(a) to 100(2)(c) and 100(2)(e) to 100(2)(g).

(2) In relation to any works which will or may be situated on, over or within 10 metres of any part of the foundations of a proposed electricity tower or between any two or more proposed electricity towers, the plan to be submitted under sub- paragraph (1) must, in addition to the matters set out in that sub-paragraph, include a method statement describing the matters set out in paragraph 100(3) so far as relevant in this scenario.

(3) Paragraphs 100(4) to 100(8) and 100(10) to 100(12) apply in relation to works to which sub-paragraph (1) or (2) applies.

108. Part 4 of Schedule 15 to the 2016 Order (protection for railway interests) has effect as if any reference to Network Rail included a reference to the railway undertaker and if references to railway property included the authorised development.

General

Arbitration

109. Any difference or dispute arising between the railway undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the railway undertaker and National Grid, be determined by arbitration in accordance with article 56 (arbitration).

Notices

110. The plans submitted to National Grid by the railway undertaker pursuant to paragraph 100 must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the railway undertaker in writing.

PART 9

For the protection of Wales and West Utilities ("WWU")

111. In this Part of this Schedule "North Somerset District Council" shall mean the undertaker and where relevant any person to whom the powers contained in this Order are conferred in so far as that person's activities in reliance on the powers in this Order affect the land and apparatus of WWU.

112. For the protection of WWU in this Part of this Schedule the following provisions, unless otherwise agreed in writing between North Somerset District Council and WWU, have effect.

113. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable WWU to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by WWU for the purposes of gas supply 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; and

"WWU" means Wales & West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ, a gas transporter within the meaning of Part 1 of the Gas Act 1986(**a**).

114. This Part of this Schedule does not apply to apparatus in respect of which the relations between North Somerset District Council and WWU are regulated by the provisions of Part 3 of the 1991 Act.

115. Regardless of any provision in this Order or anything shown on the land plans, North Somerset District Council must not acquire any apparatus otherwise than by agreement.

116.—(1) If, in the exercise of the powers conferred by this Order, North Somerset District Council acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of WWU 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 WWU.

(2) If, for the purpose of executing any works authorised by this Order in, on, over, or under any land purchased, held, appropriated or used under this Order, North Somerset District Council requires the removal of any apparatus placed in that land, it must give to WWU written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order WWU reasonably needs to remove any of its apparatus) North Somerset District Council must, subject to sub-paragraph (3), afford to WWU the necessary facilities and rights for the construction of alternative apparatus in other land of North Somerset District Council 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 North Somerset District Council, or North Somerset District Council 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, WWU must, on receipt of a written notice to that effect from North Somerset District Council, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, or agree with North Somerset District Council an alternative route for the alternative apparatus over land in respect of which it is possible for North Somerset District Council to obtain the relevant facilities and rights. For the avoidance of doubt, WWU shall not be obliged to exercise its compulsory purchase powers pursuant to the Gas Act 1986 in order to obtain any such facilities or rights and WWU shall retain an absolute discretion as to whether it shall choose to exercise those powers.

(4) Any alternative apparatus to be constructed in land of North Somerset District Council under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between WWU and North Somerset District Council, or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) WWU must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as referred to in sub-paragraph (4) in accordance with article 56 (arbitration), and after the grant to WWU of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed as soon as reasonably practicable to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by North Somerset District Council to be removed under the provisions of this Part of this Schedule.

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

(7) Nothing in sub-paragraph (6) authorises North Somerset District Council to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or

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(**a**) 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)

execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

117.—(1) Where, in accordance with the provisions of this Part of this Schedule, North Somerset District Council affords to WWU facilities and rights for the construction and maintenance in land of North Somerset District Council 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 North Somerset District Council and WWU or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of North Somerset District Council, the arbitrator must—

(a) give effect to all reasonable requirements of Network Rail and North Somerset District Council for ensuring the safety and efficient operation of the railway which forms or is to form part of Network Rail's network and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or North Somerset District Council or the traffic on the railway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by North Somerset District Council 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 WWU 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 North Somerset District Council to WWU as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

118.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 116(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by North Somerset District Council under paragraph 116(2), North Somerset District Council must submit to WWU a plan, section and description of the works to be executed.

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

(3) Any requirements made by WWU under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub¬paragraph (1) are submitted to it.

(4) If WWU in accordance with sub-paragraph (3) and in consequence of the works proposed by North Somerset District Council, reasonably requires the removal of any apparatus and gives written notice to North Somerset District Council of that requirement, paragraphs 111 to 116 apply as if the removal of the apparatus had been required by North Somerset District Council under paragraph116(2).

(5) Nothing in this paragraph precludes North Somerset District Council 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) North Somerset District Council is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to WWU notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable if possible before carrying out those works, or if not, as soon as reasonably practicable afterwards and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) For the avoidance of doubt, whenever North Somerset District Council carries out any works in the vicinity of any apparatus of WWU and whether or not WWU has made any requirements pursuant to sub-paragraph (2) above, North Somerset District Council shall comply with—

(a) all applicable health and safety laws, including the Construction (Design and Management) Regulations 2015;

(b) the Pipeline Safety Regulations 1996; and

(c) the safety guidance published from time to time by WWU and the HSE.

119.—(1) Subject to the following provisions of this paragraph, North Somerset District Council must repay to WWU the reasonable expenses incurred by WWU in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including: a) costs or compensation payable in connection with the acquisition of land for that purpose; and b) any reasonable legal or other professional costs properly incurred relating to any such works to apparatus, or to the provision of alternative apparatus) which may be required in consequence of the execution of any such works as are referred to in paragraph 116(2).

(2) If in accordance with the provisions of this Part of this Schedule WWU require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WWU's requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WWU must deduct the cost of such additional requirements from the amount payable by North Somerset District Council pursuant to sub-paragraph 119(1).

(3) For the purposes of sub–paragraph 119(2) 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.

(4) For the avoidance of doubt and subject to paragraph 114, the provisions of paragraph 118(1) above shall require North Somerset District Council to repay the full costs of any works carried out to WWU's apparatus, or in order to protect that apparatus, or in consequence of any works carried out in the vicinity of that apparatus by North Somerset District Council.

120.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 116(2), any damage is caused to any 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 WWU, or there is any interruption in any service provided, or in the supply of any goods, by WWU, North Somerset District Council must—

(a) bear and pay the cost reasonably incurred by WWU in making good such damage or restoring the supply; and

(b) make reasonable compensation to WWU for any other expenses, loss, damages, penalty or costs incurred by WWU,

by reason or in consequence of any such damage or interruption.

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

(3) WWU must give North Somerset District Council reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of North Somerset District Council which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

121. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between North Somerset District Council or Network Rail and WWU in respect of any apparatus laid or erected in land belonging to North Somerset District Council or Network Rail on the date on which this Order is made.

122. The provisions of Part 2 of this Schedule do not apply in relation to WWU or any apparatus of WWU.

PART 10

For the protection of the National Trust

123.—(1) The provisions of this Part of this Schedule have effect for the protection of the Trust unless otherwise agreed in writing between the undertaker and the Trust.

(2) In this Part of this Schedule—

"activities" means vegetation clearance, removal of loose rocks, rock scaling, insertion of rock bolts and erecting catch fences and associated stays, cables and anchors;

"construction" includes execution, placing, erecting and insertion, and "construct" and "constructed" have corresponding meanings;

"emergency" means a situation which—

(a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;

(b) is a serious event presenting a risk of harm or damage to people, property or the environment; and

(c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work and details of the extent, timing and duration of any proposed occupation of property belonging to the Trust for the purpose of engaging in the activities;

"Quarry Bridge 2 works" means the reconstruction of the accommodation bridge under the railway at 122 miles 74 chains providing access to the property of the Trust;

"the Trust" means The National Trust for Places of Historic Interest or Natural Beauty (Registered Charity 205846); and

"Trust property" means any property belonging to the Trust.

Powers of compulsory acquisition

124. The powers of article 27 (compulsory acquisition of rights or imposition of covenants) and article 31 (Acquisition of subsoil or airspace only) may only be exercised in relation to Trust property with the consent of the Trust.

Works provisions

125.—(1) The undertaker must before commencing activities on Trust property or the Quarry Bridge 2 works under the powers of the Order supply to the Trust proper and sufficient plans and method statements for the proposed activities for the reasonable approval of the Trust and the activities must not be commenced except in accordance with such plans and method statements as have been approved in writing by the Trust or settled in accordance with paragraph 132.

(2) The approval of the Trust under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to the Trust the Trust has not indicated its disapproval of those plans and the grounds of disapproval the undertaker may serve upon the Trust written notice requiring the Trust to intimate its approval or disapproval within a further period of 14 days beginning with the date upon which Trust receives written notice from the undertaker. If by the expiry of the further 14 days the Trust has not intimated its approval or disapproval, the Trust will be deemed to have approved the plans as submitted.

126.—(1) Any activities to be carried out by virtue of paragraph 125 must, when commenced, be carried out—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 125;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the Trust;

(c) in such manner as to cause as little damage as is possible to the Trust's property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe access to Trust property.

(2) If any damage to Trust property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the entry on to Trust property, the undertaker must, notwithstanding any such approval, make good such damage and must pay to the Trust all reasonable expenses to which the Trust may be put by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

(a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the Trust or its servants, contractors or agents; or

(b) any liability on the Trust with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

127. The undertaker must—

(a) at all times afford reasonable facilities to the Trust for access to inspect the activities of the undertaker on Trust property; and

(b) supply the Trust with all such information as the Trust may reasonably require with regard to activities of the undertaker on Trust property.

128.—(1) Subject to sub-paragraph (2) the undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any Trust property, unless preventing such access is with the consent of the Trust or is in the case of an emergency.

(2) Sub-paragraph (1) does not apply to the Quarry Bridge 2 works while they are under construction, save that access to any Trust property must not be prevented in the case of an emergency.

129.—(1) Subject to sub-paragraph (2) where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Trust to Trust property, it must give the Trust 56 days' written notice of that requirement.

(2) Sub-paragraph (1) does not apply in the case of an emergency.

130. Where under this Part of this Schedule the Trust is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions.

131. The undertaker must repay to the Trust all costs, charges and expenses which it may reasonably incur or which it may sustain—

(a) in the examination of plans under this Part of this Schedule;

(b) in respect of the approval of plans submitted by the undertaker and the supervision by the Trust of the carrying out or construction of any activities or the Quarry Bridge 2 works and otherwise in connection with the implementation of the provisions of this Part of this Schedule; and

(c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting and watching the activities of the undertaker on Trust property.

Expert determination

132.—(1) Article 56 (arbitration) applies to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub–paragraph (7).

(2) Save as provided for in sub–paragraph (1) or sub–paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use all reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;

(c) issue a decision within 28 days of receipt of the submissions under sub-paragraph (5)(a); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 56 (arbitration).

SCHEDULE 17

Article 55

Documents to be Certified

Documents for certification that they are true copies of the documents referred to in this Order—

(1) *Document*	*(2)* *Drawing Number*	*(3)* *Revision*
Ashton Vale Road and Winterstoke Road Highway Works Plan	674946.BD.29.01-SK31 Rev L	2
The Avon Gorge Vegetation Management Plan	-	2
The book of reference	-	4
Bridleway Extension Under Elevated M5 Plan	467470.BQ.04.20-520 Rev H	1

Cattle Creep Proposed General Arrangement drawing	W1097B-ARP-DRG-ECV-300003 and W1097B-ARP-DRG-ECV-300004	1
The COCP	-	2
The compounds, haul roads and access to works plan	674946.BQ.42.01-380 to 674946.BQ.42.01-403 Rev G	4
The crossings to be extinguished plans	674946.BQ.42.01-410 to 674946.BQ.42.01-426 Rev F	2
CTMP – Construction Traffic Management Plan	-	1
The design drawings	See requirement 4	See requirement 4
Earthworks	W1097B-ARP-DRG-EGE 300001 Rev A02 to W1097B ARP-DRG-EGE-300008 Rev A02	1
The environmental master plan	674946-001-024-A ES-C	3
The environmental statement	-	-
General arrangement plans	674946.BQ.42.01-570 to 674946.BQ.42.01-593 Rev J	4
Habitat impacted by construction works within the Avon Gorge Woodlands SAC plan	674946-004-004-A Rev ES A	1
The hedgerow location plan	674946.BQ.42.01-600 A	1
The important hedgerow plan	674946-006-020-A	2
The land plan	-	3
The Master CEMP	-	3
The permanent and temporary stopping up and diversion plan	674946.BQ.42.01-480 to 674946.BQ.42.01-481 674946.BQ.42.01-484 to 674946.BQ.42.01-486 674946.BQ.42.01-496	2
The permanent traffic regulation order plans	467470.BQ.04.20-160 467470.BQ.04.20-215 467470.BQ.04.20-225 467470.BQ.04.20.601	1
Portbury Hundred location of additional tree planting plans	467470.BQ.04.20-610 to 467470.BQ.04.20-613	1
Railway landscape plans (disused line)	674946.BJ.35.01-01 to 674946.BJ.35.01-08 Rev I	3
Section drawings (Longitudinal Profile of Railway Alignment and Cross Section Plans)	W1097B-ARP-DRG-ETR-001301 to W1097B-ARP-DRG-ETR-1309 467470.BQ.04.20-104 Rev B 467470.BQ.04.20-219 Rev B 467470.BQ.04.20-292 Rev B 467470.BQ.04.20-410 Rev B 467470.BQ.04.20-531 Rev B 467470.BQ.04.20-630 Rev B 467470.BQ.04.20-SK300-SK304 Rev I	1

	674946.BD.29.01-SK33 Rev A	
The works plans	674946.BQ.42.01-300 to 674946.BQ.42.01-324	6
The National Cycle Network (NCN) temporary and permanent work plans	467470.BQ.04.20-530 Rev H 467470.BQ.04.20-540 Rev I 467470.BQ.04.20-550 Rev E 467470.BQ.04.20-551 Rev E 467470.BQ.04.20-552 Rev F 467470.BQ.04.20-553 Rev E 467470.BQ.04.20-554 Rev B	2
The new highways plan	674946.BQ.42.01-510 to 674946.BQ.42.01-511 Rev G 674946.BQ.42.01-515 Rev G 674946.BQ.42.01-525 to 674946.BQ.42.01-526 Rev G	2

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises North Somerset District Council to construct a new railway on the formation of the disused Portishead Branch Line railway and to carry out works to upgrade the existing freight only Parson Street to Royal Portbury Dock railway to allow it to be used for passenger railway services.

The purpose of this Order is to allow passenger services to run between Portishead and Bristol and to connect into the wider national railway network. The railway will, once open to passenger services, be owned and maintained by Network Rail Infrastructure limited.

The works also necessitate the diversion of an existing public footpath that crosses the railway at Barons Close, Ashton, Bristol.

The Order permits North Somerset District Council to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the new section of railway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 55 (documents to be certified) of this Order may be inspected free of charge during working hours at the offices of North Somerset District Council at Town Hall, Walliscote Grove Road, Weston–super–Mare BS23 1UJ or (during periods in which restrictions on movement are in place under the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (S.I. 2020/1374) (or other relevant Government legislation)) on the website https://metrowestphase1.org/final-dco-examination-documents/.

ENCLOSURE 2

STATUTORY INSTRUMENTS

202X No. 0000

INFRASTRUCTURE PLANNING

The Portishead Branch Line (MetroWest Phase 1) Order 202x

Made - - - -	***
Laid before Parliament	***
Coming into force - -	***

CONTENTS

PART 1
Preliminary

1.	Citation and commencement	5
2.	Interpretation	5
3.	Incorporation of the Railway Clauses Acts	8

PART 2
Principal powers

4.	Application and modification of legislation	9
5.	Development consent etc. granted by the Order	10
6.	Planning permission	10
7.	Limits of deviation	10
8.	Maintenance of authorised development	10
9.	Benefit of Order	11
10.	Consent to transfer benefit of Order	11
11.	Agreements with Network Rail	11

PART 3
Streets, Highways and Level Crossings

12.	Application of the 1991 Act	12
13.	Street works and power to alter the layout etc. of streets	13
14.	Permanent stopping up of streets	14
15.	Temporary stopping up of streets and public rights of way	14
16.	Bridleways, cycle tracks and footpaths	15
17.	Access to works	15
18.	Agreements with street authorities	15
19.	Construction and maintenance of new or altered streets	16

20. Closure of level crossings and crossings over disused railway 16
21. Accommodation and occupation crossings 17

PART 4
Supplemental powers

22. Discharge of water 17
23. Authority to survey and investigate land 18

PART 5
Powers of acquisition

24. Compulsory acquisition of land 19
25. Modification of Part 1 of the 1965 Act 19
26. Time limit for exercise of authority to acquire land compulsorily or take land temporarily 19
27. Compulsory acquisition of rights or imposition of covenants 20
28. Private rights over land subject to compulsory acquisition or temporary possession 21
29. Power to override easements and other rights 22
30. Application of Compulsory Purchase (Vesting Declarations) Act 1981 23
31. Acquisition of subsoil or airspace only 23
32. Rights under or over streets 24
33. Temporary use of land for carrying out the authorised development 24
34. Temporary use of land for maintaining the authorised development 26
35. Disregard of certain interests and improvements 27
36. Set-off for enhancement in value of retained land 27
37. Statutory undertakers and electronics communications code network operators 27
38. Recovery of costs of new connections 28

PART 6
Operations

39. Operation and use of railways 28
40. Operational land for purposes of the 1990 Act 28

PART 7
Miscellaneous and general

41. No double recovery 29
42. Apparatus and rights of statutory undertakers in stopped up streets 29
43. Felling or lopping of trees 30
44. Hedgerows 31
45. Defence to proceedings in respect of statutory nuisance 31
46. Traffic regulation 32
47. Application of the Land Compensation Act 1973 33
48. Application of landlord and tenant law 33
49. Procedure in relation to further approvals, etc. 33
50. Service of notices 34
51. Crown rights 35
52. Amendment of local byelaws 35

53. Protective provisions 36
54. Special category land 36
55. Documents to be certified 36
56. Arbitration 36

SCHEDULES

SCHEDULE 1 — Authorised development 37
SCHEDULE 2 — Requirements 42
PART 1 — Requirements 42
PART 2 — Procedure for discharge of requirements 58
SCHEDULE 3 — Streets subject to street works 61
SCHEDULE 4 — Streets to be stopped up 62
PART 1 — Street for which a substitute is to be provided 62
PART 2 — Streets for which no substitute is to be provided 63
SCHEDULE 5 — Streets to be stopped up temporarily 63
PART 1 — Street to be stopped up temporarily for which a substitute is to be provided 63
PART 2 — Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension 63
SCHEDULE 6 — Bridleways, cycle tracks and footpaths 64
PART 1 — Footpath to be diverted 64
PART 2 — New public rights of way to be created 64
SCHEDULE 7 — Access to works 65
SCHEDULE 8 — Closure of crossings 67
PART 1 — Crossings: works required 67
PART 2 — Crossings: temporary suspension 67
PART 3 — Crossings: No works required 68
SCHEDULE 9 — Accommodation and occupation crossings 68
PART 1 — Crossings extinguished: works required 68
PART 2 — Crossings for which no substitute is to be provided 69
SCHEDULE 10 — Land in which only new rights, etc., may be acquired 70
SCHEDULE 11 — Modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictions 73
SCHEDULE 12 — Land of which temporary possession may be taken 76
SCHEDULE 13 — Hedgerows 86
PART 1 — Hedgerows to be removed 86
PART 2 — Important Hedgerow 87
SCHEDULE 14 — Traffic Regulation 87
SCHEDULE 15 — Amendment of Local Legislation 89
SCHEDULE 16 — Protective Provisions 89
PART 1 — Protection for Network Rail Infrastructure Limited 89
PART 2 — Protection for Electricity, Gas, Water, Petroleum and Sewerage Undertakers 96
PART 3 — Protection for Operators of Electronic Communications Code Networks 100
PART 4 — Protection for the Environment Agency 101

PART 5 — Protection for First Corporate Shipping Limited 102
PART 6 — Protection for Exolum Pipeline System Ltd ~~113~~112
PART 7 — For the protection of Western Power Distribution Limited (South West) Plc 115
PART 8 — For the mutual protection of National Grid and the Railway Undertaker 119
PART 9 — For the protection of Wales and West Utilities ("WWU") 128
PART 10 — For the protection of the National Trust 131
SCHEDULE 17 — Documents to be Certified 134

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 in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**), by a Panel appointed as an Examining authority appointed by the Secretary of State in accordance with Chapter 3 of Part 6 of the 2008 Act.

The Panel appointed as an Examining authority, having considered the representations made and not withdrawn has, in accordance with Section 74 (2) of the 2008 Act, made 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 appointed as an Examining authority, has decided to make an Order granting development consent for the development described in the application and consent for ancillary works with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.

In accordance with section 131(5) of the 2008 Act, the Secretary of State is satisfied, that where this Order authorises the compulsory acquisition of land forming part of an open space being the cycle track special category land (as defined in article 54 of this Order) that land is less than 200 square metres in extent and the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

In accordance with section 132(3) of the 2008 Act, the Secretary of State is satisfied, that where this Order authorises the compulsory acquisition of a right over other land forming part of an open space that land, when burdened with the order right, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights in the land, and the public.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 24, 26, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

(**a**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/752 and S.I. 2018/378.
(**c**) S.I. 2010/103 amended by S.I. 2012/635.

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Portishead Branch Line (MetroWest Phase 1) Order 202X and comes into force on [●] 202[*].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**b**);

"the 1980 Act" means the Highways Act 1980(**c**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**d**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**e**);

"the 1990 Act" means the Town and Country Planning Act 1990(**f**)

"the 1991 Act" means the New Roads and Street Works Act 1991(**g**)

"the 2003 Act" means the Communications Act 2003(**h**);

"the 2008 Act" means the Planning Act 2008(**i**);

"the 2009 Regulations" means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009;

"the 2017 Act" means the Neighbourhood Planning Act 2017(**j**);

"address" includes any number or address used for the purposes of electronic transmission;

"authorised development" means the development and associated 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;

"authorised railway works" means those parts of the authorised development that are on land that is or will become operational railway land;

"Avon Gorge Woodlands SAC" means the Avon Gorge Woodlands Special Area of Conservation (EU Code UK0012734);

"Avon Gorge Vegetation Management Plan" means the management plan for the management of the construction of the authorised development within the Avon Gorge Woodlands SAC agreed by Network Rail and the undertaker in consultation with Natural England and certified as such by the Secretary of State;

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

"bridleway" has the same meaning as in the 1980 Act;

(**a**) 1961 c. 33.
(**b**) 1965 c. 56.
(**c**) 1980 c. 66.
(**d**) 1981 c. 66.
(**e**) 1984 c. 27.
(**f**) 1990 c. 8.
(**g**) 1991.c. 22.
(**h**) 2003 c. 21. The relevant provisions of the Communications Act 2003 amended by section 4 of the Digital Economy Act 2017 (2017 c. 30).
(**i**) 2008 c. 29. The relevant provisions of the Planning Act 2008 are amended by the following: Chapter 6 of Part 6 of, and Schedules 13 and 25(21) to the Localism Act 2011 (c. 20); sections 22 to 27 of the Growth and Infrastructure Act 2013 (c. 27); S.I. 2013/1883; Schedule 16 to the Housing and Planning Act 2016 (c. 22); S.I. 2017/1285 and S.I. 2009/1307.
(**j**) 2017 c. 20.

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"COCP" means the document certified as the Code of Construction Practice by the Secretary of State for the purposes of this Order;

"commence" means beginning to carry out any material operation (as defined in section 155 (when development begins) of the 2008 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, archaeological investigations, receipt and erection of construction plant and equipment, utility diversions, laying out of compounds, works to clear watercourses, erection of any temporary means of enclosure, erection of protective fencing, the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;

"the compounds, haul roads and access to works plan" means the document certified by the Secretary of State as the compounds, haul roads and access to works plan for the purposes of this Order;

"compulsory acquisition notice" means a notice served in accordance with section 134 (notice of authorisation of compulsory acquisition) of the 2008 Act;

"crossings to be extinguished plans" means the plan certified as the crossings to be extinguished plans by the Secretary of State for the purposes of this Order;

"CTMP – Construction Traffic Management Plan" means the document certified as such by the Secretary of State for the purposes of this Order;

"cycle track" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(**a**);

"the design drawings" means the drawings described as such in Schedule 17 (documents to be certified) and certified as the design drawings by the Secretary of State for the purposes of this Order;

"electronic transmission" means a communication transmitted—

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

(b) by other means provided it is in electronic form;

"the environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

"first open for use" means—

(a) in respect of railway related activities, the date on which Works Nos. 1, 1A and 1B are first used for revenue earning purposes by the passage of passenger carrying railway vehicles; and

(b) in respect of highway related activities, the date the new highway is first available for the public to pass and repass;

"footpath" has the same meaning as in the 1980 Act;

"hedgerow location plan" means the plan certified as the hedgerow location plan by the Secretary of State for the purposes of this Order;

"highway" has the same meaning as in the 1980 Act;

"IDB" means the North Somerset Levels Internal Drainage Board;

"the important hedgerow plan" means the plan certified as the important hedgerow plan by the Secretary of State for the purposes of this Order;

"the land plan" means the plans certified as the land plan by the Secretary of State for the purposes of this Order;

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

"lead local flood authority" means North Somerset District Council as lead local flood authority and any successor flood authority;

"limits of deviation" means the limits of deviation for Work Nos 1, 1A, 1B and 1C, shown on the works plans;

"limits of land to be acquired or used" means the limits of land to be acquired or used shown on the land plan;

"maintain" includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, remove, reconstruct, replace or improve in relation to the authorised development and any derivative of "maintain" is to be construed accordingly;

"Master CEMP" means the document certified as the Master Construction Environmental Management Plan" by the Secretary of State for the purposes of this Order;

"Network Rail" means Network Rail Infrastructure Limited, company number 02904587 registered at 1 Eversholt Street, London, NW1 2DN and includes any successor in function to Network Rail authorised to operate that part of the national rail network that the authorised development is or will be included in;

"New highways plan" means the plan certified as the new highways plan by the Secretary of State for the purpose of this Order;

"operational railway land" means—

(a) land required permanently for the construction and operation of Works Nos. 1, 1A and 1B;

(b) any part of the existing railway corridor owned by Network Rail between Ashton Junction and Portbury Junction; and

(c) land forming permanent maintenance compounds held by Network Rail for the maintenance of the railways referred to in sub-paragraphs (a) and (b)

and includes associated works, structures, embankments, cuttings, stations, bridges and culverts;

"Order land" means the land shown on the land plan which is within the limits of land to be acquired or used and described in the book of reference;

"the Order limits" means the Order limits shown on the works plans;

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

"the permanent and temporary stopping up and diversion plan" means the plan certified as the permanent and temporary stopping up and diversion plan by the Secretary of State for the purposes of this Order;

"permanent traffic regulation order plans" means the documents certified by the Secretary of State as the permanent traffic regulation order plans for the purposes of this Order;

"Portishead Railway Acts" means the Bristol and Portishead Pier and Railway Act 1863(**b**) and the Bristol and Portishead Pier and Railway Act 1866(**c**);

"private means of access" means a private access to the highway network from neighbouring land;

"relevant highway authority" means North Somerset District Council for highways within the administrative area of North Somerset District Council and Bristol City Council for highways within the administrative area of Bristol City Council or any successor highway authority to those authorities;

"relevant planning authority" for land within the administrative area of North Somerset District Council means North Somerset District Council or for land within the administrative area of Bristol City Council means Bristol City Council or any successor planning authority to those authorities;

(**a**) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

(**b**) 26 & 27 Vict. c. cvii.

(**c**) 29 & 30 Vict. c. lxxxviii.

"the section drawings" means the drawings certified as the section drawings by the Secretary of State for the purposes of this Order;

"statutory undertaker" has the same meaning as in 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 (traffic authorities) of the 1984 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means—

(a) North Somerset District Council; and

(b) subject to articles 9 (benefit of Order), 10 (consent to transfer benefit of Order) and 11 (agreements with Network Rail) any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person;

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

"the works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

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

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

(4) References in this Order to points identified by letters, with or without numbers, are to be construed as references to points so lettered on the relevant plans.

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

Incorporation of the Railway Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**a**) are incorporated in this Order—

(a) section 46 (crossing of roads – level crossings), subject to paragraph (4);

(b) section 58 (company to repair roads used by them), except for the words from "and if any question" to the end;

(c) section 61 (company to make sufficient approaches and fences to highways crossing on the level);

(d) section 68 (accommodation works by company);

(**a**) 1845 c. 20. Section 46 was amended by sections 109(1) and (3) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c. 39). Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101). Section 78 was amended by section 39(3) of, and Schedule 7 to, the Compulsory Purchase Act 1965 (c. 56) and articles 5(1) and (2) of, and paras 1 and 3 of Schedule 1 to, S.I. 2009/1307. Section 105 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101), and section 31(6) of the Criminal Law Act 1977 (c. 45), and sections 37 and 49 of the Criminal Justice Act 1982 (c. 48). There are other amendments to the 1845 Act not relevant to this Order.

(e) section 71 (additional accommodation works by owners), except for the words "or directed by such justices to be made by the company" and "or, in case of difference, as shall be authorised by two justices";

(f) sections 72 and 73 (supplementary provisions relating to accommodation works);

(g) section 77 (presumption that minerals excepted from acquisition of land);

(h) sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(**a**); and

(i) section 105 (carriage of dangerous goods on railway), except for the words from "and if any person" to "for every such offence".

(2) The following provisions of the Railways Clauses Act 1863(**b**) are incorporated in this Order—

(a) sections 5 and 7 (level crossings); and

(b) section 12 (signals, watchmen etc.).

(3) In those provisions, as incorporated in this Order—

"the company" means the undertaker and, for land that is within that part of the Order limits which is either existing operational railway or which will become operational railway, Network Rail;

"goods" includes anything conveyed on the railway authorised to be constructed by this Order;

"lease" includes an agreement for a lease;

"prescribed" in relation to any such provision means prescribed by this Order for the purposes of that provision;

"the railway" means any railway authorised to be constructed by this Order and any other authorised development; and

"the special Act" means this Order.

(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order, for the proviso there is substituted "provided always that, with the consent of the relevant highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level".

PART 2

Principal powers

Application and modification of legislation

4.—(1) The provisions of Chapter 1 of Part 2 of the 2017 Act do not apply as regards the temporary possession or use of land under articles 33 and 34 of this Order or to anything else done under this Order.

(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of Regulation 6 of the Community Infrastructure Levy Regulations 2010(**c**) any building comprised in the authorised development is deemed 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.

(**a**) 1923 c. 20. Section 15 was amended by section 10(1) of the Decimal Currency Act 1969 (c. 19).
(**b**) 1863 c. 92.
(**c**) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant.

Development consent etc. granted by the Order

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

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 development authorised by this Order,

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

(2) The provisions of this Order do not preclude or apply to any development, or any part of a development, which is carried out by, or used by, Network Rail on any land (whether or not within the Order limits)—

(a) that is or will become operational railway land and is carried out in accordance with any planning permission granted under the 1990 Act including a planning permission granted under article 3 and Class A of Part 8 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(**a**); or

(b) that is carried out in accordance with any planning permission granted under the 1990 Act including a planning permission granted under article 3 and Class A of Part 18 of Schedule 2 to that Order.

Limits of deviation

7.—(1) In constructing or maintaining Works Nos. 1, 1A, 1B and 1C the undertaker may deviate—

(a) laterally from the lines or situations shown on the works plans to the extent of the limits of deviation so shown for the work; and

(b) vertically from the levels shown on the section drawings—

(i) to any extent upwards not exceeding 0.5 metres; and

(ii) to any extent downwards not exceeding 0.5 metres.

(2) In constructing or maintaining any other work comprised in the authorised development the undertaker must construct any such work within the extents of work shown on the works plans for the relevant work.

Maintenance of authorised development

8.—(1) 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.

(2) Paragraph (1) does not authorise any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

(**a**) S.I. 2015/596.

Benefit of Order

9. Subject to article 10 (consent to transfer benefit of Order), article 11 (agreements with Network Rail) and article 27 (6) (compulsory acquisition of rights or imposition of covenants) the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

10.—(1) The undertaker may—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

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

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

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

(4) The consent of the Secretary of State and the consent of Network Rail are required for a transfer or grant under this article unless such transfer or grant is to Network Rail in accordance with an agreement made under article 11 (agreements with Network Rail).

Agreements with Network Rail

11.—(1) The undertaker and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

(a) the authorised development or any part of the authorised development; and

(b) any works required for the purposes of or in connection with the authorised development

by Network Rail or by the undertaker, or by the undertaker and Network Rail jointly.

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be agreed, including (but without limitation on the scope of paragraph (1)), provisions—

(a) with respect to the defraying of, or the making of contributions towards, the cost of such construction, maintenance, use and operation as are referred to in paragraph (1) by the undertaker or by Network Rail or by the undertaker and Network Rail jointly;

(b) for the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of all or any of the powers and rights of Network Rail and the undertaker (as the case may be) in respect of any of the authorised development and any works required for the purposes of, or in connection with, those works; and

(c) without limitation on the scope of sub-paragraph (b), for the exercise by Network Rail, or by Network Rail and the undertaker jointly, of all or any of the powers under this Order for, or relating to, the compulsory acquisition or the taking of temporary possession of any land or rights over land.

(3) The exercise by the undertaker or Network Rail or by the undertaker and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (1) is subject to all statutory and contractual provisions relating to it as would apply if such powers and rights were exercised by the undertaker or Network Rail (as the case may be) alone, and accordingly such provisions, with any necessary modifications, apply to the exercise of such powers and rights by the undertaker or Network Rail or by the undertaker and Network Rail jointly, as the case may be.

(4) The undertaker and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the undertaker, or the undertaker and Network Rail jointly of—

(a) any of the authorised development or any part of that development; or

(b) any works, lands or other property required for the purposes of the authorised development or in connection with such development,

together with any rights and obligations (whether or not statutory) of Network Rail or the undertaker relating to them.

PART 3

Streets, Highways and Level Crossings

Application of the 1991 Act

12.—(1) Works carried out 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 of the 1991 Act (street works in England and Wales) as major transport works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (highway authorities, highways and related matters) of that Act (which defines what highway authority works are major highway works); or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts)(**a**).

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

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

(a) section 56 (directions as to timing)(**b**);

(b) section 56A (power to give directions as to placing of apparatus)(**c**);

(c) section 58 (restrictions following substantial road works)(**d**);

(d) section 58A (restriction on works following substantial street works)(**e**);

(e) section 73A (power to require undertaker to re-surface street);

(f) section 73B (power to specify timing etc. of re-surfacing);

(g) section 73C (materials, workmanship and standard of re-surfacing);

(h) section 78A (contributions to costs of re-surfacing by undertaker); and

(i) Schedule 3A (restriction on works following substantial street works)(**f**).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the carrying out 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 the carrying out of works under article 13 (street works and power to

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(**a**) 1980 c. 66. Section 64 was amended by Schedule 17 to the Local Government Act 1985 (c. 51) and Schedule 9 to the New Roads and Street Works Act 1991 (c. 22).

(**b**) 1991 c. 22. Section 56(1), (1A) and (3A) were amended by section 43 of the Traffic Management Act 2004 (c. 18). Section 56(3) was amended by Schedule 1 to the Traffic Management Act 2004 (c. 18).

(**c**) 1991 c. 22. Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).

(**d**) 1991 c. 22. Sections 58(1) (2) (4) (7) and (7A) were amended by section 51 of the Traffic Management Act 2004 (c. 18). Section 58(3) was amended by section 51(4) of the Traffic Management Act 2004 (c. 18). Section 58(6) was amended by Schedule 1 to the Traffic Management Act 2004 (c. 18).

(**e**) 1991 c. 22. Section 58A was inserted by section 52(1) of the Traffic Management Act 2004 (c. 18).

(**f**) 1991 c. 22. Schedule 3A was amended by Schedule 4 of the Traffic Management Act 2004 (c. 18).

alter the layout etc. of streets) whether or not the carrying out of such works constitutes street works within the meaning of that Act or any stopping up, alteration or diversion of a street under article 15 (temporary stopping up of streets and public rights of way).

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

(a) section 54 (advance notice of certain works), subject to paragraph (4)(**a**);

(b) section 55 (notice of starting date of works), subject to paragraph (4)(**b**);

(c) section 57 (notice of emergency works)(**c**);

(d) section 59 (general duty of street authority to co-ordinate works)(**d**);

(e) section 60 (general duty of undertakers to co-operate)(**e**);

(f) section 68 (facilities to be afforded to street authority)(**f**);

(g) section 69 (works likely to affect other apparatus in the street);

(h) section 76 (liability for cost of temporary traffic regulation)(**g**); and

(i) 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 included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Street works and power to alter the layout etc. of streets

13.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

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

(b) tunnel or bore under the street or carry out any works to strengthen or repair the carriageway;

(c) remove or use all earth and material in or under the street;

(d) place and keep apparatus under the street;

(e) maintain, alter or renew apparatus in the street or change its position;

(f) demolish, remove, replace and relocate any street furniture within the street;

(g) execute any works to 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;

(k) make and maintain crossovers and passing places;

(l) execute any works of surfacing or re-surfacing of the highway; and

(m) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (l).

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to paragraph (4), the undertaker may, for the purposes of constructing and maintaining any part of the authorised development, alter the layout of any street within the Order limits and the layout of

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(**a**) 1991 c. 22. Section 54 was amended by sections 40(1) and (2) and 49 of and Schedule 1 to the Traffic Management Act 2004 (c. 18).
(**b**) 1991 c. 22. Section 55 was amended by sections 40(1) and (2), 49 and 51 of and Schedule 1 to the Traffic Management Act 2004 (c. 18).
(**c**) 1991 c. 22. Section 57 was amended by section 52 of and Schedule 1 to the Traffic Management Act 2004 (c. 18).
(**d**) 1991 c. 22. Section 59 was amended by section 42 of the Traffic Management Act 2004 (c. 18).
(**e**) 1991 c. 22. Section 60 was amended by Schedule 1 to the Traffic Management Act 2004 (c. 18).
(**f**) 1991 c. 22. Section 68 was amended by Schedule 1 to the Traffic Management Act 2004 (c. 18).
(**g**) 1991 c. 22. Section 69 was amended by Schedule 1 to the Traffic Management Act 2004 (c. 18).

any street having a junction with such a street; and, without limitation on the scope of that power, the undertaker may—

(a) increase the width of the carriageway of the street by reducing the width of any kerb, splitter island, footpath, footway, cycle track or verge within the street;

(b) alter the level or increase the width of any such kerb, splitter island, footpath, footway, cycle track or verge; and

(c) reduce the width of the carriageway of the street.

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

(4) The powers conferred by paragraph (2) are not to be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.

Permanent stopping up of streets

14.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

(a) stop up the street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets to be stopped up) to the extent specified in column (3) of that part of that Schedule; and

(b) stop up the streets specified in columns (1) and (2) of Part 2 of Schedule 4 to the extent specified in column (3) of that part of that Schedule.

(2) The street specified in columns (1) and (2) of Part 1 of Schedule 4 is not 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 (4) of that Part of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or

(b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the relevant highway 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 extinguishment of any private right of way or private means of access under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Temporary stopping up of streets and public rights of way

15.—(1) Subject to paragraph (4) the undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street or public right of way or any part of a street or public right of way within the Order limits and may for any reasonable time—

(a) divert the traffic from the street or public right of way; and

(b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

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

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

(4) The street specified in columns (1) and (2) of Part 1 of Schedule 5 (streets to be stopped up temporarily) is not to be wholly or partly stopped up under this article to the extent specified, by reference to the letters and numbers shown on the permanent and temporary stopping up and diversion plan, in column (3) of that Schedule, unless the temporary alternative route to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use.

(5) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up the public rights of way described in Part 2 of Schedule 5 (streets to be stopped up temporarily) to the extent specified in column (3) of that part of that Schedule.

(6) The undertaker may not temporarily stop up, alter, divert or use as a temporary working site—

(a) any street or public right of way specified as mentioned in Schedule 3 (streets subject to street works) or paragraphs (4) or (5) without first consulting the street authority; and

(b) any other street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent in relation to the placing of street notices and traffic signs.

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

Bridleways, cycle tracks and footpaths

16.—(1) With effect from the date of coming into force of this Order, the public right of way (being a footpath) specified in columns (1) and (2) of Part 1 of Schedule 6 (bridleways, cycle tracks and footpaths) and all private rights of way (if any) are stopped up to the extent specified in column (3) of that Part of that Schedule.

(2) With effect from the date of coming in to force of this Order the section of footpath specified in column (4) of Part 1 of Schedule 6 is created.

(3) Unless otherwise agreed with the relevant planning authority, the new public rights of way set out in Part 2 of Schedule 6 and identified on the new highways plan are to be constructed by the undertaker in the specified locations and open for use from the date that part of the authorised development consisting of the new railway is first open for use.

Access to works

17. The undertaker may, for the purposes of the authorised development—

(a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 7 (access to works) and shown on the compounds, haul roads and access to works plan; and

(b) with the approval of the relevant planning authority after consultation with the relevant highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

18.—(1) A street authority and the undertaker may enter into agreements with respect to—

(a) the construction of any new street, including any structure carrying the street over or under a railway authorised by the Order;

(b) the strengthening, improvement, repair or reconstruction of any street under the powers of this Order;

(c) the maintenance of the structure of any bridge or tunnel carrying a street over or under any authorised railway;

(d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or

(e) the carrying out in the street of any of the works referred to in article 13(1) (street works and power to alter the layout etc. of streets);

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

Construction and maintenance of new or altered streets

19.—(1) Any street to be constructed under this Order must be completed to the reasonable satisfaction of the street authority and unless otherwise agreed with the street authority, must be maintained by and at the expense of the undertaker for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(3) The date of completion of any works referred to in paragraphs (1) and (2) is to be agreed between the undertaker and the street authority, acting reasonably.

Closure of level crossings and crossings over disused railway

20.—(1) Subject to paragraph (3), the crossings specified in columns (1) and (2) of Part 1 of Schedule 8 (closure of crossings) are to be permanently stopped up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of any crossing referred to in paragraph (1), all public or private rights of way (if any) over the part of the crossing specified in relation to it in column (3) of Part 1 of Schedule 8 are extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to the permanent stopping up and discontinuance of a crossing specified in columns (1), (2) and (3) of Part 1 of Schedule 8 until the replacement specified in relation to it in column (4) of that Part of that Schedule has been constructed and completed to the reasonable satisfaction of the street authority and is open for use.

(4) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily stop up the crossing specified in columns (1), (2) and (3) of Part 2 of Schedule 8 in accordance with paragraph (5).

(5) Any temporary stopping up of the crossing specified in columns (1), (2) and (3) of Part 2 of Schedule 8 must not take place until a temporary alternative route is first provided by the undertaker in relation to it as specified in column (4) of that Part of that Schedule, to the reasonable satisfaction of the relevant highway authority, and such replacement route (or any subsequently agreed variation or substitute for that route) must be maintained and available for use at all reasonable times (unless the temporary alternative route is closed because it cannot be used safely) until Work No. 7 is completed and open for use.

(6) The crossings specified in columns (1) and (2) of Part 3 of Schedule 8 (closure of crossings) are permanently stopped up and discontinued to the extent specified in column (3) of that part of that Schedule on the date this Order comes in to force.

(7) Upon the permanent closure of each of the crossings referred to in paragraph (6), all public or private rights of way (if any) over the part of the crossings specified in relation to it in column (3) of Part 3 of Schedule 8 are extinguished.

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

(9) In this article and in Schedule 8 "crossing" includes a level crossing, a former level crossing and a permissive crossing of the railway or disused railway.

Accommodation and occupation crossings

21.—(1) Subject to paragraph (2) and regardless of anything in section 68 (accommodation works by Company) of the Railways Clauses Consolidation Act 1845 as incorporated in the Portishead Railway Acts or any other enactment or instrument, all public or private rights of way (if any) afforded by means of the accommodation or occupation facilities specified in columns (1) and (2) of Parts 1 and 2 of Schedule 9 (accommodation and occupation crossings), including those specified in column (3) of Parts 1 and 2 of that Schedule, are extinguished.

(2) Paragraph (1) does not take effect with respect to the extinguishment of the public or private rights of way (if any) by means of a facility specified in columns (1) and (2) of Part 1 of Schedule 9 (accommodation and occupation crossings) until the works specified in relation to it in column (4) of Part 1 of that Schedule have been provided.

(3) Paragraph (1) takes effect with respect to the extinguishment of the public or private rights of way (if any) specified in column (3) of Part 2 of Schedule 9 by means of the facilities specified in column (1) and (2) of Part 2 of that Schedule 9 on the date this order comes into force.

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

PART 4

Supplemental powers

Discharge of water

22.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, operation 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 pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**b**) (right to communicate with public sewers).

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

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(**a**) 1961 c. 33. Section 1 was amended by S.I. 2009/1307.

(**b**) 1991 c. 56. Section 106 was amended by section 35(1) and (8) and section 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43) and 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 2016 (c. 29).

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(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 under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(**a**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991(**b**) have the same meaning as in that Act.

Authority to survey and investigate land

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

(a) survey or investigate the land;

(b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

(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 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.

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

(a) on land located within the highway boundary without the consent of the relevant highway authority; or

(b) in a private street without the consent of the street authority.

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

(**a**) S.I. 2016/1154. There are amendments to regulation 12 which are not relevant to this Order.
(**b**) 1991 c. 57.

PART 5

Powers of acquisition

Compulsory acquisition of land

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

(2) This article is subject to paragraph 27(3) of article 27 (compulsory acquisition of rights or imposition of covenants) article 31 (acquisition of subsoil or airspace only) and paragraph 33(8) of article 33 (temporary use of land for carrying out the authorised development).

Modification of Part 1 of the 1965 Act

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

(2) In section 4A(1) (extension of time limit during challenge)(**b**) 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 4" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily or take land temporarily) of the Portishead Branch Line (MetroWest Phase 1) Order 202*".

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

(a) in subsection (1)(a), after "land" insert "under that provision";

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 24 of the Portishead Branch Line (MetroWest Phase 1) Order 202*".

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

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

"(2) But see article 31(3) (acquisition of subsoil, etc., only) of the Portishead Branch Line (MetroWest Phase 1) Order 202* , which excludes the acquisition of subsoil or airspace only from this Schedule;"

and

(b) after paragraph 29, end insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the Portishead Branch Line (MetroWest Phase 1) Order 202*."

Time limit for exercise of authority to acquire land compulsorily or take land temporarily

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

(a) no notice to treat may be served under Part 1 of the 1965 Act; and

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(**a**) 2008 c. 29. Section 125 is amended by Schedule 16 to the Housing and Planning Act 2016 (c. 22).
(**b**) 1965 c. 56. Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
(**c**) 1965 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
(**d**) 1965 c. 56. Schedule 2A was amended by Schedule 17 to the Housing and Planning Act 2016 (c. 22).

(b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act(**a**) as applied by article 30 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights or imposition of covenants

27.—(1) Subject to paragraphs (3) and (4) the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) The undertaker may impose restrictive covenants affecting any part of the Order land which—

(a) adjoins or will, on completion of the authorised railway works, adjoin Works Nos. 1, 1A, 1B or 1C or as may be required for the purpose of protecting the authorised railway works; or

(b) is required for the purposes of ecological or other mitigation.

(3) In the case of the Order land specified in column (1) of Schedule 10 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights in the land for the purpose specified in relation to that land in column (2) of that Schedule or the imposition of restrictive covenants in accordance with paragraph (2).

(4) Subject to Schedule 2A (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5 of Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictions)) where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 11 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(6) In any case where the acquisition of new rights under paragraph (1) or the imposition of a restriction under paragraph (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, then

(a) the undertaker or,

(b) where the land acquisition powers are exercisable by Network Rail pursuant to an agreement made under article 11 (agreements with Network Rail), Network Rail,

may transfer the power to acquire such rights or impose such restrictions to the relevant statutory undertaker.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (6) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(8) Subject to paragraph (9), where any power is transferred to a statutory undertaker in accordance with a transfer under paragraph (6) and the statutory undertaker—

(a) is liable to pay compensation for the exercise of that power, and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(**a**) 1981 c. 66. Section 4 was amended by sections 184,185 and 199(2) of, and paragraphs 1 and 2 of Part 1 of Schedule 13 to, the Housing and Planning Act 2016 (c. 22).

(9) Nothing in this article affects any agreement between the undertaker or Network Rail and any statutory undertaker receiving the benefit of any power transferred under paragraph (6).

Private rights over land subject to compulsory acquisition or temporary possession

28.—(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 onto the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act(**a**)

whichever is the earlier.

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

(a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker , whether compulsorily or by agreement; or

(b) on the date of entry 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 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.

(4) Any person who suffers loss by the extinguishment or suspension of any private right 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 does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act(**b**) or article 37 (Statutory undertakers and electronics communications code network operators) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person

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(**a**) 1965 c. 56. Section 11(1) was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of the Housing and Planning Act 2016 (c. 22), Schedule 4 to the Acquisition of Land Act 1981 (c. 67) and section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2206 No. 1).

(**b**) 2008 c. 29. Section 138 was amended by section 23(4) of the Growth and Infrastructure Act 2013 (c. 27) and regulation 2 of, and paragraph 12 of, Part 1 of Schedule 1 to S.I. 2017/1285.

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

(8) 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

29.—(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) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or Network Rail or by any person authorised by them) 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

(3) The interests and rights to which this article applies 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 includes restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraphs (1) or (2) compensation—

(a) is payable under section 10 (further provision as to compensation for injurious affection) of the 1965 Act as applied by section 152 (compensation in cases where no right to claim in nuisance) of the 2008 Act(**a**); 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.

(5) Where a relevant person—

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) 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 paragraphs (1) or (2) of this article.

(7) Nothing in paragraph (6) affects any agreement between the undertaker and the relevant person receiving the benefit of the authorisation under paragraphs (1) or (2).

(8) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers and electronic communications code network operators) applies.

(9) In this article—

"authorised activity" means—

(i) the erection, construction or maintenance of any part of the authorised development;

(**a**) 2008 c. 29. Section 152 was amended by paragraph 293 of Schedule 1 to S.I. 2009/1307.

(ii) the exercise of any power authorised by this Order; or

(iii) the use of any Order land (including the temporary use of land) for the purposes of the authorised development.

"relevant person" means—

(iv) a person deriving title under the undertaker;

(v) Network Rail; or

(vi) a person deriving title under Network Rail.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

(5) In section 5B (extension of time limit during challenge)(**c**) 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 26 of the Portishead Branch Line (MetroWest Phase 1) Order 202*".

(6) In section 6 (notices after execution of declaration)(**d**), 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".

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

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

"(2) But see article 31 (3) (acquisition of subsoil, etc., only) of the Portishead Branch Line (MetroWest Phase 1) Order 202* , which excludes the acquisition of subsoil or airspace only from this Schedule."

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

31.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 24(1) (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 under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(**a**) 1981 c. 66. Section 5 was amended by section 183 of, and Schedule 15 to, the Housing and Planning Act 2016 (c. 22).
(**b**) 1981 c. 66. Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
(**c**) 1981 c. 66. Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).
(**d**) 1981 c. 66. Section 6 was amended by section 183 of, and paragraphs 4 and 7 of Schedule 15 to, the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).
(**e**) 1981 c. 66. Section 7 was amended by section 199(2) of, and paragraphs 1 and 3 of Part 1 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).
(**f**) 1981 c. 66. Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(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 25 of this Order;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act(**a**).

(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

32.—(1) The undertaker may enter upon 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 air-space for the purposes of the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker 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 by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing of 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.

Temporary use of land for carrying out the authorised development

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

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 12 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

(ii) any of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act(**b**) (other than in connection with the acquisition of rights or the imposition of covenants) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

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

(**a**) 1990 c. 8. Section 153(4A) was inserted by section 200(2) of the Housing and Planning Act 2016 (c. 22).

(**b**) 1965 c. 56. Section 11(1) was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of the Housing and Planning Act 2016 (c. 22), Schedule 4 to the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and articles 5(1) and (2) of, and paragraphs 59 and 64 of Schedule 1 to, S.I. 2009/1307.

(c) construct temporary works (including the provision of means of access), security fencing and buildings on that land;

(d) construct any works as are mentioned in Schedule 1 (authorised development);

(e) carry out any other mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works on that land; or

(f) provide any temporary car parking or storage facilities on that land.

(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)(i).

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

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 12; or

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

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but 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 statutory undertakers' apparatus or connections to such apparatus or any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or

(d) remove any mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works which have been placed on the land to

(i) facilitate construction of the authorised development;

(ii) protect any existing operational railway; or

(iii) mitigate the effects of the authorised development.

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

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

(7) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

(a) acquiring new rights over or imposing restrictive covenants affecting any part of that land under article 27 (compulsory acquisition of rights or imposition of covenants); or

(b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil or of airspace over) that land under article 31 (acquisition of subsoil or airspace only).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority)(**a**) 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.

Temporary use of land for maintaining the authorised development

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

(a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Unless paragraph (4) applies, the undertaker must serve notice of the intended entry on the owners and occupiers of the land not less than 28 days before entering upon and taking temporary possession of land under this article and that notice must state the purpose for which the undertaker intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be 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 one or more of—

(a) the authorised development or any of its parts;

(b) the public; or

(c) the surrounding environment,

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

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

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

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

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

(9) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

(**a**) 1965 c. 56. Section 13 was amended by section 139(4)-(9) and section 62(3) of, paragraphs 27 and 28(1)-(3) of Schedule 13 to, and Part 13 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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

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

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

Disregard of certain interests and improvements

35.—(1) In assessing the compensation payable to any person on the acquisition from that person of 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 executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration 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 executed or the improvement or alteration made, directly or indirectly concerned.

Set-off for enhancement in value of retained land

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

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

(a) any increase in value of the land over which the new rights are acquired or restrictive covenants are imposed; and

(b) any increase in the 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.

Statutory undertakers and electronics communications code network operators

37.—(1) Subject to Schedule 16 (protective provisions), and paragraph (2) the undertaker may—

(a) exercise the powers conferred by articles 24 (compulsory acquisition of land) and 27 (compulsory acquisition of rights or imposition of covenants) in relation to so much of the Order land as belongs to statutory undertakers; and

(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

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

(a) Part 3 (street works in England and Wales) of the 1991 Act; or

(b) article 42 (apparatus and rights of statutory undertakers in stopped up streets).

Recovery of costs of new connections

38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 37 (statutory undertakers and electronic communications code network operators) 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 37 (statutory undertakers and electronic communications code network operators), 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) In this article—

"public communications provider" has the same meaning as in section 151(1) (interpretation of chapter 1) of the 2003 Act(**a**); and

"public utility undertaker" has the same meaning as in the 1980 Act.

PART 6

Operations

Operation and use of railways

39.—(1) Network Rail may operate and use the railway authorised by this Order as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 of the Railways Act 1993(**b**) (the provision of railway services).

Operational land for purposes of the 1990 Act

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

(**a**) 2003 c. 21. There are amendments to section 151(1) which are not relevant to this Order.
(**b**) 1993 c. 43.

PART 7

Miscellaneous and general

No double recovery

41. 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 or different provisions of this Order.

Apparatus and rights of statutory undertakers in stopped up streets

42.—(1) Where a street is stopped up under articles 14 (permanent stopping up of streets) or 15 (temporary stopping up of streets and public rights of way), 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 permanently stopped up under article 14 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

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

(a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

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

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

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

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

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

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

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

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

time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

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

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (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 1990 Act or a public communications provider as defined in section 151(1) (interpretation) of the 2003 Act.

Felling or lopping of trees

43.—(1) The undertaker may fell, prune, coppice, pollard, reduce in height or width 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) subject to paragraph (4), from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to passengers or other persons using the authorised development.

(2) The powers in paragraph (1) may be exercised in relation to any tree or shrub which is situated within a conservation area (designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990)(**a**).

(3) Action may not be taken under paragraph (2) unless the undertaker has given written notice to the relevant planning authority of the intended action (with sufficient particulars to identify the tree), and either—

(a) the relevant planning authority has indicated in writing that it has no objection to the works or that they fall within an exemption in paragraph (4) or (5), or

(b) six weeks have elapsed from the date of the notice and a tree preservation order has not been made in respect of the tree or shrub.

(4) Paragraph (3) does not apply where consent would not be needed for the proposed action if the tree or shrub were subject to a tree preservation order.

(5) Paragraph (3) shall not apply to any action which would be exempt in accordance with regulations under section 212 of the 1990 Act (disapplication of tree preservation offences).

(6) The duty contained in section 213(1) of the 1990 Act (replacement of trees) does not apply to the undertaker in carrying out any activity authorised by paragraphs (2) and (3).

(7) The authority given by paragraphs (2) and (3) constitutes an authorisation by an order granting development consent for the purposes of section 211(1A) of the 1990 Act.

(8) In carrying out any activity authorised by paragraph (1) or paragraphs (2) and (3), the undertaker must not unnecessarily damage any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(9) Any dispute as to a person's entitlement to compensation under this article, or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(**a**) 1990 c.9.

(10) The undertaker must not exercise the powers under paragraph (2) of this article after completion of construction.

(11) Nothing in paragraph (1)(a) authorises works to any tree or shrub within the Avon Gorge Woodlands SAC in contravention of the Avon Gorge Vegetation Management Plan.

Hedgerows

44.—(1) The undertaker may, for the purposes of the authorised development—

(a) subject to requirement 6 of Schedule 2 (landscaping scheme – disused railway) and paragraph (2) below, remove those hedgerows specified in Part 1 of Schedule 13 (hedgerows to be removed);

(b) remove any other hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development where it is demonstrated by the undertaker to the relevant planning authority, and the relevant planning authority certifies accordingly, that the removal of the hedgerow would not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.; and

(c) remove the important hedgerow within the Order limits and specified in Part 2 of Schedule 13 (important hedgerow).

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not unnecessarily damage the hedgerow 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, must be determined under Part 1 of the 1961 Act.

(4) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerows Regulations 1997(**a**).

Defence to proceedings in respect of statutory nuisance

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

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974(**d**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

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

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(**a**) 1997 S.I. 1160

(**b**) 1990 c. 43. There are amendments to this section which are not relevant to this Order

(**c**) 1990 c. 43. Section 79(1) was amended by section 101 and 102 of the Clean Neighbourhood and Environment Act 2005 (c. 16). There are other amendments to the Act which are not relevant to this Order.

(**d**) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55). Section 61(9) was amended by Schedule 24 to the Environment Act 1995 (c. 25), and section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1974 Act which are not relevant to this Order

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.

Traffic regulation

46.—(1) Subject to the provisions of this article, the undertaker may at any time for the purposes of the construction, operation or maintenance of the authorised project permanently regulate traffic as described in Schedule 14 (traffic regulation), in the manner specified in column (3) on those roads specified in column (1) and along the lengths and between the points specified, or to the extent otherwise described in column (2) of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to the opening of the authorised development for use—

(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, parking, 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 undertaker must not exercise the powers in paragraph (1) unless it has—

(a) given not less than 12 weeks' notice in writing of its intention to do so 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 7 days of its receipt of notice of the undertaker's intention in the case of sub–paragraph (a).

(4) Any prohibition, restriction or other provision made by the undertaker under paragraphs (1) or (2)—

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

(i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act(**a**),

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 14) 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 to the Traffic Management Act 2004(**b**) (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time.

(6) Before exercising the provisions of paragraph (2) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.

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

(**a**) 1984 c. 27. Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51). There are other amendments to section 32 which are not relevant to this Order.

(**b**) 2004 c. 18.

Application of the Land Compensation Act 1973

47.—(1) Any regulations made by the Secretary of State under section 20 (sound proofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973(**a**) which apply to a railway provided or used in the exercise of statutory powers apply to the railway comprised in the authorised development as if that railway was provided or used in the exercise of statutory powers.

(2) Section 28 (power to pay expenses) of the Land Compensation Act 1973 has effect as if any works comprised in the authorised development were public works for the purposes of that section.

Application of landlord and tenant law

48.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Procedure in relation to further approvals, etc.

49.—(1) Where any application is made to a relevant authority, the consent, agreement, certification or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application 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 received, the relevant authority is deemed to have given its consent, agreement, certification or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) If before this Order comes into force the undertaker or any other person has taken any step in relation to an application to which this article applies, that step may be taken into account to determine whether the consent, agreement, certification or approval concerned should be granted provided that step would have been a valid step for the purpose of the application if it had been taken after this Order came into force.

(**a**) 1973 c. 26. Section 20 was amended by subsection (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984 (c. 27). Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highway Act 1980 (c. 66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c. 42). Section 20A was inserted by Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1973 Act which are not relevant to this Order.

(5) Where any application is made to a relevant authority and the application includes submissions relating to the discharge of an obligation under Part 3 of Schedule 16 (protective provisions) at the same time, paragraph (2) does not apply to that application.

(6) Where a consent, agreement or approval is required or requested by the undertaker from a relevant planning authority under a requirement in Schedule 2 (requirements) then the procedure set out in Part 2 of Schedule 2 (requirements) for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, applies.

(7) In this article—

"application" means an application or request for any consent, agreement, certification or approval required or contemplated by articles 13 (street works and power to alter the layout etc. of streets), 15 (temporary stopping up of streets and public rights of way), 17 (access to works), 19 (construction and maintenance of new or altered streets), 22 (discharge of water), 23 (authority to survey and investigate land) and 46 (traffic regulation); and

"relevant authority" means the owner of a watercourse, public sewer or drain, a local authority, a traffic authority, a highway authority or a street authority.

Service of notices

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

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) 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 may 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;

(**a**) 1978 c. 30.

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

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

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

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

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article must 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.

Crown rights

51.—(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 Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or

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

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is 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.

Amendment of local byelaws

52.—(1) The local byelaws specified in Schedule 15 (amendment of local legislation) are hereby excluded and do not apply insofar as inconsistent with a provision of, or a power conferred by, this Order.

(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 the power;

(b) action taken in pursuance of the power 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;

(c) action taken in pursuance of a power or duty under the provision 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) 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.

Protective provisions

53. Schedule 16 (protective provisions) has effect.

Special category land

54.—(1) On the exercise by the undertaker of the relevant Order power, the cycle track special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article—

"the relevant Order power" means the powers exercisable over the cycle track special category land by the undertaker under article 24 (compulsory acquisition of land);

"the cycle track special category land" means the land numbered 01/213 and 01/223 in the book of reference and on the land plan and forming part of an open space which may be acquired compulsorily under this Order.

Documents to be certified

55.—(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 17 (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 17 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) The undertaker must, following certification of the plans and documents in accordance with paragraph (1), make those plans and documents available in electronic form for inspection by members of the public.

Arbitration

56. 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Head of the Infrastructure Planning Unit
Department for Transport

Date

SCHEDULES

SCHEDULE 1

Article 5

Authorised development

A nationally significant infrastructure project as defined in sections 14 and 25 of the 2008 Act comprising—

In the district of North Somerset:

Work No. 1 – a railway of 2,264 metres in length shown on sheets 1, 1A, 2, and 3 of the works plans commencing at a point 96 metres north of the junction of Quays Avenue and Galingale Way, Portishead, using the track bed of the disused Portishead Branch Line railway, and terminating at a point 57 metres to the east of the bridge carrying Station Road (Portbury) over the disused Portishead Branch Line railway;

Work No. 1A – a railway of 2,498 metres in length shown on sheets 3, 4, 5 and 6 of the works plans commencing at a junction with the termination of Work No. 1 at a point 57 metres to the east of the bridge carrying Station Road (Portbury) over the disused Portishead Branch Line railway, using the track bed of the disused Portishead Branch Line railway and terminating at a point 49 metres to the west of the bridge carrying the Parson Street to Royal Portbury Dock railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill;

Work No. 1B – a railway of 796 metres in length shown on sheets 6 and 7 of the works plans commencing at a junction with the termination of Work No. 1A at a point 49 metres west of the bridge carrying the Parson Street to Royal Portbury Dock railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill and terminating at a junction with Work No. 1C, at a point 86 metres to the north of the junction of the highways of Ham Green and Westward Drive, Pill; and

Work No. 1C – a realignment of existing railway for a distance of 1,003 metres in length shown on sheets 6 and 7 of the works plans, commencing at a point 262 metres north west of the bridge carrying that railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill then terminating at a new junction with the Parson Street to Royal Portbury Dock railway, at a point 86 metres to the north of the junction of the highways of Ham Green and Westward Drive, Pill, being part of the existing railway between Parson Street and Royal Portbury Dock.

Associated development within the meaning of section 115(2) of the 2008 Act (development for which development consent may be granted)(**a**) and within Order limits comprising—

In the district of North Somerset:

Work No. 2 – diversion of the highway of Quays Avenue, Portishead, of 181 metres in length, shown on sheets 1 and 1A of the works plans, from the junction of Quays Avenue and Galingale Way to a point west of the existing gyratory junction of Quays Avenue, Harbour Road and Phoenix Way, Portishead, together with connections to existing highways, widening of the southern footway of Harbour Road, landscaping, new bus waiting facilities, signage, lighting, pedestrian crossing facilities, pipes, drains, cables, ducts, troughs, telecommunications apparatus, conduits and apparatus for utilities as well as footways, and a connection to the pedestrian and cycle track forming part of Work No. 4;

Work No. 2A – surface water drain, of 27 metres in length, shown on sheets 1 and 1A of the works plans north from Phoenix Way, Portishead into the watercourse known as the Cut;

(**a**) 2008 c. 29. Section 115(2) was amended by section 160(3) of the Housing and Planning Act 2016 (c. 22).

Work No. 3 – a foot and cycle track, of 63 metres in length, shown on sheet 1 of the works plans, commencing at a junction with Work No. 4 east of the watercourse known as the Portbury Ditch, to a point west of Portbury Ditch, together with associated landscaping, signage, fencing, lighting, cables, ducts, troughs, telecommunication apparatus, conduits and apparatus for utilities;

Work No. 4 – a car park of 4,841 square metres in area, foot and cycle track of 275 metres in length and a new vehicular access to the highway of Harbour Road, shown on sheets 1 and 1A of the works plans, south of Harbour Road, Portishead and east of the Portbury Ditch, together with landscaping, lighting, signage, fencing, drainage in to the adjacent Portbury Ditch, to the west of Quays Avenue, Portishead;

Work No. 5 – railway station, of 396 square metres in area, shown on sheets 1 and 1A of the works plans, to the south of Phoenix Way, Portishead, comprising platform, shelter, office, waiting area, storage and refuse area, seating, ticket vending machine, closed circuit television equipment, passenger help point, toilets, utilities connections, telecommunications equipment, public address system, information boards and displays, signage, lighting columns, fencing, acoustic barrier, landscaping, railway communications mast and surface water drain in to the adjacent watercourse known as the Cut;

Work No. 6 – car park, of 4,419 square metres in area, shown on sheets 1 and 1A of the works plans, to the south of Phoenix Way, Portishead, including mobility impaired spaces, drainage, lighting, fencing, landscaping, signage, cycle parking facilities and utilities apparatus, together with access from the highway of Phoenix Way;

Work No. 7 – public foot and cycle track bridge over Work No. 1 shown on sheets 1 and 1A of the works plans to the south west of Trinity Primary School, Portishead together with connections to cycle tracks, lighting, drainage, signage, fencing and hardstandings;

Work No. 7A – public foot and cycle track, of 273 metres in length, shown on sheets 1 and 1A of the works plans, from Phoenix Way, Portishead to connect with Works Nos.7 and 7C, to the south of Tansy Lane and north of Work No. 1, together with signage, drainage, lighting, fencing and landscaping;

Work No. 7B – public foot and cycle track, of 150 metres in length, shown on sheets 1 and 1A of the works plans, from the diverted Quays Avenue, Portishead, to connect with Work No. 7 to the north of Galingale Way and to the south of Work No. 1, together with signage, drainage, lighting, fencing and landscaping;

Work No. 7C – public foot and cycle track, of 18 metres in length, shown on sheets 1 and 1A of the works plans, from Work No. 7 north to Tansy Lane, Portishead, together with signage, drainage, lighting, fencing and landscaping;

Work No. 7D – temporary construction compound, of 2,876 square metres in area, shown on sheet 1 of the works plans, to the south of Tansy Lane, Portishead and to the north of Work No. 1;

Work No. 7E – underground electrical supply cables of 39.07 metres in length connecting from Work No. 7 to Tansy Lane, Portishead, shown on sheet 1 and 1A of the works plans;

Work No. 8 – temporary construction haul road of 486 metres in length, shown on sheets 1 and 2 of the works plans, to the south of, and parallel to, Work No. 1, from a point south of Fennel Road, Portishead, to the highway known as Sheepway, Portbury;

Work No. 9 – permanent vehicular compound of 1,862 square metres in area, road/rail vehicle access point and access road from the highway of Sheepway, shown on sheet 2 of the works plans, to the north-west of the bridge carrying the highway of Sheepway over Work No.1, a permanent diversion of the existing permissive cycle path and works to the existing car parking area to the north-west of Sheepway, together with fencing, drainage, communications apparatus, ducts, troughs, utilities apparatus, hardstanding and means of access to the highway of Sheepway;

Work No. 10 – temporary diversion of the existing permissive cycle path, of 156 metres in length, shown on sheet 2 of the works plans, on the north west side of the highway of Sheepway, opposite Shipway Gate Farm, Portbury;

Work No. 10A – temporary construction compound of 2,179 square metres in area shown on sheet 2 of the works plans, to the north-west of the highway of Sheepway opposite Shipway Gate Farm, Portbury;

Work No 10B – temporary construction haul road to the north of the highway of Sheepway of 125 metres in length shown on sheet 2 of the works plans opposite Shipway Gate Farm, Portbury;

Work No. 11 – improvements to the existing agricultural access from Shipway Gate Farm, Portbury to the highway of Sheepway, shown on sheet 2 of the works plans, south of the disused Portishead Branch Line railway, including hardstanding, gate and visibility splays;

Work No. 11A – temporary construction haul road, of 590 metres in length, shown on sheet 2 of the works plans, east from the highway of Sheepway, to the south of and parallel to the disused Portishead Branch Line railway to Work No. 12A together with temporary field accesses and hardstanding;

Work No. 11B – temporary construction haul road of 269 metres in length shown on sheet 2 of the works plans, to the south of the highway of Sheepway at Shipway Gate Farm, Portbury, together with temporary field accesses and hardstanding;

Work No. 12 – permanent vehicular access to the A369 classified road known as Portbury Hundred, shown on sheet 3 of the works plans, including hardstanding, gate and visibility splays;

Work No. 12A – temporary construction compound of 113,467 square metres in area, shown on sheets 2, 2B and 3 of the works plans, to the north of the A369 classified road known as Portbury Hundred and to the south of the disused Portishead Branch Line railway;

Work No. 13 – improvement of the existing access and parking area, shown on sheet 4 of the works plans, at The Drove, Portbury, to the north of the A369 classified road known as Portbury Hundred, including hardstanding and gates;

Work No. 13A – temporary vehicle turning space of 575.6 square metres in area, shown on sheet 4 of the works plans, south of the disused Portishead Branch Line railway, Portbury;

Work No. 14 – improvement to bridleway LA15/21/20, shown on sheet 4 of the works plans, at its junction with the highway of Royal Portbury Dock Road, Portbury;

Work No. 14A – improvement to bridleway LA8/66/10, shown on sheet 4 of the works plans, at its junction with the highway of Royal Portbury Dock Road, Portbury;

Work No. 14B – realignment of the existing permissive cycling route of 144.36 metres in length, shown on sheet 4 of the works plans, under Royal Portbury Dock Road, Portbury;

Work No. 15 – temporary path of 11 metres in length to connect bridleway LA8/66/10 with the highway of Marsh Lane, shown on sheet 5 of the works plans, on the western side of Marsh Lane, Easton in Gordano, and north of the disused Portishead Branch Line railway;

Work No. 16 – realignment of the existing permissive cycling route, shown on sheet 5 of the works plans, of 90.35 metres in length parallel to the disused Portishead Branch Line railway passing under the highway of Marsh Lane, Easton in Gordano, and connecting with bridleway LA8/67/10;

Work No. 16A – temporary construction compound of 7,509 square metres in area shown on sheet 5 of the works plans, beneath the Avonmouth Bridge of the M5 Special Road, Easton in Gordano;

Work No. 16C – road rail access point shown on sheet 5 of the works plans, west of the Avonmouth Bridge of the M5 Special Road, Easton in Gordano;

Work No. 17 – temporary construction compound of 89,293 square metres in area shown on sheets 5 and 6 of the works plans, at Lodway Farm, Pill, together with access to the highway of the Breaches, Easton in Gordano;

Work No. 17A – temporary construction haul road, of 1,078.35 metres in area shown on sheet 6 of the works plans between Work No. 17 and footpath LA8/5/40, Pill;

Work No. 18 – bridleway of 211 metres in length shown on sheet 5 of the works plans, commencing at a point to the west of the M5 Special Road and passing under the Avonmouth Bridge of the M5 to join National Cycle Way Network Route 41 between the Avonmouth Bridge of the M5 Special Road and Pill;

Work No. 19 – installation of new and alteration of existing railway signal equipment, troughs and cables, as shown on sheets 5 and 6 of the works plans, on the Bristol Port Company's railway from Portbury Junction and a new railway signal at the Bristol Port Company's Royal Portbury Dock;

Work No. 20 – temporary diversion of part of National Cycle Network Route 41 of 83 metres in length shown on sheet 6 of the works plans, north from its existing alignment on the street north of the Parson Street to Royal Portbury Dock railway, west of Avon Road, Pill to connect with the western turning head of Avon Road, Pill;

Work No. 20A – demolition of existing bridge carrying the Parson Street to Royal Portbury Dock railway over footpath LA8/5/40 and construction of new bridge and abutments, shown on sheet 6 of the works plans, south of Avon Road Pill and north of Lodway Close, Pill;

Work No. 20B – demolition of existing garages and temporary construction compound of 1,990 square metres in area, as shown on sheet 6 of the works plans, at Avon Road, Pill;

Work No. 21 – car park of 2,004 square metres in area, as shown on sheet 6 of the works plans, to the south of Severn Road and Monmouth Road, Pill, including landscaping, accesses to highway, drainage and attenuation tanks, signage, lighting, fencing, drainage, ducts, troughs, communications apparatus and utilities apparatus;

Work No. 21A – road/rail access point, permanent railway maintenance compound of 820 square metres in area and principal supply point building, as shown on sheet 6 of the works plans, south of Severn Road, Pill, including landscaping, lighting, fencing, drainage, ducts, troughs, communications apparatus, utilities apparatus and associated access;

Work No. 22 – railway station, shown on sheet 6 of the works plans, comprising platform, ramp, signage, seating, ticket vending machine, closed circuit television equipment, demolition of No. 7 Station Road, passenger help point, information boards and displays, passenger refuge area, car park drop off point (including mobility impaired spaces) and cycle parking facilities, lighting, fencing, landscaping, ground strengthening and stability works, communications apparatus, drainage and utilities apparatus, to the north west of Station Road, Pill;

Work No. 22A – improved bus waiting facility, shown on sheet 6 of the works plans, on the highways of Lodway and Heywood Road, Pill, north of the Pill Memorial Club, Pill, together with retaining wall, lighting, drainage and alteration of utilities apparatus;

Work No. 22B – temporary construction compound of 1,067 square metres in area shown on sheet 6 of the works plans, within the car park of Pill Memorial Club, Lodway, Pill;

Work No. 23 – temporary construction compound of 151 square metres in area, as shown on sheet 6 of the works plans, beneath and to the north of Pill Viaduct, Underbanks, Pill;

Work No. 24 – permanent vehicular compound of 2,011 square metres in area, shown on sheet 8 of the works plans, south of Ham Green Lake, together with a road rail vehicle access point, permanent access south from the highway of Chapel Pill Lane to the compound and new fencing, lighting, landscaping, utilities connections, laying of electricity, water, drainage and communications conduits and apparatus together with a new access to Ham Green Lake and improvements to Chapel Pill Lane;

Work No. 24A – temporary construction compound of 6,653 square metres in area, shown on sheet 8 of the works plans, accessed from the highway of Chapel Pill Lane, Ham Green, Pill; and

Work No. 25 – reconstruction of accommodation bridge known as Quarry Bridge No. 2, temporary construction compound and temporary ramp for construction access to the Parson Street to Royal Portbury Dock railway, shown on sheet 12 of the works plans.

In the City and County of Bristol:

Work No. 26 – permanent vehicular access, ramp, flood mitigation works and railway maintenance compound, of 2,948 square metres in area shown on sheet 15 of the works plans, east of the highway of the A369 classified road known as Clanage Road, Ashton, north of the Bedminster Cricket Club;

Work No. 26A – temporary construction compound of 3,346 square metres in area, shown on sheet 15 of the works plans, east of the highway of the A369 classified road known as Clanage Road, Ashton, north of the Bedminster Cricket Club,

Work No. 26B – permanent vehicular access to the highway of the A369 classified road known as Clanage Road, Ashton from the land to the north of the Bedminster Cricket Club, shown on sheet 15 of the works plans;

Work No. 27 – not used;

Work No. 28 – improvement of the highway of Winterstoke Road at its junction with Ashton Vale Road, as shown on sheet 16 of the works plans, including extension of existing left turn lane in to Ashton Vale Road, retaining wall, works to divert and install utility apparatus and installation of a new traffic signal control system, Ashton; and

Work No. 29 – temporary construction compound of 3,176 square metres within the rail freight facility at Liberty Lane, Bristol, shown on sheet 17 of the works plans.

And in connection with such works further associated development within the Order limits consisting of—

(a) permanent way (rail tracks) electrical equipment, power supply cubicles, cables, telecommunications apparatus, railway mobile communications masts and apparatus and signalling;

(b) ramps, means of access (including temporary haul roads) and construction compounds;

(c) embankments, aprons, abutments, shafts, foundations, retaining walls and structures, drainage, wing walls, fences, acoustic fences, catch fences, paths, access steps and culverts;

(d) works to alter, divert, maintain, replace and repair apparatus (including statutory undertakers' apparatus), including mains, sewers, pipes, drains and cables or for their protection;

(e) works to clear, maintain and interfere with water courses other than a navigable water course;

(f) landscaping and other works (including the creation of ponds) to mitigate any adverse effects of the construction, maintenance or operation of the authorised development described in the environmental statement;

(g) works for the benefit or protection of land affected by the authorised development;

(h) works required for the strengthening, improvement, maintenance or reconstruction of any streets;

(i) works to level crossings;

(j) works for the temporary diversion of public footpaths shown in the permanent and temporary stopping up and diversion plan;

(k) trenching and cabling associated with the new signalling and communications masts;

(l) strengthening earthworks and reconstructing retaining walls;

(m) vegetation clearance, rock bolting and rock dowels and safeguarding of unstable slopes or rock faces by stone-picking and removal of loose rocks;

(n) replacement or renewal of fencing;

(o) repairs to existing underbridges and overbridges, adding barriers to bridge parapets and raising of bridge parapets;

(p) alteration of the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by increasing or reducing the width of any kerb, footway, cycle track or verge within the street, extending any footway or removing replacing, altering or providing splitter islands in streets;

(q) works to place alter remove or maintain road furniture;

(r) works to place, alter, divert, relocate, protect, remove or maintain the position of apparatus (including statutory undertakers' apparatus), services, plant and other equipment in, under or above a street, or in other land, including mains, sewers, drains, pipes, lights, cables, cofferdams, fencing and other boundary treatments and to provide connections to adjoining land and buildings;

(s) landscaping, re-grading, re-profiling, contouring, noise barriers, works associated with the provision of ecological and archaeological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development:

(t) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling);

(u) establishment of site construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, drainage systems, temporary bridges over watercourses, storage ponds, processing plant, works and conveniences;

(v) pavement, kerbing and paved areas;

(w) signing, signals, street lighting, road markings, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and

(x) such other works, including working sites and works compounds, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which do not give rise to any materially new or materially worse adverse environmental effects to those assessed in the environmental statement.

SCHEDULE 2

Article 5 and 49

Requirements

PART 1

Requirements

1. In this Part—

"Ashton Vale Road and Winterstoke Road Highway Works Plan" means the plan to be certified as the Ashton Vale Road highway works plan by the Secretary of State for the purposes of this Order;

"Bridleway Extension under the Elevated M5 Plan" means the plan certified as the bridleway extension under the elevated M5 plan by the Secretary of State for the purposes of this Order;

"Cattle Creep Proposed General Arrangement drawing" means the plan certified at the Cattle Creep Proposed General Arrangement drawing by the Secretary of State for the purposes of this Order;

"Council's archaeologist" means the chief archaeologist for the relevant planning authority;

"currently operational railway land" means any part of the existing operational national railway network owned and managed by Network Rail that is within Order limits;

"environmental master plan" means the plans certified as the environmental master plan by the Secretary of State for the purposes of this Order;

"first commercial use" means the first use of Works Nos. 1, 1A and 1B for the carriage for fare paying passengers;

"fencing grades summary" means the summary of fencing types, based on plate 4.8 of the environmental statement and certified as the fencing grades summary by the Secretary of State for the purposes of this Order;

"general arrangement plans" means the plans certified as the general arrangement plans by the Secretary of State for the purposes of this Order;

"GSM-R mast" means Global System for Mobile Communications-Railway mast provided for the purposes of driver- signaller communications;

"Habitat impacted by construction works within the Avon Gorge Woodlands SAC plan" means the plans certified as the habitat impacted by construction works within the Avon Gorge Woodlands SAC plan by the Secretary of State for the purposes of this Order;

"MOVA" means a traffic control strategy designed to maximise the operational efficiency of a highway junction or crossing by adjusting the green time required for each approach and assessing the number of vehicles approaching the signals, whilst determining the impact that queuing vehicles would have on the overall operation of the junction;

"Portbury Hundred location of additional tree planting plans" means the plans certified as such by the Secretary of State for the purposes of this Order;

"preparatory activities" means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works;

"railway landscape plans (disused line)" means the plans certified as the railway landscape plans (disused line) by the Secretary of State for the purposes of this Order; and

"stage" means one of the stages of the authorised development and such other associated development as is connected with that stage as is described in paragraph 3.

Time limits

2. The authorised development must not commence after 5 years of the date of this Order.

Stages of authorised development

3.—(1) The following stages apply to the authorised development in the District of North Somerset—

(a) Stage 1 comprises Works Nos. 1, 1A, 5, 7, 7E, 9, 11, 11A, 12, 13, 14, 14A, 14B and 16C, being the new railway between Portishead and Station Road, Portbury; the new railway between old Portbury Station and Portbury Junction, the new Portishead Station; Trinity Primary School bridge; works at The Drove at Portbury; a road rail access point, at Easton in Gordano; works to bridleway at Royal Portbury Dock Road and Marsh Lane, Easton in Gordano, and flood attenuation works west of the M5 at Easton in Gordano;

(b) Stage 1A comprises Works Nos. 7D, 8, 10, 10A, 12A, 13A, 15, 16A, 17 and 17A being haul roads south of Work No. 1, cycle path diversions and compounds at Sheepway together with any use of neighbouring Order land as a temporary compound, a temporary construction compound north of the A369 at Portbury; construction haul roads; a permanent access from A369 at Portbury, temporary vehicle turning circle east of the Drove and north of the A369 Portbury Hundred, a temporary construction compound under the M5 Special Road Avonmouth Bridge; a temporary construction compound and haul road at Lodway;

(c) Stage 1B comprises Works Nos. 20, 20B, 23 and 24A and being demolition of garages at Avon Road, Pill, temporary diversion of bridleway to the west of Avon Road, Pill, temporary compound beneath Pill Viaduct, and a temporary construction compound at Chapel Pill Lane, Ham Green together with any use of neighbouring Order land as a temporary compound;

(d) Stage 1C comprises Works Nos. 10B and 11B, being temporary haul roads to the north and south of Shipway Gate Farm, Sheepway;

(e) Stage 2 comprises Works Nos. 2, 2A, 3, 4, 6, and 7A-C being the diversion of Quays Avenue, Portishead, highway works at Harbour Road and Quays Avenue, Portishead; new highway drain; footpaths parallel to the disused Portishead Branch Line railway; public realm works and car parks at Portishead;

(f) Stage 3 comprises Work No. 11, being improvements to the existing agricultural access from Shipway Gate Farm, Sheepway;

(g) Stage 4 comprises Works Nos. 1B, 1C, 19, 20A, 21, 21A and 22 being works to the existing railway and to construct a railway between Portbury Junction and Pill Junction, installation of signalling equipment on the Bristol Port Company's railway, works to replace an underbridge to the north of Avon Road, Pill; Pill Station; car park at Pill Station and permanent maintenance compound and road rail access point;

(h) Stage 4A comprises Work No. 18 being a bridleway from under the M5 Avonmouth Bridge to meet National Cycle Network route no. 41 on the east side of the M5 Special Road, Pill;

(i) Stage 4B comprises Work No. 24 being a permanent maintenance access at Ham Green;

(j) Stage 5 comprises Works Nos. 22A and 22B being modifications to an existing bus stop and temporary compound at Pill Memorial Club, Lodway;

(k) Stage 6 comprises Work No. 25 being the reconstruction of Quarry Bridge No. 2 and the associated temporary compound in the Avon Gorge, together with the minor works to the railway between Pill Tunnel and Clifton Overbridge.

or such other stages of the Works that are agreed in writing with the relevant planning authority.

(2) The following stages apply to the authorised development in the City and County of Bristol:

(a) Stage 7 comprises Works Nos. 26, 26A and 26B, being a permanent road rail access point and compound, temporary construction compound at Clanage Road and new permanent access to the highway of Clanage Road, at Bower Ashton in Bristol;

(b) Stage 8 – not used;

(c) Stage 9 comprises Work No. 28, being works to the public highway at the junction of Winterstoke Road and Ashton Vale Road, Bristol; and

(d) Stage 10 comprises Work No. 29 being a temporary construction compound at the rail freight facility at South Liberty Lane, Bristol;

or such other stages of the Works that are agreed in writing with the relevant planning authority.

(3) The undertaker may submit for approval such part or parts of a stage as may be agreed with the relevant planning authority, and with the approval of the relevant planning authority carry out the approved parts of a stage without securing approval of those elements of a stage that are agreed with the relevant planning authority as remaining to be determined.

(4) Any restriction in a requirement in this Schedule that prevents a stage from commencing until details regarding that stage have been approved by the relevant planning authority does not prevent

the undertaker carrying out any preparatory activities for that stage or the use of land within Order limits as a temporary construction compound.

Submission and approval of detail design

4.—(1) Those elements of the authorised development comprising the works listed in column (1) of the table in sub-paragraph (5) must not commence until the detail design for that element has been approved by the relevant planning authority.

(2) The detail designs submitted to the relevant planning authority in accordance with paragraph (1) must reflect the principles of the relevant design drawings listed in column (3) of the table in paragraph (5) unless otherwise agreed with the relevant planning authority.

(3) Any changes from the design drawings must be in accordance with the principles set out in the environmental statement.

(4) The relevant Work must be carried out in accordance with the detail designs approved by the relevant planning authority.

(5) The elements of the authorised development to which paragraph (1) applies are:

(1) *Work No(s)*	*(2)* *Description*	*(3)* *Design drawing(s)*	*(4)* *Relevant planning authority*
2, 2A, 3, 4, 6, 7A-7D	Portishead highways and car parks	467470.BQ.04.20-100 467470.BQ.04.20-101 467470.BQ.04.20-102	North Somerset District Council
5	Portishead Station	W1097B-ARP-DRG-EAR-300001 W1097B-ARP-DRG-EST-300003 W1097B-ARP-DRG-EST-300004 W1097B-ARP-DRG-EST-300005	North Somerset District Council
7	Trinity Primary School bridge and electrical connection	W1097B-ARP-DRG-EST-300006 W1097B-ARP-DRG-EST-300007 W1097B-ARP-DRG-EPT-300001	North Somerset District Council
9	Sheepway Compound	467470.BQ.04.20-400 467470.BQ.04.20-401	North Somerset District Council
12	Portbury Hundred Access	467470.BQ.04.20-600	North Somerset District Council
13	Wessex Water Compound Access	467470.BQ.04.20-570	North Somerset District Council
14, 14A	Works to bridleways at Royal Portbury Dock Road	467470.BQ.04.20-530	North Somerset District Council
14B, 16	Realignment of permissive cycle path at Royal Portbury Dock Road	467470.BQ.04.20-550 467470.BQ.04.20-551 467470.BQ.04.20-552	North Somerset District Council
21	Pill Station – Severn Road Car Park	467470.BQ.04.20-207	North Somerset District Council
22	Pill Station and Forecourt	467470.BQ.04.20-209	North Somerset District Council

		W1097B-ARP-DRG-EST-300011	
22A, 22B	Bus stop on Heywood Road and Lodway, Pill at Pill Memorial Club	467470.BQ.04.20-290 467470.BQ.04.20-291	North Somerset District Council
24	Pill Tunnel Eastern Portal Compound	467470.BQ.04.20-219 467470.BQ.04.20-220 467470.BQ.04.20-221	North Somerset District Council
26, 26B	Clanage Road Compound and replacement access	467470.BQ.04.20-621	Bristol City Council

Construction Environmental Management Plan etc.

5.—(1) A stage of authorised development must not commence until the written Construction Environmental Management Plan (CEMP) for that stage has been approved by the relevant planning authority.

(2) The CEMP for a stage must be in accordance with the principles set out in the environmental statement, the Master CEMP, the COCP and the CTMP - Construction Traffic Management Plan.

(3) The CEMP for a stage must, where relevant to that stage, in particular include the following—

(a) an external communications plan;

(b) a pollution incident prevention and control plan;

(c) a site waste management plan;

(d) a construction traffic management plan;

(e) a construction workers travel plan;

(f) a materials management plan;

(g) a plan for storage for reuse of stripped soils within land forming part of haul roads or temporary compounds;

(h) a construction flood plan and flood emergency preparedness plan for any construction site and compound located within undefended flood zone 2 or flood zone 3;

(i) a surface water management plan;

(j) measures for the protection of wildlife;

(k) a reptile and amphibian mitigation strategy; and

(l) nuisance management plans regarding noise and vibration, dust, air pollution and lighting;

(4) The construction traffic management plan when required for a stage under sub-paragraph (3) must in particular and where relevant address—

(a) construction traffic routes and operational hours;

(b) site accesses;

(c) the management of junctions to and crossings of the public highway and other public rights of way;

(d) the scheduling and timing of abnormal load movements;

(e) temporary warning signs;

(f) restrictions on vehicle turning movements in to and out of compounds on the A369 Portbury Hundred classified road; and

(g) measures to minimise dust and mud.

(5) The relevant stage must be carried out in accordance with the COCP and the approved CEMP and construction traffic management plan for that stage;

(6) Where a part of the authorised development—

(a) is not within a relevant stage or associated development connected with a relevant stage; or

(b) does not consist of preparatory activities

then that part of the authorised development must be carried out in accordance with the COCP, the Master CEMP and the CTMP - Construction Traffic Management Plan.

Landscaping scheme – disused railway

6.—(1) Work Nos. 1 and 1A must not commence until a written landscaping scheme for those works, prepared in accordance with the principles of the railway landscape plans (disused line), has been submitted to and approved by the relevant planning authority. Works Nos. 1 and 1A must be carried out in accordance with the approved scheme or any variation to the scheme that has been approved by the relevant planning authority.

(2) The submitted landscaping scheme must include details of—

(a) location, number, species, size and planting density of any proposed planting;

(b) cultivation, importing of materials and other operations to ensure plant establishment;

(c) vegetation to be retained;

(d) implementation timetables for all landscaping; and

(e) proposals to take account of the presence of trees with trunks of a diameter of 100 millimetres or more and to minimize the loss of such trees.

(3) The written landscaping scheme for Work No. 1A must also contain measures to limit the impacts of the authorised development on the important hedgerow located between Work Nos. 1A and 17 and for the restoration of the important hedgerow following the cessation of use of Work No. 17.

(4) Any tree or shrub planted as part of the approved railway landscaping scheme that, within a period of five years after the date that it is planted, is removed, uprooted, destroyed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives consent to any variation.

Landscaping – other works

7.—(1) All landscaping shown in principle on the relevant design drawings must be carried out in accordance with the landscaping details shown on the relevant drawing submitted to and approved by the relevant planning authority in accordance with requirement 4. The relevant work must not commence until an implementation timetable relevant to the approved landscaping has been submitted to and approved by the relevant planning authority. The landscaping must be carried out in accordance with the approved details and the approved implementation timetable.

(2) Any tree or shrub planted as part of the approved landscaping scheme that, within a period of five years after the date that it is planted is removed, uprooted, destroyed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives consent to any variation.

(3) This requirement does not apply to Work Nos. 1, 1A, 1B or 1C or works subject to the Avon Gorge Vegetation Management Plan.

Temporary fencing

8.—(1) Prior to the commencement of a stage of the authorised development (or such part of that stage as may be agreed with the relevant planning authority) the relevant planning authority must receive for its approval a plan indicating the extent of temporary fencing that must be erected for the authorised development, together with a timetable for its installation and removal.

(2) A part of the authorised development within a stage (or such part of that stage as may be agreed with the relevant planning authority) and being an area where temporary fencing is so indicated must not commence without the temporary fencing approved by the relevant planning authority having first been erected.

(3) The approved temporary fencing must be retained and maintained to the reasonable satisfaction of the relevant planning authority until the cessation of works in that area.

(4) The fencing must be removed in accordance with the approved removal timetable to the satisfaction of the relevant planning authority.

Highway accesses

9.—(1) A stage of the authorised development must not commence until details of the siting, design and layout of any new or altered, permanent or temporary, access, and any temporary haul roads for that stage have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The submitted details must also include a timetable for carrying out the relevant activities.

(2) The approved highway alterations and improvements, including any altered or new accesses and any temporary haul roads, for that stage must be implemented in accordance with the approved details and timetable.

(3) Where the details submitted under paragraph (1) include details of temporary accesses and haul roads, the submitted details for such temporary accesses and haul roads must also include details for the removal of the temporary access and haul road and restoration of the land used for such access together with a timetable for removal of the accesses and haul road upon cessation of its use for the purposes of the authorised development.

Archaeology

10.—(1) Work Nos. 5, 9, 10, 10A, 12A, 17, 24, 24A, 26, 26A and 26B must not commence until a written scheme of investigation (WSI) for a watching brief covering any areas of archaeological interest identified by the environmental statement relevant to that work has, after consultation with the Council's archaeologist, been submitted to and approved by the relevant planning authority.

(2) The WSI must identify areas where a watching brief is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Where a WSI is required it must include a programme for post-investigation assessment and reporting and make provision for the publication and dissemination and for the archive deposition of the analysis and records of the site investigation as appropriate and commensurate with the archaeological material recovered.

(4) The watching brief carried out under the WSI must be carried out by a suitably qualified person or body approved by the relevant planning authority.

(5) The watching brief and post-investigation assessment and reporting must be completed in accordance with the programme set out in the approved WSI and the provision made for analysis, publication and dissemination of results and archive deposition has been secured where appropriate.

(6) In addition to the WSI required for Work No. 17, any part of Work No. 17 must not commence until details of a temporary fence to be erected to protect the linear earthworks feature reference number HER47401 as identified on the environmental master plan has, after consultation with the Council's archaeologist, been submitted to and approved by the relevant planning authority.

(7) The fence approved pursuant to paragraph (6) must be erected in accordance with the approved details and in accordance with a programme specified by the relevant planning authority and must be maintained to the reasonable satisfaction of the relevant planning authority until the land is restored following cessation of use of Work No. 17.

Surface and foul water drainage

11.—(1) A stage of the authorised development must not commence until written details of the surface and (if any) foul water drainage system (including means of pollution control) have, after consultation with the lead local flood authority and the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The approved drainage systems for the relevant stage must be constructed in accordance with the approved details and thereafter managed and maintained in accordance with the approved details for the lifetime of the development unless otherwise agreed with the relevant planning authority after consultation with the lead local flood authority and the Environment Agency.

(3) This requirement does not apply to currently operational railway land.

Trees

12.—(1) A stage of the authorised development must not commence until the relevant planning authority has confirmed that it has approved an arboricultural method statement for that stage prepared in accordance with BS:5837:2012 and detailing the proposed methods for protecting trees proposed to be retained, including a timetable for the installation and removal of the proposed protective measures.

(2) The plan submitted must also identify areas of tree protective fencing to be erected prior to commencement of that stage of the authorised development.

(3) The fencing shown on the approved plan is to be erected in accordance with the relevant arboricultural method statement and thereafter maintained and retained in its approved position during the construction period to the reasonable satisfaction of the relevant planning authority.

(4) The protective fencing must be removed to the satisfaction of the relevant planning authority in accordance with the time period specified in the arboricultural method statement for that stage.

Control of invasive plants outside of Avon Gorge Woodlands SAC

13.—(1) A stage of the authorised development must not commence until, after consultation with the relevant planning authority, a written scheme to prevent the spread or emanation of invasive plant species from the authorised development has been submitted to and approved in writing by the relevant planning authority.

(2) The approved scheme to prevent the spread or emanation of invasive plant species must be implemented before and maintained during the construction of the relevant stage of the authorised development.

(3) This requirement does not apply to the Avon Gorge Woodlands SAC.

Avon Gorge Woodlands SAC

14.—(1) Any part of the authorised development within the Avon Gorge Woodlands SAC must be carried out in accordance with the Avon Gorge Vegetation Management Plan.

(2) Any part of the authorised development within the Avon Gorge Woodlands SAC consisting of—

(i) foot accesses and steps;

(ii) GSMR masts, antennae and associated equipment boxes;

(iii) signal and associated equipment box;

(iv) catch fences;

(v) works to retaining walls and structures; or

(vi) rock stabilization works

must not commence before details of the location, siting and design of the relevant work, together with any required site clearance, working space and lay down areas, have been submitted to and approved by the relevant planning authority in consultation with Natural England. The details

submitted for approval must be located within the areas shown for the relevant works on the general arrangement plans. The works must be carried out in accordance with the approved details.

(3) Work to remove, install or replace security fencing in the Avon Gorge Woodlands SAC must not commence before details of the location, siting, colour and design of the fencing, together with any required site clearance and working space, have been submitted to and approved by the relevant planning authority in consultation with Natural England. The details submitted for approval must be located within the areas shown for fencing in the habitat impacted by construction works within the Avon Gorge Vegetation Management Plan and any permanent security fencing to be installed must be of a nature substantially in accordance with the details set out in the relevant part of the general arrangement plans and the fencing grades summary. The works must be carried out in accordance with the approved details and the installed fencing thereafter retained unless alternative type fencing is required for railway operational safety reasons.

(4) Any temporary works within the Avon Gorge Woodlands SAC consisting of compounds or construction welfare facilities (including the temporary works that are part of Work No. 25) must not commence before the location, siting duration of use and details for the removal of the relevant facility has been approved by the relevant planning authority in consultation with Natural England.

(5) The facilities described in paragraph (4) must be carried out as approved and the relevant facility must at the conclusion of the temporary works be removed to the satisfaction of the relevant planning authority in consultation with Natural England and in accordance with the approved details.

(6) The mitigation and compensation measures specified in the Avon Gorge Vegetation Management Plan must be carried out in accordance with the timetables set out in that document. The measures must thereafter be managed in accordance with the Avon Gorge Vegetation Management Plan to the satisfaction of the relevant planning authority in consultation with Natural England.

(7) The undertaker must provide monitoring reports to the relevant planning authority and Natural England no later than 12 months following first commercial use in accordance with the provisions of the Avon Gorge Vegetation Management Plan. Thereafter monitoring reports must be provided as specified in the Avon Gorge Vegetation Management Plan.

External lighting and control of artificial light emissions during construction

15.—(1) A stage of the works (or such part of that stage as may be agreed with the relevant planning authority) must not commence until written details of any temporary external lighting to be installed in connection with the construction of that stage, including measures to prevent light spillage, have been submitted to and approved by the relevant planning authority; and any approved means of lighting must be installed in accordance with the approved details and retained for the duration of the construction period.

(2) Any means of construction lighting approved under sub-paragraph (1) must be removed on completion of the relevant stage.

Construction hours

16.—(1) Except for—

(a) works on any existing highway,

(b) works on currently operational railway land; or

(c) activities associated with such works within the compounds authorised by this Order

to which no restriction on working hours applies under this Order, works to construct the authorised development must not take place other than within normal daytime working hours (6.30am to 6pm Monday to Saturday) unless paragraph (2) applies.

(2) Construction work must not take place—

(a) on Sundays, Bank or Public Holidays; or

(b) outside the times specified in paragraph (1)

except for such working which has been notified to and approved by the relevant planning authority and communicated to affected residents by an agreed notification procedure.

(3) Nothing in this requirement prevents use of construction compounds for:

(a) necessary preparation, before and after each shift, for items such as the management of materials and machinery,

(b) staff briefings,

(c) maintenance and cleaning of site welfare facilities;

(d) Stockpile management and removal or redundant material; or

(e) arrival of personnel on site and parking

after 6am Monday to Saturday.

Contaminated land and groundwater

17.—(1) Any stage of the authorised development must not commence until a written scheme applicable to that stage to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The scheme must include an investigation and assessment report (including a desk based study), prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken with respect to any contaminants on the site.

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

(4) Where the scheme sets out remedial measures to be taken with respect to any contaminants on the site, a verification plan must also be submitted providing details of the data that will be collected in order to demonstrate that the remedial measures are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

(5) If, during development, contamination not previously identified is found to be present at the site, no further development (unless otherwise agreed in writing with the relevant planning authority) is to be carried out, until a remediation strategy detailing how this unsuspected contamination will be dealt with has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the relevant planning authority. The remediation strategy must be implemented as approved.

(6) Paragraphs (1) to (5) do not apply to any currently operational railway land.

Works to Winterstoke Road, Bristol

18.—(1) Work No. 28 (Winterstoke Road and Ashton Vale Road Junction) must not commence until the relevant planning authority, in consultation with the relevant highway authority, has approved the detail design for Work 28, to include—

(a) an extended left turn lane on Winterstoke Road for vehicles in to Ashton Vale Road; and

(b) details for the installation of a MOVA system or other traffic control measures designed to maximise the operational efficiency of the Winterstoke Road and Ashton Vale Road junction including provision for the movement of trains over the level crossing at Ashton Vale Road.

(2) The detail design required by paragraph (1) to be submitted to the relevant planning authority must be in substantial accordance with the Ashton Vale Road and Winterstoke Road Highway Works Plan.

(3) Work No. 28 must be carried out in accordance with the approved details to the satisfaction of the relevant planning authority in consultation with the relevant highway authority prior to first commercial use.

Temporary path south of Trinity Primary School, Portishead

19.—(1) Work to lay out a temporary path between the points T1 and T2 on sheet 1 of the crossings to be extinguished plans must not commence until—

(a) details of the siting, design and method of construction of the proposed temporary path; and

(b) a statement detailing the times at which the temporary path (or any replacement temporary path for which siting, design and method of construction has previously been approved by the relevant planning authority) will be available for use.

have been approved in writing by the relevant planning authority.

(2) The statement to be submitted in accordance with sub-paragraph (1)(b) must in particular explain that the temporary path (or any approved replacement)—

(a) will be available for use between the hours of 08:00-16:30 Monday to Friday; and

(b) will be available for use between daylight hours on Saturdays and Sundays.

(3) The temporary path (or any replacement temporary path approved by the relevant planning authority) must be constructed in accordance with the approved details and must, following its construction, be retained and maintained as approved and available for use in accordance with the approved statement to the satisfaction of the relevant planning authority.

(4) Any temporary path must be removed within a period of 6 months following the opening of Work No. 7 for public use.

Path at Marsh Lane, Easton in Gordano

20.—(1) Work No. 15 must not commence until written details of the levels and surfacing of the Work have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The Work must be carried out in accordance with the approved details.

(2) Following cessation of the construction haul road between Marsh Lane and the compounds located under the M5 Avonmouth Bridge and on Lodway Farm, Work No. 15 must be removed within 6 months to the satisfaction of the relevant planning authority in consultation with the relevant highway authority.

Temporary path at Avon Road, Pill

21.—(1) Work No. 20 must not commence until written details of the levels and surfacing of the Work have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The Work must be carried out in accordance with the approved details prior to commencement of Work No. 20A or 20B. Work No. 20 must thereafter be retained and available for use for the duration of the use of Work No. 20B as a construction compound.

(2) Following cessation of use of Work No. 20B, Work No. 20 must be removed within 6 months to the satisfaction of the relevant planning authority.

Restoration of land used temporarily for construction

22.—(1) Any land within the Order limits which is used temporarily for construction of the authorised development and not ultimately used for the purposes of the permanent works or approved landscaping, must be reinstated in accordance with such details the relevant planning authority in consultation with (if relevant) the relevant highway authority may approve, as soon as reasonably practicable and in any event within twelve months of completion of that part of the authorised development for which the land is used.

(2) Paragraph (1) does not apply to any mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works to which article 33(4)(d) (temporary use of land for carrying out the authorised development) applies and which have been placed on land which is used temporarily for the authorised development.

Watercourses

23.—(1) Work Nos. 1 and 1A must not commence until a scheme and programme (including timescale) for works proposed to any watercourse flowing under the authorised development has been submitted to and approved in writing by the relevant planning authority in consultation with, if relevant, the lead local flood authority, Environment Agency and IDB. The scheme submitted for approval must include details of the proposed clearance and repair works together with proposals for any temporary obstructions within the watercourse and any over pumping or other proposals for the maintenance of flow during the works.

(2) The works to a watercourse to which paragraph (1) applies must be carried out and the watercourse subsequently reinstated in accordance with the approved scheme and programme.

(3) Unless otherwise permitted under paragraph (1), throughout the period of construction, all watercourses must be maintained so that the flow of water is not impaired or the drainage on to and from adjoining land rendered less effective.

For the protection of bats

24.—(1) Work Nos. 1, 1A, 1B and 1C must not commence until written details of the proposed tree planting on the A369 Portbury Hundred classified road have been approved in writing by the relevant planning authority in consultation with the relevant highway authority and Natural England. The details submitted for approval must accord with the Portbury Hundred location of additional tree planting plans.

(2) The proposed tree planting on the A369 Portbury Hundred classified road must be carried out in accordance with the approved details to the reasonable satisfaction of the relevant planning authority in the first planting season after the details have been approved by the relevant planning authority unless the planting has already been carried out to the reasonable satisfaction of the relevant planning authority.

(3) The required planting must be maintained to the reasonable satisfaction of the relevant planning authority for five years following completion.

(4) No part of the authorised development must commence in the Avon Gorge Woodlands SAC until—

(a) five artificial bat roosts have been installed in the locations shown on sheets 14, 17, 18 and 19 of the environmental master plan; and

(b) a grille has been installed at the entrance to the cave known as Adit Cave 7 in the location shown on sheet 19 of the environmental master plan

to the satisfaction of the relevant planning authority.

Permanent fencing outside of Avon Gorge Woodlands SAC

25.—(1) Subject to paragraphs (2) and (3) and without affecting requirement 31(4), a stage of the works must not commence until written details of any permanent security fencing to be installed in connection with that stage, together with a timetable for its installation, have been submitted to and approved by the relevant planning authority.

(2) Where new fencing is to be provided that does not fall within a stage, and is outside of the Avon Gorge Woodlands SAC any permanent security fencing to be installed must be of a nature substantially in accordance with the details set out in the general arrangement plans and the fencing grades summary.

(3) Any new permanent security fencing must be installed in accordance with the approved details and thereafter retained unless alternative type fencing is required for railway operational safety reasons.

Permanent acoustic fencing

26.—(1) Work Nos. 1 and 1A must not commence until written details of the proposed permanent acoustic mitigation fences, to be located to the south of the proposed Portishead station and at the disused Portbury Station at the locations shown on the general arrangement plans have been submitted to and approved by the relevant planning authority.

(2) The dimensions of the acoustic mitigation fences must be—

(a) between 200 and 210 metres in length and 2 metres in height from track bed level for the fence to be located to the south of the proposed Portishead station; and

(b) between 35 and 55 metres in length and 2.4 metres in height from track bed level for the fence to be located at the former Portbury Station.

(3) The permanent acoustic fencing, or other means of enclosure, must be installed as approved prior to first commercial use of Work Nos. 1 and 1A and thereafter retained.

Portishead Station

27.—(1) Work No. 5 (Portishead Station) must not commence until written details of any permanent lighting to be installed in connection with that work, including measures to minimise light spillage, have been submitted to and approved by the relevant planning authority, the authority acknowledging the necessity for the lighting to comply with Railway Industry Standards.

(2) Work No. 5 must not commence until written details of any GSM-R mast to be located at Portishead Station have been submitted to and approved by the relevant planning authority. The GSM-R mast must not exceed 12 metres in height from the proposed track bed level of Work No. 1 at Portishead Station.

(3) Work No. 5 must not commence until written details of proposals for the inclusion of on-site energy generation to be incorporated within the detail design for Portishead Station have been submitted to and approved by the relevant planning authority.

(4) Work No. 5 must not commence until a Flood Risk Assessment (FRA) for this work has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency. If the FRA concludes that Work No. 5 is at risk of flooding then the FRA must include details of the mitigation, such as a flood emergency and evacuation plan, that would be required for the station and users to remain safe should a flood event occur.

(5) Work No. 5 must be carried out in accordance with the approved details.

(6) First commercial use must not occur prior to the approval of a station travel plan for Portishead Station by the relevant planning authority. The content of the station travel plan must substantially reflect the outline station travel plan for Portishead station submitted as part of the Environmental Statement, as Volume 4, Technical Appendices, Appendix 16.1 Transport Assessment (Part 17 of 18) – Appendix M, Outline Station Travel Plans.

Pill Station

28.—(1) Work No. 22 (Pill Station) must not commence until written details of any permanent lighting to be installed in connection with that Work, including measures to minimise light spillage, have been submitted to and approved by the relevant planning authority in consultation with Natural England, both acknowledging the necessity for the lighting to comply with Railway Industry Standards.

(2) The submitted details must demonstrate to the reasonable satisfaction of the relevant planning authority that the lighting levels on the northern platform of the former Pill Station will not be above 0.5 lux as a result of the permanent lighting proposed or the provision of lighting screens to restrict light spill on to the northern platform.

(3) Work No. 22 must not commence until written details of works to minimise light spill into the arches of the former stepped access to the northern platform of the former Pill Station have been submitted to and approved by the relevant planning authority in consultation with Natural England.

(4) The approved works must be installed in accordance with the approved details prior to first commercial use and thereafter maintained to the reasonable satisfaction of the relevant planning authority for ten years.

(5) First commercial use must not occur prior to the approval of a station travel plan for Pill Station by the relevant planning authority. The content of the station travel plan must substantially reflect the outline station travel plan for Pill station submitted as part of the Environmental Statement, as Volume 4, Technical Appendices, Appendix 16.1 Transport Assessment (Part 17 of 18) – Appendix M, Outline Station Travel Plans.

Operational lighting – highways, bridges, paths and car parks

29.—(1) Any part of the authorised development which includes—

(a) new highway lighting;

(b) new permissive paths or public rights of way including new lighting;

(c) lighting of Work No. 7; or

(d) new car parks at Portishead or Pill including new lighting

must not commence until written details of any permanent lighting to be installed in connection with the relevant work, including measures to prevent light spillage, have been submitted to and approved in writing by the relevant planning authority.

(2) Any approved means of lighting must be installed in accordance with the approved details.

Works affecting M5 Junction 19

30.—(1) Works Nos. 1- 24A must not commence until the undertaker has created a Traffic Management Working Group (J19 TMWG) to consider the impacts of the authorised development on Junction 19 of the M5 special road which must be organised by the undertaker and to which Highways England, Bristol Port Company, Network Rail and the relevant highway authority will be invited to participate. Unless agreed otherwise by the parties J19 TMWG will meet on a monthly basis for the duration of the construction period.

(2) Works Nos. 1- 24A must not commence until the local planning authority has approved in writing a construction traffic management plan having first consulted with Highways England in respect of those works as they affect Junction 19 of the M5 ("J19 CTMP") and detailing—

(a) construction traffic routes (including HGV routes, construction traffic profile (for the duration of construction period disaggregated by daily movements, vehicle type (including abnormal loads) and construction activity) and operational hours;

(b) the construction compounds to which the J19 CTMP will apply ("the J19 compounds");

(c) the management of junctions to and crossings of the public highway and other public rights of way;

(d) the scheduling and timing of abnormal load movements;

(e) temporary warning signs;

(f) a scheme to encourage the use of public transport amongst contractors;

(g) a monitoring strategy to include the provision of a monitoring report to be submitted to the J19 TMWG a minimum of one week in advance of the J19TMWG monthly meeting

(h) a change process (in the event that any changes to the J19 CTMP are proposed during the construction phase) and a process to implement corrective measures if required; and

(i) a construction worker travel plan, including car parking arrangements for staff and contractors.

(3) All morning shift construction staff arriving by private car at the J19 compounds will be told in advance not to arrive between the hours of 7.30am and 9am (Monday to Friday) ("the restricted hours").

(4) Except in exceptional circumstances morning shift construction staff arriving by private car at the J19 compounds must not arrive within the restricted hours.

(5) The undertaker must record and report to Highways England in the CTMP monitoring and reporting strategy the numbers of morning shift staff arriving by private car at the J19 compounds within the restricted hours together with the exceptional circumstances for such arrival;

(6) The numbers of staff arriving by private car within the restricted hours at the J19 compounds in the absence of any exceptional circumstances must be reported to Highways England in accordance with (5) above together with the proposed steps to be taken by the undertaker to avoid any further such arrivals within the restricted hours.

Clanage Road, Bristol

31.—(1) Works 26, 26A and 26B must not commence until a flood plan which details—

(a) the emergency and evacuation procedures for use of the temporary and permanent compound;

(b) the location, height above ground level and the duration on site of the welfare facility on the temporary compound; and

(c) the means to remove materials stored at the temporary and permanent compound in the event of flooding;

have been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency and the lead local flood authority. The approved flood plan must thereafter be complied with to the satisfaction of the relevant planning authority.

(2) The landscaping and planting forming part of Work No. 26 must be carried out in accordance with the relevant design drawing prior to first use of Work No. 26 as a permanent maintenance compound. Any tree or shrub planted as part of the landscaping that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives written consent to any variation.

(3) The regrading of the levels forming part of Work No. 26 must be carried out, in accordance with the Clanage Road, compound, landscaping and access plan prior to first use of Work No. 26 as a permanent maintenance compound. The levels must thereafter be maintained.

(4) Prior to the first use of Work No. 26 as a permanent maintenance compound details of the permanent paladin type fencing including colour height and location must be submitted to and approved by the relevant planning authority and once installed must be permanently maintained.

New bridleway east of M5 Avonmouth Bridge

32.—(1) Work No. 18 must not commence until the siting, design, landscaping and method of construction of the proposed bridleway have been submitted to and approved by the relevant planning authority. The submitted details must adhere to the principles shown on the Bridleway Extension under the Elevated M5 Plan.

(2) Work No. 18 must thereafter be carried out in accordance with the approved details.

Cattle Creep Bridge, Easton in Gordano

33.—(1) Work No. 1B must not commence before the undertaker has provided to the relevant planning authority and the Environment Agency a topographic survey setting out the existing ground levels at Cattle Creep bridge, Easton in Gordano.

(2) Works to Cattle Creep Bridge must be carried out and retained thereafter in accordance with the principles set out in the Cattle Creep Proposed General Arrangement drawing and in particular the arch of the Cattle Creep Underbridge must not be altered and the ground level beneath the Cattle Creep Underbridge must not be raised without the prior consent in writing of the relevant planning authority following consultation with the Environment Agency and (if relevant) the lead local flood authority.

Trinity Primary School Bridge

34.—(1) Work No 7 must not commence until details of any permanent lighting to be installed in connection with that work, including measures to minimise light spillage, have been submitted to and approved by the relevant planning authority.

(2) Work No 7 must not commence until details of the location, design and colour of privacy screens, if required by the relevant planning authority, have been submitted to and approved by the relevant planning authority.

(3) Work No7 must be carried out in accordance with the approved details and thereafter the required details must be permanently retained.

Perimeter Track between Marsh Lane and the compounds under the M5 Avonmouth Bridge and on Lodway Farm

35.—(1) Work Nos 16A and 17 must not commence until a pre-commencement survey of the perimeter track between Marsh Lane and Work Nos 16A and 17 (The Marsh Lane Track) has been undertaken and submitted to and approved by the relevant planning authority. The pre-commencement survey must include but not be limited to:

(a) details of the current surfacing material;

(b) details of the sub-structure; and

(c) an assessment of whether the Marsh Lane Track as currently constructed would be able to take the volume of construction traffic for the authorised development that will need to access these works.

(2) Based on the results of the pre-commencement survey a strategy (the Marsh Lane Track Strategy) must be submitted to and approved by the relevant planning authority. The Marsh Lane Track Strategy must include but not be limited to:

(a) details of what, if any, measures are required to minimise damage to the perimeter track by construction vehicles using the Marsh Lane Track to access Work Nos 16A and 17;

(b) a timescale for the implementation of any necessary measures;

(c) a strategy for on-going maintenance and management of the Marsh Lane Track during construction of the authorised development;

(d) a strategy for using the Marsh Lane Track in conjunction with the owner of the Marsh Lane Track and other parties permitted to use it by the owner; and

(e) details of management measures to minimise dust generation from construction traffic for the authorised development.

(3) Work Nos 16A and 17 must be carried out in accordance with the Marsh Lane Track Strategy.

(4) Within six months of the cessation of the use of Marsh Lane Track for construction traffic for the authorised development a post-construction survey must be submitted to the relevant planning authority for approval. The post-construction survey must include but is not limited to:

(a) details of the state of the Marsh Lane Track post construction;

(b) details of what measures/repairs, if any, are required to ensure that the Marsh Lane Track is returned in the same or similar state to pre-commencement; and

(c) a timetable for the implementation of any measures/repairs that would be required.

(5) Any measures/repairs (including, without limitation, any physical works required as a result of the pre-commencement strategy or the post-construction survey) must thereafter be carried out

as approved by the relevant planning authority unless the permission of the street authority (as street authority and as owner) for the relevant measures/repairs to the Marsh Lane Track is not forthcoming.

Pill Tunnel Eastern Portal Compound Access, Ham Green

36. Work No 24 must not commence until written details of the levels and surfacing of the Work have been submitted to and approved by the relevant planning authority. Work No 24 must thereafter be carried out and retained in accordance with the approved details.

Requirement for written approval

37. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

38.—(1) With respect to any requirement which requires the authorised development or any part of it to be carried out in accordance with the details, plans or schemes approved under this Schedule, the approved details, plans or schemes are taken to include any amendments that may subsequently be approved in writing by the relevant planning authority in consultation with any other consultee specified in the requirement in question, or approved in writing by the relevant planning authority or another approval authority.

(2) Any amendments to or variations from the approved detail, plans or schemes must be unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Anticipatory steps towards compliance with any requirement

39. If before this Order came into force the undertaker or any other person took 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.

PART 2

Procedure for discharge of requirements

Applications made under requirements

40.—(1) Where a valid application has been made to the relevant planning authority for any consent, agreement or approval required or contemplated by a requirement (including agreement or approval in respect of part of a requirement) included in this Order, the relevant planning authority 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 relevant planning authority acknowledge the application;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 41 (further information);

or such longer period as may be agreed between the undertaker and the relevant planning authority.

(2) Subject to sub-paragraphs (3) and (4), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority 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 relevant planning authority for any consent, agreement or approval required by a requirement included in this Order;

(b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and

(c) the application is accompanied by a report that considers it likely that the subject matter of the application is to give rise to any materially new or materially worse environmental effects in comparison with the authorised development as approved,

then the application is taken to have been refused by the relevant planning authority at the end of that period.

(4) Sub-paragraph (2) will only apply to an application made under requirements if—

(a) at least 6 weeks have elapsed since the application was received by the relevant planning authority,

(b) the undertaker has served on the relevant planning authority written notice that sub-paragraph (2) will apply from a date specified in the notice (such date not being less than 8 weeks from the date the application was received by the relevant planning authority), and

(c) by the date specified in the notice (or such later date as the relevant planning authority may agree with the undertaker) the relevant planning authority has not determined the relevant application.

Further information

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

(2) In the event that the relevant planning authority considers such further information to be necessary, the relevant planning authority must, within 20 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant planning authority does not give such notification within this 20 day period the relevant planning authority is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 40 (applications made under requirements) and in this paragraph.

Appeals

42.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required or contemplated by any of the provisions of this Order or grants it subject to conditions;

(b) the relevant planning authority does not give notice of its decision to the undertaker within the decision period specified in sub-paragraph 40(1) (applications made under requirements);

(c) on receipt of a request for further information under paragraph 41 (further information) the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(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 determination, or (where no determination has been made) expiry of the decision period as determined under paragraph (1);

(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 relevant planning authority and the requirement consultees;

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal ("the appointed person")(**a**) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person's attention should be sent;

(d) the relevant planning authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations 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 shall make any counter-submissions to the appointed person within 20 business days of receipt of written representations under paragraph (d).

(3) The appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(4) The appointment of the appointed person may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(5) If the appointed person considers that further information is necessary to enable consideration of 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.

(6) Any further information required under sub-paragraph (5) is to 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. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.

(7) 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 relevant planning 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.

(8) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person under this paragraph.

(9) The appointed person may proceed to a decision even though no written representations have been made within the prescribed 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.

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

(11) If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the Order or for the purpose of this Schedule as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing

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(**a**) Appointed by the Planning Inspectorate on behalf of the Secretary of State

but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person are to be met by the undertaker(**a**).

(13) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. 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 Planning Practice Guidance published by the Department for Communities and Local Government on 6th March 2014 or any circular or guidance which may from time to time replace it.

Interpretation of Part 2 of Schedule 2

43. In this part of this Schedule—

"the appeal parties" means the discharging authority, the undertaker and any requirement consultees;

"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(**b**);

"requirement consultee" means any body named in a requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that requirement.

SCHEDULE 3

Article 13

Streets subject to street works

(1) *Area*	*(2)* *Street subject to street works*
In the District of North Somerset	Harbour Road, Portishead
In the District of North Somerset	Haven View, Portishead
In the District of North Somerset	Phoenix Way, Portishead
In the District of North Somerset	Quays Avenue, Portishead
In the District of North Somerset	Tansy Lane, Portishead
In the District of North Somerset	Galingale Way, Portishead
In the District of North Somerset	Conference Avenue, Portishead
In the District of North Somerset	Sheepway, Portbury
In the District of North Somerset	Station Road, Portbury
In the District of North Somerset	The Portbury Hundred, Portbury
In the District of North Somerset	Royal Portbury Dock Road, Portbury
In the District of North Somerset	Marsh Lane, Easton in Gordano
In the District of North Somerset	Access road to the M5 Avonmouth Bridge east of Marsh Lane, Easton in Gordano
In the District of North Somerset	Severn Road, Pill
In the District of North Somerset	Access road to the M5 Avonmouth Bridge, west of Avon Road, Pill
In the District of North Somerset	Avon Road, Pill

(**a**) The costs of the appointed person are calculated based on the applicable day rate for a Single Inspector as if he or she were appointed under section 78 and section 79 of the 2008 Act. See the National Infrastructure Planning website for more information: https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/

(**b**) 1971 c. 80.

In the District of North Somerset	Monmouth Court, Pill
In the District of North Somerset	Monmouth Road, Pill
In the District of North Somerset	Newport Road, Pill
In the District of North Somerset	Crusty Lane, Pill
In the District of North Somerset	Back Lane, Pill
In the District of North Somerset	Station Road, Pill
In the District of North Somerset	Chapel Row, Pill
In the District of North Somerset	Myrtle Hill, Pill
In the District of North Somerset	Sambourne Lane, Pill
In the District of North Somerset	Heywood Road, Pill
In the District of North Somerset	Lodway, Pill
In the District of North Somerset	Underbanks, Pill
In the District of North Somerset	Watchhouse Road, Pill
In the District of North Somerset	Macrae Road, Pill
In the District of North Somerset	Fitzharding Road, Pill
In the District of North Somerset	Ham Green, Pill
In the District of North Somerset	The Green, Ham Green, Pill
In the District of North Somerset	Hart Close, Ham Green, Pill
In the District of North Somerset	Chapel Pill Lane, Ham Green, Pill
In the City and County of Bristol	Clanage Road, Bower Ashton
In the City and County of Bristol	Ashton Road, Ashton
In the City and County of Bristol	Ashton Gate Underpass, Ashton
In the City and County of Bristol	Winterstoke Road, Ashton
In the City and County of Bristol	Marsh Road, Ashton
In the City and County of Bristol	Ashton Vale Road, Ashton

SCHEDULE 4

Article 14

Streets to be stopped up

PART 1

Street for which a substitute is to be provided

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New Highway to be substituted*
District of North Somerset	Quays Avenue, Portishead	160 metres of Quays Avenue shown by vertical zebra stripes the points marked A-A and B-B on sheet 1 of the permanent and temporary stopping up and diversion plan	127 metres of new all-purpose highway shown by stipple hatch between the points marked C-C and D-D on sheet 1 of the permanent and temporary stopping up and diversion plan (Work No. 2)

PART 2

Streets for which no substitute is to be provided

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*
In the District of North Somerset, Portishead	All rights to use the former Moor Lane crossing south of Trinity Primary School Portishead	Between the points marked S7 and S8 on sheet 1of the permanent and temporary stopping up and diversion plan
In the District of North Somerset, Portbury	All rights to use crossing forming part of the Drove, north of the highway known as Portbury Hundred	Between the points marked S17 and S18 on sheet 4 of the permanent and temporary stopping up and diversion plan

SCHEDULE 5

Article 15

Streets to be stopped up temporarily

PART 1

Street to be stopped up temporarily for which a substitute is to be provided

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*	*(4)* *Replacement to be provided*
In the District of North Somerset, Pill	Unnamed street from Avon Road, Pill to the Avonmouth Bridge of the M5 Special Road	Between the points marked TS4 and TS5 on sheet 6 of the permanent and temporary stopping up and diversion plan	Temporary route for non-motorised users and motorised vehicles of less than 50 cc engine capacity between the points marked TS4 and TS4A shown on sheet 6 of the permanent and temporary stopping up and diversion plan

PART 2

Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension

(1) *Area*	*(2)* *Bridleways and footpaths to be temporarily suspended*	*(3)* *Extent of temporary suspension*
In the District of North Somerset, Easton in Gordano	Public bridleway LA8/67/10 from its junction with Marsh Lane to its termination point under the Avonmouth Bridge of the M5 Special Road	Between the points marked TS1 and TS2 on sheet 5 of the permanent and temporary stopping up and diversion plan

In the District of North Somerset, Easton in Gordano	Public footpath LA8/68/10 from its junction with public bridleway LA8/67/10 to its junction with public footpaths LA8/6/5 and LA8/6/10 under the Avonmouth Bridge of the M5 Special Road	Between the points marked TS2 and TS3 on sheet 5 of the permanent and temporary stopping up and diversion plan
In the District of North Somerset, Pill	Public footpath LA8/5/40 between Lodway Close and Avon Road, Pill	Between the points marked TS6 and TS7 on sheet 6 of the permanent and temporary stopping up and diversion plan
In the District of North Somerset, Pill	Public footpath LA8/4/10 between Avon Road and Severn Road, Pill	Between the points marked TS7 and TS8 on sheet 6 of the permanent and temporary stopping up and diversion plan

SCHEDULE 6

Article 16

Bridleways, cycle tracks and footpaths

PART 1

Footpath to be diverted

(1) *Area*	*(2)* *Footpath to be stopped up*	*(3)* *Extent of Stopping up*	*(4)* *New Footpath to be substituted*
City and County of Bristol, Ashton	Part of footpath BCC/422/10 known as Barons Close Level Crossing or Ashton Containers Crossing, Ashton, Bristol	Between the points marked S31 and S32 on sheet 16 of the permanent and temporary stopping up and diversion plan	507.50 metres of footpath BCC/422/10 shown on sheet 16 of the permanent and temporary stopping up and diversion plan

PART 2

New public rights of way to be created

(1)	*(2)*
Cycle track	Between points CT1 and CT2 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT2 and CT3 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT4 and CT5 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT5 and CT6 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT6 and CT8 shown on Sheet 1 of the new highways plan
Bridleway	Between points B1 and B2 shown on Sheet 5 of the new highways plan

SCHEDULE 7

Article 17

Access to works

(1) *Area*	*(2)* *Description of access*
In the District of North Somerset	Access from Harbour Road, Portishead shown as AW1.1 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Quays Avenue, Portishead shown as AW1.2 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Phoenix Way, Portishead shown as AW1.3 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Quays Avenue, Portishead shown as AW1.4 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway to field to the north of the highway, south of the disused Portishead branch line, shown as AW2.1 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway north of the disused Portishead branch line, shown as AW2.2 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway to field to the south of the highway, south of the disused Portishead branch line, shown as AW2.3 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Portbury Hundred, west of Station Road Portbury, shown as AW3.1 on sheet 3 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway, Portbury, shown as AW3.2 on sheet 3 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Station Road, Portbury, shown as AW3.3 on sheet 3 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Portbury Hundred, east of Station Road, Portbury, shown as AW4.1 on sheet 4 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch Line railway, shown as AW5.1 on sheet 5 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as the Breaches, Easton in Gordano, shown as AW5.2

	on sheet 5 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch Line railway, shown as AW5.3 on sheet 5 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Avon Road, Pill shown as AW6.1 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Monmouth Road, Pill shown as AW6.2 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Underbanks, Pill AW6.3 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Station Road, Pill AW6.4 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Lodway, Pill AW6.5 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Chapel Pill Lane to new maintenance compound (and temporary construction compound), Ham Green, Pill, shown as AW8.1 on sheet 8 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Chapel Pill Lane to the unadopted part of Chapel Pill Lane, Ham Green, Pill, shown as AW8.2 on sheet 8 of the access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW10.1 on sheet 10 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access on foot from the River Avon Tow Path, shown as AW11.1 on sheet 11 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the A369 classified road known as Abbots Leigh Road, shown as AW11C.1 on sheet 11C of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW12.1 on sheet 12 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW12.2 on sheet 12 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access on foot only from the River Avon Tow Path, shown as AW13.1 on sheet 13 of the

	compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Rownham Hill, shown as AW14.1 on sheet 14 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Clanage Road, Bower Ashton, shown as AW15.1 on sheet 15 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Clanage Road, Bower Ashton, shown as AW15.2 on sheet 15 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Winterstoke Road, Ashton, shown as AW16.1 on sheet 16 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as South Liberty Lane, Ashton, shown as AW17.1 on sheet 17 the compounds, haul roads and access to works plan

SCHEDULE 8

Article 20

Closure of crossings

PART 1

Crossings: works required

(1) *Area*	*(2)* *Crossing to be discontinued*	*(3)* *Street or way to be stopped up*	*(4)* *Replacement*
District of North Somerset, Portishead	Quays Avenue, Portishead	Crossing known as Quays Avenue Portishead between the points marked S1 and S2 on sheet 1 of the crossings to be extinguished plans	Work No. 2
District of North Somerset, Portishead	Pedestrian and cycle crossing between Galingale Way and Tansy Lane, Portishead at 129 miles, 16 chains	Crossing, between the points marked S5 and S6 on sheet 1 of the crossings to be extinguished plan	Work No. 7

PART 2

Crossings: temporary suspension

(1)	*(2)*	*(3)*	*(4)*

Area	*Crossing to be discontinued*	*Street or way to be temporarily stopped up*	*Temporary Replacement*
District of North Somerset, Portishead	Pedestrian and cycle crossing between Galingale Way and Tansy Lane, Portishead at 129 miles, 16 chains	Crossing, between the points marked S5 and S6 on sheet 1 of the crossings to be extinguished plans	Pedestrian and cycle crossing on any reasonably direct route previously agreed by the relevant highway authority between the points marked T1 and T2 on sheet 1 of the crossings to be extinguished plan

PART 3

Crossings: No works required

(1) *Area*	*(2)* *Level Crossing to be stopped up*	*(3)* *Extent of stopping up*
In the District of North Somerset, Portishead	The former Moor Lane crossing south of Trinity Primary School Portishead	Between the points marked S7 and S8 on sheet 1 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	The crossing forming part of The Drove, north of the highway known as Portbury Hundred	Between the points marked S17 and S18 on sheet 4 of the crossings to be extinguished plans

SCHEDULE 9

Article 21

Accommodation and occupation crossings

PART 1

Crossings extinguished: works required

(1) *Area*	*(2)* *Accommodation facility to be discontinued*	*(3)* *Rights to be extinguished*	*(4)* *Works to be provided*
In the District of North Somerset, Portbury	Crossing at 128 miles 46 chains at Shipway Gate Farm	All rights (if any) to use the crossing at Shipway Gate Farm between points S9 and S10 shown on sheet 2 of the crossings to be extinguished plans	New gate and works on the highway known as Sheepway marked N1 on sheet 2 of the crossings to be extinguished plan

In the District of North Somerset, Portbury	Crossing at 128 miles 39 chains at Shipway Gate Farm	All rights (if any) to use the crossing at Shipway Gate Farm between the points S11 and S12 shown on sheet 2 of the crossings to be extinguished plans	New gate and works on the highway known as Sheepway marked N1 on sheet 2 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 128 miles 17 chains at Elm Tree Farm, Portbury	All rights (if any) to use the crossing to the South of Sheepway and to the west of Elm Tree Farm between the points S13 and S14 shown on sheet 3 of the crossings to be extinguished plans	New gate and works on the highway known as Portbury Hundred marked N2 on sheet 3 of the crossings to be extinguished plans

PART 2

Crossings for which no substitute is to be provided

(1) *Area*	*(2)* *Crossing to be discontinued*	*(3)* *Right to be extinguished*
In the District of North Somerset, Portishead	Crossing at 129 miles 22 chains, south of the Wessex Water pumping station, east of Quays Avenue Portishead	All rights (if any) to use the crossing between the points marked S3 and S4 on sheet 1 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 71 chains north of the A369 Portbury Hundred classified road	All rights (if any) to use the crossing between the points marked S15 and S16 on sheet 3 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 41 chains north of the A369 Portbury Hundred classified road known as Portbury No.3 crossing	All rights (if any) to use the crossing between the points marked S19 and S20 on sheet 4 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 12 chains north of Court House Farm, Portbury	All rights (if any) to use the crossing between the points marked S21 and S22 on sheets 4 and 5 of the crossings to be extinguished plans
In the District of North Somerset, Easton in Gordano	Crossing at 126 miles 74 chains known as Manor Farm No.2 crossing, east of Marsh Lane, Easton in Gordano	All rights (if any) to use the crossing between the points marked S25 and S26 on sheet 5 the crossings to be extinguished plans
In the District of North Somerset, Easton in Gordano	Crossing at 126 miles 74 chains known as Manor Farm No.1 crossing, east of Marsh Lane, Easton in Gordano	All rights (if any) to use the crossing between the points marked S27 and 28 on sheet 5 the crossings to be extinguished plans

In the District of North Somerset, Pill	Crossing at 126 miles 56 chains, south east of M5 Avonmouth Bridge, Easton in Gordano	All rights (if any) to use the crossing between the points marked S29 and S30 on sheet 5 of the crossings to be extinguished plans

SCHEDULE 10

Article 27

Land in which only new rights, etc., may be acquired

(1) *Number of land shown on the land plan*	*(2)* *Purpose for which rights may be acquired*
01/97	To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, repair, cleanse, retain, renew, replace and remove a drainage pipe for the purpose of draining water from the adjoining highway.
01/215, 01/225	To access (with or without vehicles plant and machinery) and to install, maintain, use, retain, repair, inspect, cleanse, renew, replace and remove a drainage pipe for the purpose of draining water from adjoining land.
01/230, 01/231, 01/232	To access (with or without vehicles plant and machinery) and to install, maintain, use, repair, inspect, renew, replace and remove cables and other conduits for the purposes of the supply and distribution of electricity through the cables to adjoining land.
01/252, 01/255, 01/260, 01/270	To access, pass and repass and remain upon the land (with or without vehicles plant and machinery) for all purposes in connection with access to adjoining land.
02/19	To access and remain upon the land (with or without vehicles, plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
02/117	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
02/121	To access, pass and repass and remain upon the land (with or without vehicles plant and machinery) for all purposes in connection with access to adjoining land.
03/31	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.

03/69, 03/77, 03/78	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
05/75, 05/85, 05/86	To access, pass and repass and remain upon the land with or without vehicles, plant and machinery and for all purposes in connection with inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing, (a) an accommodation bridge and associated walls, embankments and structures; and (b) a culvert, watercourse and head wall.
05/100, 05/103, 05/105, 05/112	To access, pass and repass and remain upon the land with or without vehicles, plant and machinery (including road and rail vehicles) to access the national railway network and for all purposes in connection with access to neighbouring land.
05/104, 05/165, 05/171	(i) To access, pass and repass and remain upon the land with or without vehicles, plant and machinery; (ii) To install, lay, maintain, use, transmit, retain, renew, repair, replace, inspect and remove railway signalling and communications apparatus; and (iii) To pass and repass with or without vehicles, plant and machinery (including rail vehicles) to access the national railway network.
05/107, 05/108	To access, pass and repass and remain upon the land with or without vehicles, plant and machinery (including road and rail vehicles) and to access the national railway network, together with the right to use the land for the purpose of transferring road and rail maintenance vehicles onto the railway and removing road and rail maintenance vehicles from the railway.
06/25, 06/55	(i) To access, pass and repass and remain upon the land with or without vehicles, plant and machinery; (ii) To alter or remove existing railway and to install, lay, retain, renew, repair, inspect and replace railway track and apparatus; (iii) To install , lay, inspect, maintain, use, transmit, retain, renew, repair, replace and remove railway signalling and communications apparatus; and

	(iv) To pass and repass with or without vehicles, plant and machinery (including rail vehicles) to access the national railway network.
06/160, 06/280, 06/285, 06/290, 06/295, 06/300, 06/305, 06/310, 06/315 06/320, 06/325, 06/330, 06/335, 06/340, 06/345, 06/350, 06/355, 06/360, 06/365, 06/370, 06/375, 06/380, 06/385, 06/390, 06/395, 06/400, 06/405, 06/410, 06/415, 06/420, 06/425, 06/430, 06/435, 06/440, 06/445, 06/450, 06/455, 06/460, 06/465, 06/470, 06/475, 06/480, 06/485, 06/490, 06/495, 06/500, 06/510, 06/520	(i) To insert, inspect, maintain, adjust, repair, remove, retain and renew soil nails at a depth at least 1 metre below the current surface of the land together with access for all necessary workmen, vehicles, machinery and other apparatus at any time in, through and under the land for those purposes; (ii) To enter, with any necessary workmen, contractors or other authorised persons and bring necessary plant, equipment, materials and vehicles onto the land and to remain thereon for so long as is reasonably required for the purposes of— (a) carrying out site soil and environmental surveys and environmental mitigation measures and geotechnical ecological archaeological and site investigations; and (b) making trial holes in such positions to investigate the nature of the surface layer and subsoil and taking soil samples. (iii) To undertake works to upgrade, stabilise, repair, improve, install or replace fences; and (iv) A restrictive covenant not to do anything or allow anything to be done on the land which may cause damage to the soil nails or other subsoil works or affect their proper and efficient operation.
06/566	To install, lay, maintain, use, operate, retain, renew, repair, replace, inspect and remove electrical apparatus and to distribute electricity through the installed cables..
06/634, 06/644	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining renewing, replacing and removing railway and the abutment and arches of a viaduct on adjoining land.
06/640	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining, renewing, replacing and removing the abutment and arches of a viaduct on adjoining land.
06/641, 06/642, 06/643	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining renewing, replacing and removing

	a railway and the abutment and arches of a viaduct on adjoining land.
06/646	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining, renewing, replacing and removing a railway and the abutment and arches of a viaduct on adjoining land.
07/71, 07/73, 07/77, 07/78, 07/130	To access, pass and repass with or without vehicles (such vehicles being limited to no more than 3.5 tonnes laden in weight) to access the adjoining railway.
08/12, 08/13	To access, pass and repass and remain upon the land with or without vehicles to access adjoining land.
08/45	To access, pass and repass and remain upon the land with or without vehicles to access adjoining land.
09/12, 09/13, 09/14	To access, remain upon, pass and repass and access adjoining land for the inspection, construction, operation, use and maintenance of the authorised development.

SCHEDULE 11

Article 27

Modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictions

Compensation enactments

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

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

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

"(5A) If—

(a) the acquiring authority enters on land for the purpose 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 11 to Portishead Branch Line (MetroWest Phase 1) Order 202X(a) ("the 202X 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 11 to the 202X 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 where it entered on that land for the purpose of exercising that right."

(**a**) 1961 c. 33. Section 5A(5A) was inserted by paragraph 4(2) of Schedule 17(2) to the Housing and Planning Act 2016 (c. 22).

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 Part 1 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 25 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27(1) (compulsory acquisition of rights or imposition of covenants)—

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

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

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

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

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

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

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the 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 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 (powers of entry) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 19 (construction and maintenance of new or altered streets)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right

(**a**) 1973 c. 26.

or enforcing that restriction; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date)(**a**), 12 (penalty for unauthorised entry)(**b**) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) (modification of Part 1 of the 1965 Act) 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 to the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve 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 have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Portishead Branch Line (MetroWest Phase 1) Order 202X in respect of the land to which the notice to treat relates.

(2) But see article 31 (acquisition of subsoil or airspace only) of the Portishead Branch Line (MetroWest Phase 1) Order 202X 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 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.

(**a**) 1965 c. 56. Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c. 22).
(**b**) 1965 c. 56. Section 12 was amended by paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).
(**c**) 1965 c. 56. Section 20 was amended by paragraph 4 of Schedule 15(1) to the Planning and Compensation Act 1991 (c. 34) and paragraph 70 of Schedule 1 to S.I. 2009/1307.

6. The 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 authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve 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 use to be made of the right or covenant proposed to be acquired or imposed, and

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

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

13. If the Upper Tribunal determines that the 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 authority ought to be required to take some or all of the house, building or factory, the 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 they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

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

SCHEDULE 12

Article 33

Land of which temporary possession may be taken

(1) *Location*	*(2)* *Number of land shown on land plan*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*

In the District of North Somerset, Portishead	01/70, 01/75, 01/76, 01/77	Working space and access for construction	Work No. 2
In the District of North Somerset, Portishead	01/91	Working space and access for construction	Work No. 2A
In the District of North Somerset, Portishead	01/111, 01/112	Access, working space, materials storage, compound and lay down area for construction	Work Nos. 1, 7, 7A, 7C, 7D and 7E
In the District of North Somerset, Portishead	01/210	Access, working space for construction and ecological mitigation	Work Nos. 1, 7 and 7B
In the District of North Somerset, Portishead	01/211, 01/212, 01/216	Access, working space for construction and ecological mitigation	Work Nos. 1, 7 and 7B
In the District of North Somerset, Portishead	01/220, 01/221	Access, working space and materials storage, compound, lay down area for construction and diversionary route for path	Work Nos. 1, 7, 7C, 7D and 7E
In the District of North Somerset, Portishead	01/222	Access, working space for construction	Work Nos. 1, 5, 7, 7A and 7D
In the District of North Somerset, Portishead	01/226	Access, working space, and ecological mitigation for construction	Work Nos. 1, 5 and 7A
In the District of North Somerset, Portishead	01/240, 01/241, 01/250	Access, working space for construction and ecological mitigation	Work Nos. 1 and 7
In the District of North Somerset, Portishead	01/251, 01/265	Access, working space for construction and diversionary route for path	Work Nos. 1 and 7
In the District of North Somerset, Portishead	01/296, 01/297	Access, working space for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portishead	01/310	Access, haul road, materials storage and working space for construction	Work Nos. 1, 1A, 1B, 1C and 8
In the District of North Somerset, Portbury	02/05, 02/06, 02/07, 02/08, 02/10, 02/20 02/26, 02/27	Access and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/30	Access, working space for construction and ecological mitigation	Work Nos. 1 and 9

In the District of North Somerset, Portbury	02/31, 02/32	Access and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/35	Temporary construction compound and materials storage	Work Nos. 1, 9 and 10A
In the District of North Somerset, Portbury	02/36, 02/37	Temporary diversion of permissive cycle path	Work Nos .9 and 10A
In the District of North Somerset, Portbury	02/40, 02/41, 02/45, 02/46, 02/75, 02/76, 02/82	Access, construction haul road, material storage and ecological mitigation works	Work Nos. 1, 1A, 1B, 1C and 8
In the District of North Somerset, Portbury	02/60, 02/65, 02/120	Access, haul road, material storage and working space for construction	Work Nos. 1, 1A, 1B, 1C and 11A
In the District of North Somerset, Portbury	02/85, 02/122	Access, haul road, visibility splays and working space for construction	Work Nos. 1, 1A, 1B, 1C and 11A
In the District of North Somerset, Portbury	02/116	working space and access for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/118	working space and access for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/145	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22
In the District of North Somerset, Portbury	02a/10, 02a/15	Access, haul road visibility splays and working space	Work Nos. 8, 11 and 11A
In the District of North Somerset, Portbury	02b/05	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22
In the District of North Somerset, Portbury	03/10	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22
In the District of North Somerset, Portbury	03/21	Access, working space and environmental mitigation works	Work No. 1
In the District of North Somerset, Portbury	03/35, 03/36, 03/37, 03/38	Access and environmental mitigation works	Work No. 1

In the District of North Somerset, Portbury	03/47, 03/67, 03/68	Access, working space and environmental mitigation works	Work No. 1
In the District of North Somerset, Portbury	03/65	Working space and works to adjacent disused station platform	Work No. 1
In the District of North Somerset, Portbury	03/71, 03/76	Access, material storage, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	03/80	Access, working space and visibility splay	Work No. 1A
In the District of North Somerset, Portbury	04/06, 04/07, 04/08	Access, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	04/10, 04/13, 04/15	Access, material storage, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	04/20	Access, turning space, materials storage, working space and environmental mitigation	Work Nos. 1, 1A, 1B, 1C and 13
In the District of North Somerset, Portbury	04/25, 04/46	Access, visibility splays, working space and environmental mitigation	Work No. 13
In the District of North Somerset, Portbury	04/41	Access, visibility splays, working space and environmental mitigation	Work No. 13
In the District of North Somerset, Portbury	04/42	Access, working space, materials storage and environmental mitigation	Work Nos. 1, 1A, 1B, 1C and 13
In the District of North Somerset, Portbury	04/55	Working space and vegetation clearance	Work No.14
In the District of North Somerset, Easton in Gordano	04/90	Working space and vegetation clearance	Work Nos. 1A, 14A and 14B
In the District of North Somerset, Easton in Gordano	04/105	Working space and vegetation clearance	Work No. 1A
In the District of North Somerset, Easton in Gordano	05/10	Working space, access and vegetation clearance	Work Nos . 1A and 15

In the District of North Somerset, Easton in Gordano	05/17, 05/18	Access to works	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/25, 05/106	Access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/26, 05/28	Working space, access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/113	Working space, access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/150, 05/152	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 17, 17A, 18, 20A and 22
In the District of North Somerset, Easton in Gordano	05/170	Temporary construction compound, materials storage	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 18, 19, 20A and 22
In the District of North Somerset, Lodway	06/15	Working space, access and vegetation clearance	Work No. 1A
In the District of North Somerset, Lodway	06/30	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 17, 17A, 18, 20A and 22
In the District of North Somerset, Lodway	06/35,06/36, 06/40, 06/45, 06/50, 06/65	Working space and access to works	Work Nos. 1A, 1B, 1C, 17, 17A, 18 and 20A
In the District of North Somerset, Pill	06/60, 06/105	Working space , oversail for crane and access to works	Work Nos. 1B, 1C, 20, 20A and 20B
In the District of North Somerset, Pill	06/61, 06/62, 06/63	Temporary diversion of cycle path	Work Nos. 1B, 1C, 20, 20A and 20B
In the District of North Somerset, Pill	06/70, 06/75, 06/85, 06/90, 06/95, 06/100, 06/140, 06/145, 06/155	Working space and access to works	Work Nos. 1B, 1C, 20A and 20B
In the District of North Somerset, Pill	06/190	Access to works	Work Nos. 1B, 1C, 20A and 20B
In the District of North Somerset, Pill	06/532, 06/535	Working space and access to works	Work Nos. 22A and 22B
In the District of North Somerset, Pill	06/533	Temporary compound	Work Nos. 22A and 22B
In the District of North Somerset, Pill	06/550, 06/555, 06/556	Access to Works	Work Nos. 1B, 1C and 22
In the District of North Somerset, Pill	06/596, 06/597, 06/598	Access to Works, demolition and replacement of wall	Work Nos. 1B, 1C and 20A
In the District of North Somerset, Pill	06/632, 06/633, 06/636	Access to Works	Work Nos. 1B and 1C

In the District of North Somerset, Pill	06/647, 06/661, 06/666, 06/705, 06/710, 06/730	Working space and access to works	Work Nos. 1B and 1C
In the District of North Somerset, Pill	07/05, 07/10, 07/15, 07/20, 07/25, 07/30, 07/35, 07/36, 07/44, 07/46, 07/51, 07/52, 07/53, 07/55, 07/56, 07/58, 07/59, 07/60, 07/65, 07/70, 07/80, 07/85, 07/90, 07/100, 07/105, 07/110, 07/111, 07/112, 07/113, 07/114, 07/116, 07/117, 07/121	Working space access to works and embankment strengthening	Work Nos. 1B and 1C
In the District of North Somerset, Ham Green	08/11, 08/20, 08/26	Working space and access to works	Work Nos. 24 and 24A
In the District of North Somerset, Ham Green	08/21, 08/22, 08/23, 08/24	Access to works	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Pill	08/50, 08/60, 08/61	Access to works	Work Nos. 24 and 24A
In the District of North Somerset, Abbots Leigh	08/71	Access to works and materials storage	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/11	Access to works and materials storage	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/20	Access to works and materials storage	Storage of materials, installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/22, 09/23, 09/25	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/06	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway

In the City and County of Bristol, Abbots Leigh	10/11	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the City and County of Bristol, Abbots Leigh	10/25	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/30	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/35	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/06	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting, and rock picking for the protection of the adjacent Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works
In the District of North Somerset, Abbots Leigh	11/07	Access to works working space and environmental mitigation	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol, Abbots Leigh	11/10, 11/15	Access to works and working space	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation

In the City and County of Bristol, Abbots Leigh	11/20	Access to works and working space	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol, Abbots Leigh	11/25	Access to works and working space	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/41, 11/42	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent railway, installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation.
In the District of North Somerset, Abbots Leigh	11/61	Access to works	Vegetation clearance and rock picking for the protection of Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/65, 11/70, 11/75,	Access to works	Vegetation clearance and rock picking for the protection of Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/80	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent railway, installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11a/05	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of Parson Street to Royal Portbury Dock

			railway, ecological mitigation.
In the District of North Somerset, Abbots Leigh	11a/10, 11a/15	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11b/05, 11b/10, 11b/15, 11b/20, 11b/30, 11b/35	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11b/25	Access to works	Micro compound, access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11c/05, 11c/10, 11c/15	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	12/07 12/10, 12/20, 12/21, 12/30	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Work No. 25, vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the City and County of Bristol, Abbots Leigh	12/25	Access to works	Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access

			for minor works to railway.
In the District of North Somerset, Abbots Leigh	13/07, 13/31, 13/32	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the City and County of Bristol, Abbots Leigh	13/33, 13/36, 13/40	Access to works	Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the District of North Somerset, Abbots Leigh	13/55	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to existing railway
In the District of North Somerset, Abbots Leigh	14/05	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol	14/10, 14/25, 14/35	Access to works	Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway

In the City and County of Bristol	15/15	Temporary construction compound, materials storage and access to works	Work Nos. 26, 26A, installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway
In the City and County of Bristol	16/56, 16/57. 16/58, 16/61, 16/62, 16/63, 16/75, 16/80, 16/85	Access to works	Work No. 28
In the City and County of Bristol	17/05, 17/20	Temporary construction compound, materials storage and access to works	Work No. 29
In the City and County of Bristol	17/10, 17/15	Access to works	Work No. 29

SCHEDULE 13

Article 44

Hedgerows

PART 1

Hedgerows to be removed

(1) *Location of hedgerow*	*(2)* *Work to be carried out*	*(3)* *Relevant part of the authorised*
North of Sheepway and east of Fennel Way along the south side of the disused railway line shown marked H2/1 on sheet 2 of the hedgerow location plan.	Removal of part of a hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work no. 8
North side of Sheepway west of bridge over disused railway line shown marked H2/2 on sheet 2 of the hedgerow location plan.	Removal of part of a hedgerow to allow for the temporary construction haul road crossing over Sheepway. Hedgerow to be replanted on completion of works.	Work no. 8
South side of Sheepway west of bridge over disused railway line shown marked H2/3 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road east of Sheepway. Hedgerow to be replanted on completion of works.	Work no. 11A
South side of the disused railway line east of Shipway Gate Farm shown marked H2/4 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work no. 11A
South side of the disused railway line east of Shipway	Removal of end of the hedgerow to allow for the	Work no. 11A

Gate Farm shown marked H2/5 on sheet 2 of the hedgerow location plan.	temporary construction haul road. Hedgerow to be replanted on completion of works.	
South side of the disused railway line east of Shipway Gate Farm shown marked H2/6 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work no. 12A
South of the disused railway line and north of the Portbury Hundred, shown marked H3/1 on sheet 2 of the hedgerow location plan.	Removal of part of hedgerow for access within the construction compound. Hedgerow to be replanted on completion of works.	Work no. 12A
Lodway Farm on southern boundary of the disused railway line, shown marked H5/1 on sheets 5 and 6 of the hedgerow location plan.	Removal of part of hedgerow adjacent to the disused line. Hedgerow to be replanted on completion of works.	Works no. 1A and 17
Lodway Farm, shown marked H5/2 on sheets 5 and 6 of the hedgerow location plan.	Removal of part of hedgerow for access within the construction compound. Hedgerow to be replanted on completion of works.	Work no. 17
South side of Chapel Pill Lane, Ham Green, Pill, shown marked H8/1 on sheet 8 of the hedgerow location plan.	Removal of part of hedgerow for new access.	Work no. 24

PART 2

Important Hedgerow

(1) *Area*	*(2)* *Reference of hedgerow*
In the district of North Somerset, at Lodway, Pill	The important hedgerow marked 1 on the important hedgerow plan

SCHEDULE 14

Article 46

Traffic Regulation

In the district of North Somerset

(1) *Road*	*(2)* *Extent*	*(3)* *Measure*
Harbour Road, Portishead	Between the junction of Harbour Road with Harbour Road (leading to Harbour Road Trading Estate) and the junction of Harbour Road with re-aligned Quays Avenue, as shown coloured red on the	Prohibition of waiting at any time.

	permanent traffic regulation order plans (Portishead Station)	
Quays Avenue, Portishead	Between the junction of Quays Avenue with the realigned Harbour Road to the junction of Quays Avenue with Wyndham Way as shown coloured red on the permanent traffic regulation order plans (Portishead Station)	Prohibition of waiting at any time.
Phoenix Way, Portishead	Between the junction of Phoenix Way with the realigned Quays Avenue to a point 47 metres west of the junction of Phoenix Way with Marjoram Way as shown coloured red on the permanent traffic regulation order plans (Portishead Station)	Prohibition of waiting at any time (save for designated parking bays).
Portbury Hundred, Portbury	At a point 457 metres west of the junction of the A369 Portbury Hundred classified road and Station Road, Portbury, either on to or from the highway known as Portbury Hundred at the location shown on the permanent traffic regulation order plans (A369 Portbury Hundred)	Prohibition of right turn manoeuvres
Monmouth Road, Pill	From the junction of Monmouth Road with Crusty Lane to the junction of Monmouth Road with Station Road as shown coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
Station Road, Pill	From the junction of Station Road with Monmouth Road to the junction of Station Road with Heywood Road as shown in the locations coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
New Road, Chapel Row and Myrtle Hill, Pill	To the extent shown coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
Sambourne Lane, Pill	To the extent shown coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.

Macrae Road, The Sanctuary and Hart Close gyratory, Ham Green, Pill	At the junction of Macrae Road and Hart Close, as shown coloured red on the permanent traffic regulation order plans (Ham Green)	Prohibition of waiting at any time.
Junction of Ham Green and Macrae Road, Ham Green, Pill	At the junction of Ham Green and Macrae Road as shown coloured red on the permanent traffic regulation order plans (Ham Green)	Prohibition of waiting at any time.

SCHEDULE 15

Article 52

Amendment of Local Legislation

Byelaws

(1) *Title*	*(2)* *Byelaw to be disapplied*
North Somerset Levels Internal Drainage Board Land Drainage Byelaws 2004	Byelaw 3 (control of introduction of water and increases in flow or volume of water); Byelaw 7 (detrimental substances not to be put in watercourses); Byelaw 14 (vehicles not to be driven on banks); Byelaw 15 (banks not to be used for storage); Byelaw 17 (fences, excavations, pipes, etc.); Byelaw 24 (damage to property of the Board).

SCHEDULE 16

Article 53

Protective Provisions

PART 1

Protection for Network Rail Infrastructure Limited

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 (licences) of the Railways Act l993(**a**);

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the

(**a**) 1993 c. 43. Section 8 was amended by regulation 2(2) and Part 1 paragraph 1(d) of the Schedule to S.I. 2015/1682, sections 216 and 274 of and Schedule 17 to the Transport Act 2000 (c. 38), sections 1(1) and 59(6) of, and Schedule 1 and 13 to, the Railways Act 2005 (c. 14), section 16(5) of, and Schedule 2 to, the Railways and Transport Safety Act 2003 (c. 20).

purpose of this definition "associated company" means any company which is (within the meaning of section 1159 (meaning of "subsidiary" etc.) of the Companies Act 2006(**a**)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by articles 24 (compulsory acquisition of land) or 27 (Compulsory acquisition of rights or imposition of covenants) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act(**b**), as applied by article 37 (statutory undertakers and electronic communications code network operators), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

(**a**) 2006 c. 46.

(**b**) 1990 c. 8. Section 272 was amended by section 406(1) of and paragraph 103 of Schedule 17 to the Communications Act 2003 (c. 21).

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications sub-paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph (6).

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 56 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or the failure thereof or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail

must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the lands plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 10 (consent to transfer of benefit of order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must no later than 28 days from the date that the plans and documents submitted to and certified by the Secretary of State in accordance with article 55 (documents to be certified) are certified by the Secretary of State, provide a set of those plans and documents to Network Rail in the form of a computer disc with read only memory.

PART 2

Protection for Electricity, Gas, Water, Petroleum and Sewerage Undertakers

22. In this Part of this Schedule "North Somerset District Council" shall mean the undertaker and where relevant any person to whom the powers contained in this Order are conferred in so far as that person's activities in reliance on the powers in this Order affect the land and apparatus of the relevant statutory undertaker

23. For the protection of the undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between North Somerset District Council and the undertaker concerned, have effect.

24. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter 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(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act(**c**) or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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; and

"undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989(**d**);

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**e**);

(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.

(**a**) 1989 c. 29.
(**b**) 1991 c. 56.
(**c**) 1991 c. 56. Section 102(4) was amended by section 56 of and Schedule 7 to the Water Act 2014 (c. 21), and section 96(1) of the Water Act 2003 (c. 37).
(**d**) 1989 c. 29. A new section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and was further amended by sections 136 and 145(5) – (7) of and Schedules 19 and 23(1) to the Energy Act 2004 (c. 20), S.I. 2012/2400 and S.I. 2011/2704. There are other amendments to section 6 but none are relevant to this Order.
(**e**) 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).

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

26. Regardless of any provision in this Order or anything shown on the land plans, North Somerset District Council must not acquire any apparatus otherwise than by agreement.

27.—(1) If, in the exercise of the powers conferred by this Order, North Somerset District Council acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an 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 undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, North Somerset District Council requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) North Somerset District Council must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of North Somerset District Council 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 undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of North Somerset District Council under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56 (arbitration), and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by North Somerset District Council to be removed under the provisions of this Part of this Schedule.

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

(7) Nothing in sub-paragraph (6) authorises North Somerset District Council to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

28.—(1) Where, in accordance with the provisions of this Part of this Schedule, North Somerset District Council affords to an undertaker facilities and rights for the construction and maintenance in land of North Somerset District Council 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 North Somerset District Council and the undertaker in question or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway, the arbitrator must—

(a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway which forms or is to form part of Network Rail's network and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or North Somerset District Council or the traffic on the railway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by North Somerset District Council 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 undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by North Somerset District Council to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

29.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 27(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by North Somerset District Council under paragraph 27(2), North Somerset District Council must submit to the undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by an undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub–paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by North Somerset District Council, reasonably requires the removal of any apparatus and gives written notice to North Somerset District Council of that requirement, paragraphs 23 to 28 apply as if the removal of the apparatus had been required by North Somerset District Council under paragraph 27(2).

(5) Nothing in this paragraph precludes North Somerset District Council 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) North Somerset District Council is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

30.—(1) Subject to the following provisions of this paragraph, North Somerset District Council must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 27(2).

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

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

(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;

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 North Somerset District Council 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 undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) 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 undertaker 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.

31.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 27(2), any damage is caused to any 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 an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, North Somerset District Council must—

(a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

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

(3) An undertaker must give North Somerset District Council reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of North Somerset District Council which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

32. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between North Somerset District Council or Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to North Somerset District Council or Network Rail on the date on which this Order is made.

PART 3

Protection for Operators of Electronic Communications Code Networks

33.—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

(2) In this Part of this Schedule—

"conduit system" has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

"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(**a**);

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit 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 Secretary of State is providing or proposing to provide;

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

"operator" means the operator of an electronic communications code network.

34. The exercise of the powers of article 37 (statutory undertakers and electronic communications code network operators) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(**b**).

35.—(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 the works comprised in the authorised development—

(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 must—

(c) make reasonable compensation to an operator for loss sustained by it; and

(d) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator 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 may be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(**a**) See section 106.
(**b**) 1984 c. 12.

(4) Any difference arising between the undertaker and the operator under this paragraph is to be referred to and settled by arbitration under article 56 (arbitration).

36. 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 damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

PART 4

Protection for the Environment Agency

38.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

"the Agency" means the Environment Agency;

"emergency" means a situation which—

(a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;

(b) is a serious event presenting a risk of harm or damage to people, property or the environment; and

(c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation; and

"relevant watercourse" has the same meaning as in article (powers in relation to relevant watercourses).

(3) Where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Agency to a relevant watercourse, it must give the Agency 56 days' written notice of that requirement.

39.—(1) Where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Agency to a relevant watercourse, it must give the Agency 56 days' written notice of that requirement.

(2) Except in cases of emergency where the undertaker interferes with or obstructs access by the Agency to a relevant watercourse and it is not possible for the undertaker to give the Agency the notice required under sub-paragraph (1), a suitable alternative access must be provided prior to and for the duration of any such interference.

40. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest of the Agency in any land or proposes to interfere with, or remove, any of the Agency's apparatus it must give the Agency 56 days' written notice before any such interest is acquired or any apparatus is interfered with or removed.

41. The undertaker must indemnify the Agency in respect of all costs, charges and expenses which it may reasonably incur or which it may sustain in the examination of plans or other matters under this Part of this Schedule.

42. Any dispute arising between the undertaker and the Agency under this Part of this Schedule is to be determined by arbitration in accordance with article 56 (arbitration) of this Order.

PART 5

Protection for First Corporate Shipping Limited

43. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and BPC.

44. In this Part—

"access works" means works—

(a) on, over or under or otherwise affecting a private street or any public right of way on BPC's property, including the kerbs, splitter islands, footways, verges and carriageway of such street and any road markings, signing, signals, and other street furniture;

(b) to alter, modify, improve, create or provide any means of access (whether temporary or otherwise) on or across BPC's property or to or from any private street or any other part of BPC's property or to or from any dock public road;

(c) to alter the layout of any private street or any public right of way on BPC's property; and

(d) to position or install plant or equipment on or over any private street or any public right of way on BPC's property,

and includes, without limitation on the scope of the foregoing, any works under article 13 (street works and power to alter layout etc., of streets) or article 17 (access to works) in respect of or affecting any private street or any public right of way on BPC's property;

"ancillary works" means embankments, earthworks, retaining structures or works, planting, landscaping or other mitigation, fencing and all other works falling within the descriptions of the further associated development set out in paragraphs (a) to (x) (inclusive) of Schedule 1;

"BPC" means First Corporate Shipping Limited (registered company number 2542406), trading as The Bristol Port Company, being the statutory harbour authority and competent harbour authority for the Port;

"BPC's apparatus" means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil water, electricity, telephone, television, data and information transmission or any other service) on BPC's property;

"BPC's property" means the whole and each of every part of all the leasehold and freehold land and rights and the benefit of all covenants, owned by or vested in BPC at Avonmouth, Chittening and Portbury—

(a) upon, across, under, over or in respect of or affecting which any powers conferred by this Order may be exercised; or

(b) upon, across, under or over which there is situated anything over or in respect of which any such powers may be exercised,

and includes, without limitation on the scope of the foregoing, the Port's railway and any private street but does not include the Court House Farm terminable access;

"BPC's representative" means the person appointed by BPC from time to time to be its representative for the purposes of this Order;

"certified documents" means any and all of the plans and documents certified by the Secretary of State for the purpose of this Order;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"construction access rights" means any and all powers conferred on the undertaker by this Order to exercise temporary powers of access over any land with or without vehicles, plant and equipment including, without limitation on the scope of the foregoing, any ancillary powers to remove buildings and vegetation from that land and to construct works for the purpose of providing a means of access;

"Court House Farm easement" means a Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company;

"Court House Farm terminable access" means the existing crossing at grade over the disused Portishead Branch Line which is described in the Court House Farm easement;

"dock public road" means each of the streets known as Marsh Lane, Royal Portbury Dock Road (including the roundabout at its junction with Portbury Way and Gordano Way), Redland Avenue, Gordano Way, Garonor Way and Portbury Way to the extent that it is maintainable highway;

"drainage works" means works—

(a) to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on, over or under BPC's property or which drains water to or from BPC's property; and

(b) to make any opening or connection into any watercourse belonging to BPC or to lay down, take up or alter any pipes for that purpose;

"environmental protection works" means measures reasonably required to be carried out on or in respect of Work No. 18 to protect the scrub environment and water bodies established and managed by BPC;

"highway access land" means any and all of parcels 5/30, 5/61, 5/62, 5/65 and 5/70;

~~"landscaping works" means—~~

~~(a) removing, cutting back, felling, lopping, pruning or reducing in any way any hedge, hedgerow, tree, shrub or other vegetation on BPC's property; and~~

~~(b) planting new or replacement hedges, hedgerows, trees, shrubs or other vegetation on BPC's property~~

~~and includes, without limitation on the scope of the foregoing, any works on BPC's property under article 43 (felling or lopping of trees) or article 44 (hedgerows);~~

"maintainable highway" has the same meaning as in section 86(1) of the 1991 Act;

"Marsh Lane track" means the private street referred to in Schedule 3 and there described as Access Road to the M5 Avonmouth Bridge east of Marsh Lane, Easton-in-Gordano;

"Marsh Lane track land" means any and all of parcels 5/25, 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 and that part of parcel 5/28 which lies to the east of an imaginary line projected in a northerly direction across the disused railway at 126 miles 78 chains and includes the Marsh Lane track;

"plans" includes sections, elevations, designs and design data, drawings, calculations, specifications, programmes, method statements, assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work;

"Port" means the port and harbour of Bristol;

"Port's railway" means the railway owned by BPC leading from Portbury Junction, Pill to the Royal Portbury Dock;

"powers of temporary possession" means the powers conferred by article 33 (temporary use of land for carrying out the authorised development);

"preparatory activities" means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works but excluding any such activities carried out under article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property;

"private street" means any street on BPC's property which is not a maintainable highway;

"rail link land" means any and all of parcels 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55;

"railway rights land" means any and all of parcels 5/95, 5/100, 5/105, 5/122, 5/137, 5/140, 5/141, 6/10, 6/15, 6/20 6/55, 6/60 and 6/80;

"relevant works" means that part of Work 1C that is on the Port's railway and Works Nos. 14, 14A, 14B, 15, 16, 16A, 16C, 18, 19 and 20;

"specified work" means—

(a) that part of Work 1C that is on the Port's railway;

(b) the whole of Work Nos. 14, 14A, 15, 16, 16A, 16C, 18, 19 and 20;~~and~~

(c) all access works and drainage works; and

(d) ~~(c)~~so much of all other parts of the authorised development and of any works to be carried out under the powers conferred by article 33 as is situated upon, across, under, over or within 5 metres of BPC's property, including all environmental mitigation and restoration measures;

(2) In this Part—

(a) references to the undertaker include references to any person to or in which any or all of the benefit of the provisions of this Order and any related statutory powers are transferred or are vested pursuant to any provision of this Order and any person which may by virtue of any agreement made pursuant to article 11 (agreements with Network Rail) whether alone or jointly with another exercise any or all of the powers contained in this Order;

(b) references to numbered parcels are to the parcels of land so numbered in the book of reference;

(c) references to a requirement to consult include that consultation must take place in good faith and in a timely manner with the provision of all reasonably necessary information and so that the party concerned must act reasonably in taking into account the reasonable comments made by the other party in response; and

(d) references to BPC's consent, agreement or approval are to BPC's prior consent, agreement or approval given in writing.

45. Nothing in this Order affects—

(a) any right of BPC to use the Court House Farm terminable access; or

(b) the provisions of the Court House Farm easement or any other agreement relating to the Court House Farm terminable access

and accordingly the following provisions of this Part of this Schedule do not apply as regards the Court House Farm terminable access.

46. The undertaker must give written notice to BPC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 10 (consent to transfer of benefit of order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

47.—(1) No agreement made under article 11 (agreements with Network Rail) may authorise or permit the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of any powers and rights of Network Rail and the undertaker (as the case may be) under any BPC contract or affecting any of BPC's property.

(2) In sub-paragraph (1), "BPC contract" means all and any contracts, licences, easements and other agreements, permissions and consents to which BPC is a party or of which it has the benefit.

Watercourses and drainage

48.—(1) No part of any impounded dock at the Port is included within the definition of "watercourse" for any purpose of this Order.

(2) The undertaker must not without BPC's consent (such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions) create any new discharges for water into any watercourse belonging to or used by BPC.

(3) Without limitation on the scope of sub-paragraph (2), any consent given by BPC under this paragraph—

(a) may be given subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse by the undertaker; and

(b) does not obviate the need for the undertaker to obtain any further consents required in relation to the activity concerned.

(4) In the exercise of any power under article 22 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse in, on, over or under BPC's property.

Surveys

49.—(1) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property—

(a) outside the Order limits except to the extent that BPC agrees for the purpose of carrying out non-intrusive surveys, investigations and monitoring only;

(b) other than to the extent that the exercise of such powers is necessary in connection with carrying out the authorised development; and

(c) other than by prior agreement with BPC on each and every occasion, such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions, and on at least 14 days' notice.

(2) When requesting BPC's agreement to access under sub-paragraph (1) the undertaker must provide to BPC full details of the property to which access is requested, the activities proposed (including risk assessments and method statements and intended duration of the activities), the identity of the persons who would undertake them and any apparatus that might be left on the affected property.

(3) BPC is, without limitation on the scope of sub-paragraph (1)(c)—

(a) entitled to refuse access as requested by the undertaker on any occasion for operational reasons, in which case BPC must act reasonably and without delay in seeking to offer alternative arrangements; and

(b) entitled as a condition of its agreement on any occasion to require the production of evidence of the existence of adequate insurance with insurers of repute, the proceeds of which will be available to cover all liability, costs, claims, expenses and demands which may arise as a result of that access.

(4) The undertaker must remove any equipment left on, over or under BPC's property as soon as reasonably possible after completion of the relevant surveys and investigations.

(5) The undertaker must, at its own expense, deliver to BPC as soon as reasonably practicable after their production on a non-reliance basis copies in an electronic format of all survey and ground investigation reports carried out in respect of BPC's property under the powers conferred by article 23 or the powers conferred by section 11(3) of the 1965 Act as applied by this Order, which reports BPC may use and provide to others (on a non-reliance basis) free of cost in connection with works and operations at the Port.

Streets, access and public rights of way

50.—(1) The undertaker must not in carrying out any works or exercising the powers conferred by this Order cause pedestrian or vehicular access to or across any of BPC's property (including access for cargo operations but excluding access over the Court House Farm terminable access) to be interfered with or obstructed, other than with the consent of BPC, not to be unreasonably withheld or delayed, or, if the carrying out of works or exercising the powers relate to a dock public road, unless the undertaker has first consulted with BPC.

(2) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under—

(a) article 13(1) (street works and power to alter layout etc., of streets) in respect of or so as to affect the Marsh Lane track other than by prior agreement with BPC such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions;

(b) article 13(1) in respect of or so as to affect any dock public road unless it has first consulted with BPC; or

(c) article 13(2) in respect of or so as to affect any private street on any part of BPC's property.

(3) With the exception of the locations specified in columns (1) and (2) of Schedule 7 and shown on sheet 5 of the compounds, haul roads and access to works plan as AW5.1 (access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch railway line) and AW5.3 (access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch railway line) the undertaker must not pursuant to any powers in this Order carry out any works to create or improve any means of access affecting any private street or any public right of way on BPC's property or any other part of BPC's property or any dock public road.

(4) In carrying out any access works, the undertaker must not so far as reasonably practicable interfere with or obstruct the free, uninterrupted and safe use by other traffic of any street or interfere with street furniture, signage and lighting masts.

(5) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under article 15(1) (temporary stopping up of streets and public rights of way) in respect of:

(a) the Marsh Lane track (except to the extent permitted by article 15(5)) or any other private street; or

(b) Royal Portbury Dock Road without BPC's consent, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

(6) Despite any provision in this Order, the undertaker must not, except with the agreement of BPC, exercise any power under article 15 or article 46 to use or to authorise the use of any private street or any dock public road or any public right of way on BPC's property as a temporary working site or as a parking place.

(7) The undertaker must exercise the power granted to it under paragraph (5) of article 15 to stop up public rights of way LA8/67/10 and LA/8/68/10 to the extent specified in column (3) of Part 2 of Schedule 5 (Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension), throughout the period of operation or use of the Lodway Farm construction compound to be constructed as Work No. 17 and the temporary construction compound located under the M5 Avonmouth Bridge.

(8) The undertaker must, before submitting any survey, proposed measures or strategy relating to the Marsh Lane track to the relevant planning authority for approval in accordance with requirement 35 of Schedule 2 (Requirements), consult with BPC in relation to the content of all such surveys, measures and strategies;

(9) ~~(7)~~Despite paragraphs (1) and (2) of article 19—

(a) any street constructed under this Order on BPC's property; and

(b) the altered or diverted part of any street altered or diverted under this Order on BPC's property

must be maintained by and at the expense of the relevant highway authority at all times from its completion.

(10) ~~(8)~~If the undertaker acquires, whether compulsorily or by agreement, any of BPC's property within the Order limits, or any right or interest in or over such property, which property is subject to a public right of way, from the date of the acquisition of the relevant land, right or interest or from 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, any liability or responsibility of BPC to the relevant highway authority for or in respect of the maintenance of that public right of way is extinguished and that public right of way shall after that date instead be maintained by and at the expense of the relevant highway authority.

(11) ~~(9)~~Without limitation on the scope of any other provision in this Part if any damage to any public right of way on BPC's property is caused in the exercise of any powers under this Order or by carrying out of, or in consequence of the construction of, any works under this Order, the undertaker must make good such damage and pay to BPC all reasonable expenses to which BPC may be put by reason of any such damage.

(12) ~~(10)~~The undertaker must not exercise any powers under article 13, article 15 or article 46 (traffic regulation) over or in respect of any part of BPC's property or any dock public road after completion of construction of the authorised development.

Acquisition and use of land

51.—(1) The undertaker must not exercise the powers conferred by section 271 (extinguishment of rights of statutory undertakers: preliminary notices) of the 1990 Act in relation to any rights of BPC over or in respect of the railway rights land or the highway access land; or any of BPC's apparatus.

(2) ~~If~~ Despite any other provision of this Order, if the undertaker acquires any interest in the railway rights land or in the highway access land, whether compulsorily or by agreement, no rights of BPC over or in respect of the railway rights land or the highway access land so acquired must be extinguished.

Use of land and execution, maintenance and use of the authorised development

52.—(1) Despite any provision in this Order or anything shown on the land plan, the undertaker must not except with the agreement of BPC—

(a) exercise any powers of temporary possession over or in respect of parcel 5/75 or (if and to the extent they form part of BPC's property) parcel 5/85 or parcel 5/86 unless BPC fails, within 14 days of a request by the undertaker, to make available for exercise by the undertaker in substitution for the exercise of the relevant powers temporary rights of access over other land which are sufficient (whether alone or in conjunction with the exercise by the undertaker of other powers under this Order) to enable the undertaker to gain access in connection with the construction of the authorised development, with such vehicles, plant and equipment as may be necessary, from access point AW5.3 shown on the compounds, haul roads and access to works plan to the accommodation bridge (and associated walls, embankments and structures) on land adjacent to parcel 05/86 and to the culvert, watercourse and head wall situated on land adjacent to parcel 05/85; or

(b) other than any construction access rights which may be authorised by or pursuant to the terms of this Order over the Marsh Lane track ~~or parcels 05/75~~, ~~05/103, 05/104, 05/107, 05/108, 05/165, 05/171, 06/25, any part of 05/112 that is not part of the Marsh Lane Track~~the rail link land or parcel 05/75, or over bridleways and footpaths that are open to the public~~)~~, exercise any construction access rights over BPC's property or otherwise use any part of BPC's property for the purpose of gaining access to any part of the authorised development or to any other land or in connection with the construction or maintenance of the authorised development.

(2) Any exercise of powers of temporary possession by the undertaker in respect of the rail link land or the Marsh Lane track land which may be permitted pursuant to the terms of this Order is

subject to, and in common with, the use of the rail link land and the Marsh Lane track land by BPC and by any other person acting with BPC's authority or which may have rights to use the rail link land and the Marsh lane track land.

53.—(1) If required to do so by BPC (acting reasonably), the undertaker must at its cost and expense procure that surveys are carried out to a specification approved by BPC (acting reasonably) to show the condition of any land of which temporary possession is taken under article 33 (together with all associated structures) before the undertaker's use of it begins and after that use ends.

(2) The undertaker must promptly after receipt of reasonable demand by BPC and at the undertaker's cost and expense make good any and all damage and wear and tear caused to any part of BPC's property which is used by the undertaker in connection with the construction or maintenance of the authorised development where in BPC's reasonable opinion the rectification of such damage, wear or tear is necessary in the interests of safety or security.

(3) If required to do so by BPC (acting reasonably), the undertaker must permit BPC to inspect the execution of all works of rectification being carried out under this paragraph in order to ensure compliance by the undertaker with the requirements of this paragraph.

54.—(1) The undertaker must present to BPC not less than three months before the intended date of commencing construction the draft programme for the execution of each part of the authorised development on BPC's property.

(2) The undertaker must consult with BPC in relation to the draft programme and must present its final programme for the execution of the authorised development on BPC's property to BPC not less than four weeks before the intended date of commencing construction.

(3) The undertaker must not enter on or take temporary possession of any part of BPC's property unless it has served at least 14 days' written notice on BPC of its intended entry onto that part.

(4) In this paragraph "intended date of commencing construction" means the first date on which the undertaker wishes to commence construction of any part of the authorised development on, under or over any part of BPC's property, including carrying out any preparatory activities.

(5) In the exercise of any powers of temporary possession in respect of any part of BPC's property and in the commencement and execution of the authorised development on BPC's property the undertaker must—

(a) proceed diligently with the works affecting each part of BPC's property; and

(b) notify BPC in writing of the completion of the relevant part of the authorised development affecting each part of BPC's property within fourteen days of its completion.

(6) In the exercise of any powers of temporary possession in respect of any part of BPC's property the undertaker must not—

(a) except with the agreement of BPC, provide or authorise the provision of car parking or storage (for materials or other items) facilities on any part of BPC's property other than within Work No. 16A;

(b) demolish or remove any buildings; or

(c) except as BPC agrees, construct or carry out on BPC's property any works comprising fencing, any mitigation works, ground or rock stability, geotechnical or strengthening works other than works which are of a temporary nature.

(7) In addition to and without limitation on the scope of the undertaker's other obligations under this Order (including those in article 33(4) and Schedule 2), before giving up possession of any part of BPC's property in respect of which any powers of temporary possession have been exercised the undertaker must remove any works constructed in contravention of sub-paragraph (6) or paragraph 55.

Works

55. Despite any provision of this Order or anything shown on the certified documents except as BPC may agree—

(a) no part of Work No. 14 or any ancillary works associated with Work No. 14 must be constructed or maintained on parcel 04/55; and

(b) other than works of a temporary nature, no ancillary works associated with any relevant works or with Work No. 1A or Work No. 1B must be constructed or maintained upon, across, under or over any of BPC's property of which only temporary possession is taken under this Order or over which the undertaker does not, under this Order, acquire rights authorising the retention of those ancillary works.

56.—(1) The undertaker must before commencing construction of any specified work supply to BPC proper and sufficient plans of that work for BPC's approval and the specified work must not be commenced or executed except in accordance with such plans as have been approved in writing by BPC.

(2) Subject to sub-paragraph (3), BPC's approval under sub-paragraph (1) must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions.

(3) BPC's approval to plans must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions—

(a) in respect of all or any of Work No. 1C on BPC ~~Property~~'s property and Work No. 19, if and in so far as the proposed works comprise and, following design development, are broadly consistent with the works shown on drawings W1097B-ARP-DRG-ECV-000305, W1097B-ARP-DRG-ECV-000330 and W1097B-ARP-DRG-ECV-000331;

(b) in respect of Work No. ~~19~~ 18 if and in so far as the proposed works comprise and, following design development, are broadly consistent with the Bridleway Extension Under the Elevated M5 Plan, and

(c) in respect of Work No. 16C, if and in so far as the proposed works comprise only work necessary to renew the level crossing in modern equivalent form.

(4) Where under sub-paragraph (2) or (3) BPC's approval to plans submitted by the undertaker under sub-paragraph (1) cannot be unreasonably withheld or delayed if by the end of the period of 28 days beginning with the date on which such plans have been supplied to BPC, BPC has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon BPC written notice requiring BPC to intimate approval or disapproval within a further period of 28 days beginning with the date upon which BPC receives written notice from the undertaker. If by expiry of the further period of 28 days BPC has not intimated approval or disapproval, BPC is deemed to have approved the plans as submitted.

(5) When signifying approval of plans submitted under sub-paragraph (1), BPC may specify any protective works (whether temporary or permanent) which in BPC's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of BPC's property or the continuation of safe and efficient operation of the Port (including the Port's railway) and such protective works as may be reasonably necessary for those purposes are to be constructed by BPC but at the expense of the undertaker, or if BPC so desires such protective works must be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that the protective works have been completed to BPC's reasonable satisfaction.

(6) When signifying approval of plans submitted under sub-paragraph (1) in relation to Work No. 18, BPC may specify any environmental protection works which in BPC's reasonable opinion should be implemented before the commencement of, or during, the construction of Work No. 18 and such environmental protection works as may be reasonably necessary for those purposes are to be implemented by BPC but at the expense of the undertaker, or if BPC so desires such environmental protection works must be implemented by the undertaker at its own expense with all reasonable dispatch, and except to the extent BPC may agree the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that any and all relevant environmental protection works have been implemented to BPC's reasonable satisfaction.

57.—(1) Any specified work and any protective works (and any environmental protection works connected with Work No. 18) to be constructed or implemented by virtue of paragraph 56(5) or

56(6) must, when commenced, be constructed and implemented with all reasonable dispatch in accordance with the plans approved or deemed to have been approved under paragraph 56—

(a) under BPC's supervision (where appropriate and if given) and to BPC's reasonable satisfaction;

(b) in such manner as to cause as little damage as is possible to BPC's property; and

(c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe and efficient operation of the Port (including use of the Port's railway or the traffic on it).

(2) If any damage to BPC's property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph 56(1), make good such damage and pay to BPC all reasonable expenses to which BPC may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

(a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of BPC or its servants, contractors or agents; or

(b) any liability on BPC with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

58. The undertaker must—

(a) at all times afford reasonable facilities to BPC's representative (or to a person nominated by BPC's representative) for access to a specified work during its construction; and

(b) supply BPC with all such information as BPC's representative may reasonably require with regard to a specified work or the method of constructing it.

59. BPC must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by BPC under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

60.—(1) If any permanent or temporary alterations or additions to BPC's property, or any protective works under paragraph 56(5), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by BPC and if BPC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to BPC all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by BPC in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing BPC's property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to BPC under this paragraph.

61. The undertaker must repay to BPC all fees, costs, charges and expenses reasonably and properly incurred by BPC—

(a) in constructing any protective works under the provisions of paragraph 56(5) and in implementing any environmental protection works under the provisions of paragraph 56(6) including, in respect of any permanent protective works or permanent environmental protection works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of BPC's representative's approval of plans submitted by the undertaker and the supervision by BPC of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;

(c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting, watching and lighting BPC's property (including the Port's railway) and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work; and

(d) in respect of any additional temporary lighting of BPC's property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

62. If at any time after the completion of a specified work BPC gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation or use of any of BPC's property (including the Port's railway) in connection with carrying on BPC's statutory undertaking, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to adversely affect the operation or use of such property in that connection.

63. Any additional expenses which BPC may reasonably incur in altering, reconstructing, working, or maintaining under any powers existing at the making of this Order any of BPC's property in connection with carrying on BPC's statutory undertaking by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, working or maintenance has been given to the undertaker, are to be repaid by the undertaker to BPC.

64.—(1) The undertaker must pay to BPC all costs, charges, damages and expenses not otherwise provided for in this Part (but subject to article 41 (no double recovery)) which may be occasioned to or reasonably and properly incurred by BPC—

(a) by reason of the construction, working, maintenance of a specified work or the failure of such a work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work

and the undertaker must indemnify BPC from and against all costs, claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done BPC on behalf of the undertaker or in accordance with plans approved by BPC or in accordance with any requirement of BPC's representative or under BPC's representative's supervision will not (if it was done without negligence on the part of BPC or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) BPC must give the undertaker reasonable notice of any such claim or demand made by a third party as soon as reasonably practicable after BPC becomes aware of it and must make no settlement or compromise of such a claim or demand in excess of £10,000 without the prior consent of the undertaker (such consent not to be unreasonably withheld or delayed).

65. BPC must, on receipt of a request from the undertaker, from time to time provide free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

66. In the assessment of any sums payable to BPC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by BPC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

BPC's apparatus

67. ~~67.~~ Despite any provision of this Order or anything shown on the land plan—

(a) the undertaker must not acquire any of BPC's apparatus other than by agreement;

(b) any right of BPC to maintain and use any of BPC's apparatus in land must not be extinguished-, suspended or interfered with other than with BPC's agreement; and

(c) the undertaker must not alter, divert, remove, replace, reposition, relocate or repair any of BPC's apparatus other than with BPC's consent (not to be unreasonably withheld or delayed in respect of any specified work).

(2)In this paragraph "BPC's apparatus" means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil, water, electricity, telephone, television, data and information transmission or any other service) on BPC's property.

The Port's railway

68. For the purpose of this Order—

(a) no part of the Port's railway is, or will become by virtue of this Order or the execution of the authorised development, existing operational railway or operational railway; and

(b) no part of BPC's property or of any other land over which the Port's railway is located (whether or not that land is owned by BPC) is, or will become by virtue of this Order or the execution of the authorised development, operational railway land or currently operational railway land or form part of the railway authorised by this Order to which article 39 (operation and use of railways) applies.

Trees and other vegetation

69.—(1) Despite any provision in this Order and anything shown on the certified documents, in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development the undertaker must not—

(a) plant new or replacement trees, hedges, hedgerows, shrubs or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed; or

(b) remove, cut back, fell or lop, prune or reduce in any way any other hedge, tree, shrub or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed.

General

70. The undertaker must in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development secure compliance with and implementation of all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part.

71. Article 49 (procedure in relation to further approvals, etc) will not apply in relation to any consent, agreement or approval from BPC required under this Order.

PART 6

Protection for Exolum Pipeline System Ltd

72. The provisions of this Part have effect for the protection of the Exolum undertaker referred to in this Part unless otherwise agreed in writing between the undertaker and the Exolum undertaker.

73. In this Part—

"alternative apparatus" means alternative apparatus adequate to enable the Exolum undertaker to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means the pipeline, or any part of it, belonging to or maintained by the Exolum undertaker, which is within the Order limits, and includes any structure in which that apparatus is or is to be lodged or which gives or will give access to apparatus;

"Exolum undertaker" means Exolum Pipeline System Ltd (registered company number 09497223) or any successor in title to the Exolum undertaker in respect of the apparatus;

"functions" includes powers and duties; and

"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.

74. Despite any provision of this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

75.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which the apparatus is placed, that apparatus must not be removed under this Part and any right of the Exolum 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 Exolum undertaker.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the Exolum undertaker written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed in the land referred to in sub-paragraph (2), the Exolum 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 other land in which the alternative apparatus is to be constructed.

(4) The Exolum undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56 (arbitration), and after the grant to the Exolum undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the Exolum undertaker that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the Exolum undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the Exolum undertaker.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

76.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 75(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the Exolum undertaker a plan, section and description of the works to be executed.

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

(3) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of the apparatus or (wherever situated) will impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the information to

be submitted to the Exolum undertaker under sub-paragraph 76(1) shall be submitted not less than 35 days before the works are started and shall include a method statement describing:

(a) the exact position of the works;

(b) the level at which the works are to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus

to permit the Exolum undertaker to assess whether any protective works or monitoring of adjoining activities or works are necessary, acting reasonably.

(4) Any requirements made by the Exolum undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) re-submitted to it.

(5) If the Exolum undertaker in accordance with sub-paragraph (4) 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, paragraph 75 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph (2) of that paragraph.

(6) 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the Exolum undertaker notice as soon as is reasonably practicable and a plan, section and description of the works referred to in sub-paragraph (1) as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) and sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(8) Where, in the reasonable opinion of the Exolum undertaker or the undertaker, anything done in the exercise of the powers conferred by this Order might interfere with the cathodic protection forming part of apparatus or any apparatus might interfere with the proposed or existing cathodic protection forming part of the undertaker's works, the Exolum undertaker and the undertaker must co-operate in carrying out any tests which they consider reasonably necessary for ascertaining the nature and extent of such interference, and measures reasonably necessary for providing or preserving such cathodic protection.

77.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the Exolum undertaker the proper and reasonable expenses reasonably incurred by the Exolum undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus.

(2) The value of any apparatus removed under the provisions of this Part of the Schedule is to be deducted from any sum payable under paragraph (1), that value being calculated after removal.

78.—(1) If in accordance with the provisions of this Part—

(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, 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 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 Exolum undertaker by virtue of paragraph 77(1) is to be reduced by the amount of that excess.

(2) For the purposes of sub-paragraph (1), the extension of the apparatus to a length greater than the length of the existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

(3) An amount which apart from this sub-paragraph would be payable to the Exolum undertaker in respect of works by virtue of paragraph 77(1) 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 Exolum undertaker 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.

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

PART 7

For the protection of Western Power Distribution Limited (South West) Plc

Application

80. For the protection of Western Power Distribution Limited (South West) plc as referred to in this Part 7 of Schedule 16 the following provisions, unless otherwise agreed in writing between the undertaker and Western Power Distribution Limited (South West) plc have effect.

Interpretation

81. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously;

"alternative rights" means all and any necessary legal easements, consents, or permissions required by WPD in order to permit or authorise a diversion;

"apparatus" means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by WPD;

"diversion" means an alteration to the WPD network in order to enable or facilitate the authorised development;

"functions" includes powers and duties;

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

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

"specified work" means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

"WPD" means Western Power Distribution (South West) plc (company number 02366894) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB;

"WPD network" means WPD's distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the Electricity Act 1989; and

for the avoidance of doubt, all other terms as defined in article 2 (interpretation) of this Order.

Precedence of 1991 Act in respect of apparatus in streets

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

No acquisition or extinguishment except by agreement

83. 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

84.—(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 WPD's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD in accordance with sub-paragraphs (2) to (11).

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

(a) If, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed.

(b) Should the undertaker not be able to obtain the alternative rights required under sub-paragraph (a) then the undertaker and WPD shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights.

(c) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (a) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph (b), WPD shall on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(3) Any alternative apparatus required pursuant to sub-paragraph (2) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 87.

(4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 87, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (2), 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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

(7) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 87.

(8) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.

(9) 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 expert less favourable on the whole to WPD than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

(10) If in accordance with the provisions of this Part of this Schedule WPD require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WPD must deduct the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph 86(1).

(11) For the purposes of sub–paragraph (10)—

(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.

85.—(1) Not less than 28 days before the undertaker intends to start the execution of any specified work, the undertaker must submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3).

(2) Subject to sub-paragraph (3) the undertaker must not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the plan so submitted, and identified any reasonable requirements it has in relation to the carrying out of the works such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the

protection of the apparatus, or for securing access to it, it shall be deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by WPD and WPD is entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker must comply with WPD's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Edition) (2014) as the same may be replaced from time to time.

(6) If WPD, in accordance with sub–paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement subject to sub-paragraph (3), paragraphs 84(1) to (6) apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 84(2).

(7) Nothing in this paragraph 85 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub–paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub–paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

86.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any alternative apparatus arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

(a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and

(b) reimburse WPD for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by WPD of such damage, by reason or in consequence of any such damage or interruption.

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

(4) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) WPD shall not be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

87.—(1) Article 56 (arbitration) applies to any difference as to the legal interpretation of this Schedule and as provided for in sub–paragraph (7).

(2) Save as provided for in sub–paragraph (1) or sub–paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;

(c) issue a decision within 28 days of receipt of the submissions under sub-paragraph (5)(a); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 56.

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

89. The provisions of Part 2 of this Schedule do not apply in relation to WPD or any apparatus of WPD.

PART 8

For the mutual protection of National Grid and the Railway Undertaker

Preliminary

Application

90. For the protection of National Grid and the railway undertaker referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the railway undertaker and National Grid, have effect.

Interpretation

91. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"2016 Order" means the National Grid (Hinkley Point C Connection Project) Order 2016 as amended;

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable it to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

"commence" has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

"existing apparatus" means apparatus which is sited in, over, or under land on 19 April 2021 and belonging to or maintained by National Grid on that date "existing electricity tower" shall be construed accordingly;

"functions" includes powers and duties;

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

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

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

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

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid" means National Grid Electricity Transmission plc (registered company number 2366977);

"parent company" means a parent company of the railway undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

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

"railway property" means—

(a) any railway belonging to the railway undertaker;

(b) any stations, land, works, apparatus and equipment belonging to the railway undertaker and connected with any such railway; and

(c) any easement or other property interest held or used by the railway undertaker for the purposes of such railway or works, apparatus or equipment;

"railway undertaker" means the undertaker as defined in article 2 of this Order and, in relation to property owned by Network Rail, Network Rail;

"the relevant 2016 Order development" means so much of any of the development authorised under the 2016 Order as will or may be situated under, over or within 15 metres of, or which may in any way adversely affect, railway property;

"the relevant authorised development" means so much of any of the authorised development or activities undertaken in association with the authorised development as will or may be situated under, over, or within 15 metres measured in any direction of any apparatus proposed to be constructed or installed by National Grid under the powers of the 2016 Order; and

"specified railway works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any existing apparatus the removal of which has not been required by the railway undertaker under paragraph 99(2) or otherwise; and/or

(b) may in any way adversely affect any existing apparatus the removal of which has not been required by the railway undertaker under paragraph 99(2) or otherwise.

92. Except for paragraphs 96 (apparatus of National Grid in stopped up streets), 100 (retained existing apparatus), 101 (expenses) and 102 of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the railway undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the railway undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

93. The provisions of the 2016 Order take effect subject to the provisions of this Part.

94. The provisions of Part 2 of this Schedule do not apply in relation to National Grid or any apparatus of National Grid.

Duty to co-operate

95.—(1) The railway undertaker and National Grid will co-operate and work together to secure that the works proposed to be carried out by National Grid under the powers of the 2016 Order and the authorised works to be carried out by the railway undertaker under this Order will so far as reasonably possible be programmed, and arrangements for the carrying out of those works will be made, so as, so far as reasonably possible, to avoid undue delay or any conflict arising between the carrying out of those proposed works and the implementation of the authorised development.

(2) Any consent, agreement or approval by National Grid or the railway undertaker under this Part of this Schedule must not be unreasonably withheld or delayed.

Provisions for the protection of National Grid

Apparatus of National Grid in stopped up streets

96.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 14 (permanent stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the railway undertaker will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to it in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (temporary stopping up of streets and public rights of way), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and

do all such works and things in, upon or under any such highway as 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.

Acquisition of land

97.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the railway undertaker may not acquire or extinguish any land interest or apparatus or override any easement and/or other interest of National Grid, including any rights contained in the 2016 Order, otherwise than by agreement.

(2) The railway undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of existing apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(3) Any agreement or consent granted by National Grid under paragraph 100 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under paragraph (1).

Provisions relating to existing apparatus

Removal of existing apparatus

98.—(1) If, in the exercise of the agreement reached in accordance with paragraph 97 or in any other authorised manner, the railway undertaker acquires any interest in any land in which any apparatus is placed or requires that National Grid's existing apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that existing apparatus in that land must not be extinguished, until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the railway undertaker requires the removal of any existing apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the railway undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 99(1) below) the necessary facilities and rights for the construction of alternative apparatus in other land of or land secured by the railway 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 or land secured by the railway undertaker, or the railway undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, as soon as is reasonably possible and on receipt of a written notice to that effect from the railway undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the railway undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the railway undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the railway undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

99.—(1) Where, in accordance with paragraph 98 of this Part of this Schedule, the railway undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the railway undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the railway undertaker and agreed with National Grid under paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter will be referred to arbitration in accordance with article 56 (arbitration) and the arbitrator shall make such provision for the payment of compensation by the railway undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained existing apparatus

100.—(1) Not less than 56 days before the commencement of any specified railway works that are near to, or will or may affect, any existing apparatus the removal of which has not been required by the railway undertaker under paragraph 98(2) or otherwise, the railway undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to specified railway works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any existing apparatus, or (ii) involve embankment works within 15 metres of any existing apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all existing apparatus as provided by National Grid under sub-paragraph (1);

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an existing electricity tower or between any two or more existing electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub- paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The railway undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted or they have been settled by arbitration under article 56 (arbitration).

(5) Any approval of National Grid required under sub-paragraphs (2) or (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any existing apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the railway undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the railway undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the railway undertaker, reasonably requires the removal of any existing apparatus and gives written notice to the railway undertaker of that requirement, paragraphs 90 to 92 and 94 to 96 apply as if the removal of the apparatus had been required by the railway undertaker under paragraph 98(2).

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

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

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the railway undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

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

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such existing apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 98(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the railway 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 National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the railway undertaker.

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

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

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

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

102.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the railway undertaker or in consequence of any act or default of the railway undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the railway undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the railway undertaker will—

(a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and

(b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker.

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

(3) Nothing in sub-paragraph (1) shall impose any liability on the railway undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents.

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

Enactments and agreements

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

Co-operation

104. Where in consequence of the proposed construction of any of the authorised works, the railway undertaker or National Grid requires the removal of apparatus under paragraph 98(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 100, the railway undertaker shall use its best endeavours to co-ordinate the execution of the works in the

interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the railway undertaker for that purpose.

Access

105. If in consequence of the agreement reached in accordance with paragraph 97(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the railway undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction

Provisions for the protection of National Grid's proposed works and for the railway undertaker

106. As soon as reasonably practicable after the coming into force of this Order, and in any event no later than 70 days before commencing a part of the relevant 2016 Order development, National Grid will give the railway undertaker plans of the works to be carried out including in particular a method statement and the exact position of the works and sufficient details to enable the engineer to ascertain the impact of the works on railway property and on the carrying out of the authorised works and for the railway undertaker to give the details set out in paragraph 107.

107.—(1) As soon as reasonably practicable after the coming into force of this Order, and in any event no later than 56 days before commencing any of the relevant authorised development, the railway undertaker will give National Grid plans of the works to be carried out comprised in that development which must include a method statement and describe the position of the proposed apparatus as provided by National Grid under sub-paragraph (1) and the matters set out in paragraph 100(2)(a) to 100(2)(c) and 100(2)(e) to 100(2)(g).

(2) In relation to any works which will or may be situated on, over or within 10 metres of any part of the foundations of a proposed electricity tower or between any two or more proposed electricity towers, the plan to be submitted under sub- paragraph (1) must, in addition to the matters set out in that sub-paragraph, include a method statement describing the matters set out in paragraph 100(3) so far as relevant in this scenario.

(3) Paragraphs 100(4) to 100(8) and 100(10) to 100(12) apply in relation to works to which sub-paragraph (1) or (2) applies.

108. Part 4 of Schedule 15 to the 2016 Order (protection for railway interests) has effect as if any reference to Network Rail included a reference to the railway undertaker and if references to railway property included the authorised development.

General

Arbitration

109. Any difference or dispute arising between the railway undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the railway undertaker and National Grid, be determined by arbitration in accordance with article 56 (arbitration).

Notices

110. The plans submitted to National Grid by the railway undertaker pursuant to paragraph 100 must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the railway undertaker in writing.

PART 9

For the protection of Wales and West Utilities ("WWU")

111. In this Part of this Schedule "North Somerset District Council" shall mean the undertaker and where relevant any person to whom the powers contained in this Order are conferred in so far as that person's activities in reliance on the powers in this Order affect the land and apparatus of WWU.

112. For the protection of WWU in this Part of this Schedule the following provisions, unless otherwise agreed in writing between North Somerset District Council and WWU, have effect.

113. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable WWU to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by WWU for the purposes of gas supply 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; and

"WWU" means Wales & West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ, a gas transporter within the meaning of Part 1 of the Gas Act 1986(**a**).

114. This Part of this Schedule does not apply to apparatus in respect of which the relations between North Somerset District Council and WWU are regulated by the provisions of Part 3 of the 1991 Act.

115. Regardless of any provision in this Order or anything shown on the land plans, North Somerset District Council must not acquire any apparatus otherwise than by agreement.

116.—(1) If, in the exercise of the powers conferred by this Order, North Somerset District Council acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of WWU 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 WWU.

(2) If, for the purpose of executing any works authorised by this Order in, on, over, or under any land purchased, held, appropriated or used under this Order, North Somerset District Council requires the removal of any apparatus placed in that land, it must give to WWU written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order WWU reasonably needs to remove any of its apparatus) North Somerset District Council must, subject to sub-paragraph (3), afford to WWU the necessary facilities and rights for the construction of alternative apparatus in other land of North Somerset District Council 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 North Somerset District Council, or North Somerset District Council 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, WWU must, on receipt of a written notice to that effect from North Somerset District Council, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, or agree with North Somerset District Council an alternative route for the alternative apparatus over land in respect of which it is possible for North Somerset District Council

(**a**) 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)

to obtain the relevant facilities and rights. For the avoidance of doubt, WWU shall not be obliged to exercise its compulsory purchase powers pursuant to the Gas Act 1986 in order to obtain any such facilities or rights and WWU shall retain an absolute discretion as to whether it shall choose to exercise those powers.

(4) Any alternative apparatus to be constructed in land of North Somerset District Council under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between WWU and North Somerset District Council, or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) WWU must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as referred to in sub-paragraph (4) in accordance with article 56 (arbitration), and after the grant to WWU of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed as soon as reasonably practicable to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by North Somerset District Council to be removed under the provisions of this Part of this Schedule.

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

(7) Nothing in sub-paragraph (6) authorises North Somerset District Council to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

117.—(1) Where, in accordance with the provisions of this Part of this Schedule, North Somerset District Council affords to WWU facilities and rights for the construction and maintenance in land of North Somerset District Council 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 North Somerset District Council and WWU or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of North Somerset District Council, the arbitrator must—

(a) give effect to all reasonable requirements of Network Rail and North Somerset District Council for ensuring the safety and efficient operation of the railway which forms or is to form part of Network Rail's network and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or North Somerset District Council or the traffic on the railway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by North Somerset District Council 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 WWU 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 North Somerset District Council to WWU as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

118.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 116(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by North Somerset District Council under paragraph 116(2), North Somerset District Council must submit to WWU a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be

made in accordance with sub-paragraph (3) by WWU for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and WWU is entitled to watch and inspect the execution of those works.

(3) Any requirements made by WWU under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub¬paragraph (1) are submitted to it.

(4) If WWU in accordance with sub-paragraph (3) and in consequence of the works proposed by North Somerset District Council, reasonably requires the removal of any apparatus and gives written notice to North Somerset District Council of that requirement, paragraphs 111 to 116 apply as if the removal of the apparatus had been required by North Somerset District Council under paragraph116(2).

(5) Nothing in this paragraph precludes North Somerset District Council 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) North Somerset District Council is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to WWU notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable if possible before carrying out those works, or if not, as soon as reasonably practicable afterwards and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) For the avoidance of doubt, whenever North Somerset District Council carries out any works in the vicinity of any apparatus of WWU and whether or not WWU has made any requirements pursuant to sub-paragraph (2) above, North Somerset District Council shall comply with—

(a) all applicable health and safety laws, including the Construction (Design and Management) Regulations 2015;

(b) the Pipeline Safety Regulations 1996; and

(c) the safety guidance published from time to time by WWU and the HSE.

119.—(1) Subject to the following provisions of this paragraph, North Somerset District Council must repay to WWU the reasonable expenses incurred by WWU in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including: a) costs or compensation payable in connection with the acquisition of land for that purpose; and b) any reasonable legal or other professional costs properly incurred relating to any such works to apparatus, or to the provision of alternative apparatus) which may be required in consequence of the execution of any such works as are referred to in paragraph 116(2).

(2) If in accordance with the provisions of this Part of this Schedule WWU require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WWU's requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WWU must deduct the cost of such additional requirements from the amount payable by North Somerset District Council pursuant to sub-paragraph 119(1).

(3) For the purposes of sub–paragraph 119(2) 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.

(4) For the avoidance of doubt and subject to paragraph 114, the provisions of paragraph 118(1) above shall require North Somerset District Council to repay the full costs of any works carried out to WWU's apparatus, or in order to protect that apparatus, or in consequence of any works carried out in the vicinity of that apparatus by North Somerset District Council.

120.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 116(2), any damage is caused to any 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 WWU, or there is any interruption in any service provided, or in the supply of any goods, by WWU, North Somerset District Council must—

(a) bear and pay the cost reasonably incurred by WWU in making good such damage or restoring the supply; and

(b) make reasonable compensation to WWU for any other expenses, loss, damages, penalty or costs incurred by WWU,

by reason or in consequence of any such damage or interruption.

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

(3) WWU must give North Somerset District Council reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of North Somerset District Council which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

121. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between North Somerset District Council or Network Rail and WWU in respect of any apparatus laid or erected in land belonging to North Somerset District Council or Network Rail on the date on which this Order is made.

122. The provisions of Part 2 of this Schedule do not apply in relation to WWU or any apparatus of WWU.

PART 10

For the protection of the National Trust

123.—(1) The provisions of this Part of this Schedule have effect for the protection of the Trust unless otherwise agreed in writing between the undertaker and the Trust.

(2) In this Part of this Schedule—

"activities" means vegetation clearance, removal of loose rocks, rock scaling, insertion of rock bolts and erecting catch fences and associated stays, cables and anchors;

"construction" includes execution, placing, erecting and insertion, and "construct" and "constructed" have corresponding meanings;

"emergency" means a situation which—

(a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;

(b) is a serious event presenting a risk of harm or damage to people, property or the environment; and

(c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work and details of the extent, timing and duration of any proposed occupation of property belonging to the Trust for the purpose of engaging in the activities;

"Quarry Bridge 2 works" means the reconstruction of the accommodation bridge under the railway at 122 miles 74 chains providing access to the property of the Trust;

"the Trust" means The National Trust for Places of Historic Interest or Natural Beauty (Registered Charity 205846); and

"Trust property" means any property belonging to the Trust.

Powers of compulsory acquisition

124. The powers of article 27 (compulsory acquisition of rights or imposition of covenants) and article 31 (Acquisition of subsoil or airspace only) may only be exercised in relation to Trust property with the consent of the Trust.

Works provisions

125.—(1) The undertaker must before commencing activities on Trust property or the Quarry Bridge 2 works under the powers of the Order supply to the Trust proper and sufficient plans and method statements for the proposed activities for the reasonable approval of the Trust and the activities must not be commenced except in accordance with such plans and method statements as have been approved in writing by the Trust or settled in accordance with paragraph 132.

(2) The approval of the Trust under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to the Trust the Trust has not indicated its disapproval of those plans and the grounds of disapproval the undertaker may serve upon the Trust written notice requiring the Trust to intimate its approval or disapproval within a further period of 14 days beginning with the date upon which Trust receives written notice from the undertaker. If by the expiry of the further 14 days the Trust has not intimated its approval or disapproval, the Trust will be deemed to have approved the plans as submitted.

126.—(1) Any activities to be carried out by virtue of paragraph 125 must, when commenced, be carried out—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 125;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the Trust;

(c) in such manner as to cause as little damage as is possible to the Trust's property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe access to Trust property.

(2) If any damage to Trust property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the entry on to Trust property, the undertaker must, notwithstanding any such approval, make good such damage and must pay to the Trust all reasonable expenses to which the Trust may be put by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

(a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the Trust or its servants, contractors or agents; or

(b) any liability on the Trust with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

127. The undertaker must—

(a) at all times afford reasonable facilities to the Trust for access to inspect the activities of the undertaker on Trust property; and

(b) supply the Trust with all such information as the Trust may reasonably require with regard to activities of the undertaker on Trust property.

128.—(1) Subject to sub-paragraph (2) the undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any Trust property, unless preventing such access is with the consent of the Trust or is in the case of an emergency.

(2) Sub-paragraph (1) does not apply to the Quarry Bridge 2 works while they are under construction, save that access to any Trust property must not be prevented in the case of an emergency.

129.—(1) Subject to sub-paragraph (2) where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Trust to Trust property, it must give the Trust 56 days' written notice of that requirement.

(2) Sub-paragraph (1) does not apply in the case of an emergency.

130. Where under this Part of this Schedule the Trust is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions.

131. The undertaker must repay to the Trust all costs, charges and expenses which it may reasonably incur or which it may sustain—

(a) in the examination of plans under this Part of this Schedule;

(b) in respect of the approval of plans submitted by the undertaker and the supervision by the Trust of the carrying out or construction of any activities or the Quarry Bridge 2 works and otherwise in connection with the implementation of the provisions of this Part of this Schedule; and

(c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting and watching the activities of the undertaker on Trust property.

Expert determination

132.—(1) Article 56 (arbitration) applies to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub–paragraph (7).

(2) Save as provided for in sub–paragraph (1) or sub–paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use all reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;

(c) issue a decision within 28 days of receipt of the submissions under sub-paragraph (5)(a); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 56 (arbitration).

SCHEDULE 17

Article 55

Documents to be Certified

Documents for certification that they are true copies of the documents referred to in this Order—

(1) *Document*	*(2)* *Drawing Number*	*(3)* *Revision*
Ashton Vale Road and Winterstoke Road Highway Works Plan	674946.BD.29.01-SK31 Rev L	2
The Avon Gorge Vegetation Management Plan	-	2
The book of reference	-	4
Bridleway Extension Under Elevated M5 Plan	467470.BQ.04.20-520 Rev H	1
Cattle Creep Proposed General Arrangement drawing	W1097B-ARP-DRG-ECV-300003 and W1097B-ARP-DRG-ECV-300004	1
The COCP	-	2
The compounds, haul roads and access to works plan	674946.BQ.42.01-380 to 674946.BQ.42.01-403 Rev G	4
The crossings to be extinguished plans	674946.BQ.42.01-410 to 674946.BQ.42.01-426 Rev F	2
CTMP – Construction Traffic Management Plan	-	1
The design drawings	See requirement 4	See requirement 4
Earthworks	W1097B-ARP-DRG-EGE 300001 Rev A02 to W1097B ARP-DRG-EGE-300008 Rev A02	1
The environmental master plan	674946-001-024-A ES-C	3
The environmental statement	-	-
General arrangement plans	674946.BQ.42.01-570 to 674946.BQ.42.01-593 Rev J	4
Habitat impacted by construction works within the Avon Gorge Woodlands SAC plan	674946-004-004-A Rev ES A	1
The hedgerow location plan	674946.BQ.42.01-600 A	1
The important hedgerow plan	674946-006-020-A	2
The land plan	-	3
The Master CEMP	-	3
The permanent and temporary stopping up and diversion plan	674946.BQ.42.01-480 to 674946.BQ.42.01-481 674946.BQ.42.01-484 to 674946.BQ.42.01-486 674946.BQ.42.01-496	2

The permanent traffic regulation order plans	467470.BQ.04.20-160 467470.BQ.04.20-215 467470.BQ.04.20-225 467470.BQ.04.20.601	1
Portbury Hundred location of additional tree planting plans	467470.BQ.04.20-610 to 467470.BQ.04.20-613	1
Railway landscape plans (disused line)	674946.BJ.35.01-01 to 674946.BJ.35.01-08 Rev I	3
Section drawings (Longitudinal Profile of Railway Alignment and Cross Section Plans)	W1097B-ARP-DRG-ETR-001301 to W1097B-ARP-DRG-ETR-1309 467470.BQ.04.20-104 Rev B 467470.BQ.04.20-219 Rev B 467470.BQ.04.20-292 Rev B 467470.BQ.04.20-410 Rev B 467470.BQ.04.20-531 Rev B 467470.BQ.04.20-630 Rev B 467470.BQ.04.20-SK300-SK304 Rev I 674946.BD.29.01-SK33 Rev A	1
The works plans	674946.BQ.42.01-300 to 674946.BQ.42.01-324	6
The National Cycle Network (NCN) temporary and permanent work plans	467470.BQ.04.20-530 Rev H 467470.BQ.04.20-540 Rev I 467470.BQ.04.20-550 Rev E 467470.BQ.04.20-551 Rev E 467470.BQ.04.20-552 Rev F 467470.BQ.04.20-553 Rev E 467470.BQ.04.20-554 Rev B	2
The new highways plan	674946.BQ.42.01-510 to 674946.BQ.42.01-511 Rev G 674946.BQ.42.01-515 Rev G 674946.BQ.42.01-525 to 674946.BQ.42.01-526 Rev G	2

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises North Somerset District Council to construct a new railway on the formation of the disused Portishead Branch Line railway and to carry out works to upgrade the existing freight only Parson Street to Royal Portbury Dock railway to allow it to be used for passenger railway services.

The purpose of this Order is to allow passenger services to run between Portishead and Bristol and to connect into the wider national railway network. The railway will, once open to passenger services, be owned and maintained by Network Rail Infrastructure limited.

The works also necessitate the diversion of an existing public footpath that crosses the railway at Barons Close, Ashton, Bristol.

The Order permits North Somerset District Council to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the new section of railway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 55 (documents to be certified) of this Order may be inspected free of charge during working hours at the offices of North Somerset District Council at Town Hall, Walliscote Grove Road, Weston–super–Mare BS23 1UJ or (during periods in which restrictions on movement are in place under the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (S.I. 2020/1374) (or other relevant Government legislation)) on the website https://metrowestphase1.org/final-dco-examination-documents/.

Summary Report	
Title	**compareDocs Comparison Results**
Date & Time	21/07/2021 13:37:56
Comparison Time	26.73 seconds
compareDocs version	v4.3.400.130

Sources	
Original Document	_DOC_166925640(1)_3.1 - Draft Proposed Development Consent Order (Version 8) (clean).DOC
Modified Document	[#168548583] [v1] Enclosure 1 - Validated MetroWest draft Development Consent Order - 21.07.2021.docx

Comparison Statistics	
Insertions	20
Deletions	8
Changes	11
Moves	4
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	43

Word Rendering Set Markup Options	
Name	
Insertions	
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Moves / ~~Moves~~	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark outside border.
Comments color	By Author.
Balloons	True

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Flatten Field Codes	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	[Yes / No]
Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print
Remove Personal Information	Word	False

ENCLOSURE 3

Tom Ewings

From: no-reply@publishing.legislation.gov.uk
Sent: 14 July 2021 23:47
To: Dawn White
Subject: Internet - VALIDATION SUCCESS: SI Validation for MASTERSubmission9MetroWestDCOwithamendedPortPPsandupdatedSchedule1712Jul21.doc (7 Warnings)

Dear Ms White,

Thank you for submitting your document 'MASTERSubmission9MetroWestDCOwithamendedPortPPsandupdatedSchedule1712Jul21.doc' for validation.

The document has validated successfully.

Please note: Your document contains 7 warnings which may indicate an error, it is good practice to check and correct these.

Please check the warnings and resubmit the document. To view your online validation report please click https://publishing.legislation.gov.uk/validation/2021-07-14/118. For documents of 25 pages or less an interactive web version of the report is available in addition to the PDF report.

This is a system-generated email sent on behalf of the SI Support Team.

Support reference: https://publishing.legislation.gov.uk/validation/2021-07-14/118

STATUTORY INSTRUMENTS

202X No. 0000

INFRASTRUCTURE PLANNING

The Portishead Branch Line (MetroWest Phase 1) Order 202x

Made - - - - ***

Laid before Parliament ***

Coming into force - - ***

CONTENTS

PART 1

Preliminary

1. Citation and commencement 5
2. Interpretation 5
3. Incorporation of the Railway Clauses Acts 8

PART 2

Principal powers

4. Application and modification of legislation 9
5. Development consent etc. granted by the Order 10
6. Planning permission 10
7. Limits of deviation 10
8. Maintenance of authorised development 11
9. Benefit of Order 11
10. Consent to transfer benefit of Order 11
11. Agreements with Network Rail 11

PART 3

Streets, Highways and Level Crossings

12. Application of the 1991 Act 12
13. Street works and power to alter the layout etc. of streets 13
14. Permanent stopping up of streets 14
15. Temporary stopping up of streets and public rights of way 15
16. Bridleways, cycle tracks and footpaths 15
17. Access to works 15
18. Agreements with street authorities 16
19. Construction and maintenance of new or altered streets 16

Comment [ERR1]: The offending text for the following warning is: '***' *Warning only High impact [e00096] Please ensure the asterisks are replaced by text / dates* *Warning only High impact [e00023] The format of the Made date paragraph is incorrect*

Comment [ERR2]: The offending text for the following warning is: '***' *Warning only High impact [e00096] Please ensure the asterisks are replaced by text / dates* *Warning only High impact [e00024] The format of the Laid date paragraph is incorrect*

Comment [ERR3]: The offending text for the following warning is: '***' *Warning only High impact [e00096] Please ensure the asterisks are replaced by text / dates* *Warning only High impact [e00026] The format of the Coming into Force date is incorrect*

20. Closure of level crossings and crossings over disused railway 16
21. Accommodation and occupation crossings 17

PART 4
Supplemental powers

22. Discharge of water 17
23. Authority to survey and investigate land 18

PART 5
Powers of acquisition

24. Compulsory acquisition of land 19
25. Modification of Part 1 of the 1965 Act 19
26. Time limit for exercise of authority to acquire land compulsorily or take land temporarily 20
27. Compulsory acquisition of rights or imposition of covenants 20
28. Private rights over land subject to compulsory acquisition or temporary possession 21
29. Power to override easements and other rights 22
30. Application of Compulsory Purchase (Vesting Declarations) Act 1981 23
31. Acquisition of subsoil or airspace only 24
32. Rights under or over streets 24
33. Temporary use of land for carrying out the authorised development 25
34. Temporary use of land for maintaining the authorised development 26
35. Disregard of certain interests and improvements 27
36. Set-off for enhancement in value of retained land 27
37. Statutory undertakers and electronics communications code network operators 28
38. Recovery of costs of new connections 28

PART 6
Operations

39. Operation and use of railways 29
40. Operational land for purposes of the 1990 Act 29

PART 7
Miscellaneous and general

41. No double recovery 29
42. Apparatus and rights of statutory undertakers in stopped up streets 29
43. Felling or lopping of trees 30
44. Hedgerows 31
45. Defence to proceedings in respect of statutory nuisance 32
46. Traffic regulation 32
47. Application of the Land Compensation Act 1973 33
48. Application of landlord and tenant law 33
49. Procedure in relation to further approvals, etc. 34
50. Service of notices 35
51. Crown rights 36
52. Amendment of local byelaws 36

53. Protective provisions 36
54. Special category land 37
55. Documents to be certified 37
56. Arbitration 37

SCHEDULES

SCHEDULE 1 — Authorised development 37
SCHEDULE 2 — Requirements 43
PART 1 — Requirements 43
PART 2 — Procedure for discharge of requirements 59
SCHEDULE 3 — Streets subject to street works 62
SCHEDULE 4 — Streets to be stopped up 63
PART 1 — Street for which a substitute is to be provided 63
PART 2 — Streets for which no substitute is to be provided 64
SCHEDULE 5 — Streets to be stopped up temporarily 64
PART 1 — Street to be stopped up temporarily for which a substitute is to be provided 64
PART 2 — Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension 64
SCHEDULE 6 — Bridleways, cycle tracks and footpaths 65
PART 1 — Footpath to be diverted 65
PART 2 — New public rights of way to be created 65
SCHEDULE 7 — Access to works 66
SCHEDULE 8 — Closure of crossings 68
PART 1 — Crossings: works required 68
PART 2 — Crossings: temporary suspension 69
PART 3 — Crossings: No works required 69
SCHEDULE 9 — Accommodation and occupation crossings 69
PART 1 — Crossings extinguished: works required 69
PART 2 — Crossings for which no substitute is to be provided 70
SCHEDULE 10 — Land in which only new rights, etc., may be acquired 71
SCHEDULE 11 — Modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictions 74
SCHEDULE 12 — Land of which temporary possession may be taken 78
SCHEDULE 13 — Hedgerows 87
PART 1 — Hedgerows to be removed 87
PART 2 — Important Hedgerow 88
SCHEDULE 14 — Traffic Regulation 88
SCHEDULE 15 — Amendment of Local Legislation 90
SCHEDULE 16 — Protective Provisions 90
PART 1 — Protection for Network Rail Infrastructure Limited 90
PART 2 — Protection for Electricity, Gas, Water, Petroleum and Sewerage Undertakers 97
PART 3 — Protection for Operators of Electronic Communications Code Networks 101
PART 4 — Protection for the Environment Agency 102

PART 5 — Protection for First Corporate Shipping Limited 103
PART 6 — Protection for Exolum Pipeline System Ltd 114
PART 7 — For the protection of Western Power Distribution Limited (South West) Plc 116
PART 8 — For the mutual protection of National Grid and the Railway Undertaker 121
PART 9 — For the protection of Wales and West Utilities ("WWU") 129
PART 10 — For the protection of the National Trust 132
SCHEDULE 17 — Documents to be Certified 135

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 in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**), by a Panel appointed as an Examining authority appointed by the Secretary of State in accordance with Chapter 3 of Part 6 of the 2008 Act.

The Panel appointed as an Examining authority, having considered the representations made and not withdrawn has, in accordance with Section 74 (2) of the 2008 Act, made 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 appointed as an Examining authority, has decided to make an Order granting development consent for the development described in the application and consent for ancillary works with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.

In accordance with section 131(5) of the 2008 Act, the Secretary of State is satisfied, that where this Order authorises the compulsory acquisition of land forming part of an open space being the cycle track special category land (as defined in article 54 of this Order) that land is less than 200 square metres in extent and the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

In accordance with section 132(3) of the 2008 Act, the Secretary of State is satisfied, that where this Order authorises the compulsory acquisition of a right over other land forming part of an open space that land, when burdened with the order right, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights in the land, and the public.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 24, 26, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

(**a**) 2008 c 29 Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c 20)
(**b**) S I 2009/2264, amended by S I 2010/439, S I 2010/602, S I 2012/635, S I 2012/2654, S I 2012/2732, S I 2013/522, S I 2013/755, S I 2014/469, S I 2014/2381, S I 2015/377, S I 2015/1682, S I 2017/524, S I 2017/752 and S I 2018/378
(**c**) S I 2010/103 amended by S I 2012/635

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Portishead Branch Line (MetroWest Phase 1) Order 202X and comes into force on [●] 202[*].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**b**);

"the 1980 Act" means the Highways Act 1980(**c**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**d**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**e**);

"the 1990 Act" means the Town and Country Planning Act 1990(**f**)

"the 1991 Act" means the New Roads and Street Works Act 1991(**g**)

"the 2003 Act" means the Communications Act 2003(**h**);

"the 2008 Act" means the Planning Act 2008(**i**);

"the 2009 Regulations" means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009;

"the 2017 Act" means the Neighbourhood Planning Act 2017(**j**);

"address" includes any number or address used for the purposes of electronic transmission;

"authorised development" means the development and associated 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;

"authorised railway works" means those parts of the authorised development that are on land that is or will become operational railway land;

"Avon Gorge Woodlands SAC" means the Avon Gorge Woodlands Special Area of Conservation (EU Code UK0012734);

"Avon Gorge Vegetation Management Plan" means the management plan for the management of the construction of the authorised development within the Avon Gorge Woodlands SAC agreed by Network Rail and the undertaker in consultation with Natural England and certified as such by the Secretary of State;

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

(**a**) 1961 c 33
(**b**) 1965 c 56
(**c**) 1980 c 66
(**d**) 1981 c 66
(**e**) 1984 c 27
(**f**) 1990 c 8
(**g**) 1991 c 22
(**h**) 2003 c 21 The relevant provisions of the Communications Act 2003 amended by section 4 of the Digital Economy Act 2017 (2017 c 30)
(**i**) 2008 c 29 The relevant provisions of the Planning Act 2008 are amended by the following: Chapter 6 of Part 6 of, and Schedules 13 and 25(21) to the Localism Act 2011 (c 20); sections 22 to 27 of the Growth and Infrastructure Act 2013 (c 27); S I 2013/1883; Schedule 16 to the Housing and Planning Act 2016 (c 22); S I 2017/1285 and S I 2009/1307
(**j**) 2017 c 20

"bridleway" has the same meaning as in the 1980 Act;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"COCP" means the document certified as the Code of Construction Practice by the Secretary of State for the purposes of this Order;

"commence" means beginning to carry out any material operation (as defined in section 155 (when development begins) of the 2008 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, archaeological investigations, receipt and erection of construction plant and equipment, utility diversions, laying out of compounds, works to clear watercourses, erection of any temporary means of enclosure, erection of protective fencing, the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;

"the compounds, haul roads and access to works plan" means the document certified by the Secretary of State as the compounds, haul roads and access to works plan for the purposes of this Order;

"compulsory acquisition notice" means a notice served in accordance with section 134 (notice of authorisation of compulsory acquisition) of the 2008 Act;

"crossings to be extinguished plans" means the plan certified as the crossings to be extinguished plans by the Secretary of State for the purposes of this Order;

"CTMP – Construction Traffic Management Plan" means the document certified as such by the Secretary of State for the purposes of this Order;

"cycle track" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(**a**);

"the design drawings" means the drawings described as such in Schedule 17 (documents to be certified) and certified as the design drawings by the Secretary of State for the purposes of this Order;

"electronic transmission" means a communication transmitted—

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

(b) by other means provided it is in electronic form;

"the environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

"first open for use" means—

(a) in respect of railway related activities, the date on which Works Nos. 1, 1A and 1B are first used for revenue earning purposes by the passage of passenger carrying railway vehicles; and

(b) in respect of highway related activities, the date the new highway is first available for the public to pass and repass;

"footpath" has the same meaning as in the 1980 Act;

"hedgerow location plan" means the plan certified as the hedgerow location plan by the Secretary of State for the purposes of this Order;

"highway" has the same meaning as in the 1980 Act;

"IDB" means the North Somerset Levels Internal Drainage Board;

"the important hedgerow plan" means the plan certified as the important hedgerow plan by the Secretary of State for the purposes of this Order;

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

"the land plan" means the plans certified as the land plan by the Secretary of State for the purposes of this Order;

"lead local flood authority" means North Somerset District Council as lead local flood authority and any successor flood authority;

"limits of deviation" means the limits of deviation for Work Nos 1, 1A, 1B and 1C, shown on the works plans;

"limits of land to be acquired or used" means the limits of land to be acquired or used shown on the land plan;

"maintain" includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, remove, reconstruct, replace or improve in relation to the authorised development and any derivative of "maintain" is to be construed accordingly;

"Master CEMP" means the document certified as the Master Construction Environmental Management Plan" by the Secretary of State for the purposes of this Order;

"Network Rail" means Network Rail Infrastructure Limited, company number 02904587 registered at 1 Eversholt Street, London, NW1 2DN and includes any successor in function to Network Rail authorised to operate that part of the national rail network that the authorised development is or will be included in;

"New highways plan" means the plan certified as the new highways plan by the Secretary of State for the purpose of this Order;

"operational railway land" means—

(a) land required permanently for the construction and operation of Works Nos. 1, 1A and 1B;

(b) any part of the existing railway corridor owned by Network Rail between Ashton Junction and Portbury Junction; and

(c) land forming permanent maintenance compounds held by Network Rail for the maintenance of the railways referred to in sub-paragraphs (a) and (b)

and includes associated works, structures, embankments, cuttings, stations, bridges and culverts;

"Order land" means the land shown on the land plan which is within the limits of land to be acquired or used and described in the book of reference;

"the Order limits" means the Order limits shown on the works plans;

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

"the permanent and temporary stopping up and diversion plan" means the plan certified as the permanent and temporary stopping up and diversion plan by the Secretary of State for the purposes of this Order;

"permanent traffic regulation order plans" means the documents certified by the Secretary of State as the permanent traffic regulation order plans for the purposes of this Order;

"Portishead Railway Acts" means the Bristol and Portishead Pier and Railway Act 1863(**b**) and the Bristol and Portishead Pier and Railway Act 1866(**c**);

"private means of access" means a private access to the highway network from neighbouring land;

"relevant highway authority" means North Somerset District Council for highways within the administrative area of North Somerset District Council and Bristol City Council for highways

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(**a**) 1981 c 67 Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c 34) There are other amendments to the 1981 Act which are not relevant to this Order

(**b**) 26 & 27 Vict c cvii

(**c**) 29 & 30 Vict c lxxxviii

within the administrative area of Bristol City Council or any successor highway authority to those authorities;

"relevant planning authority" for land within the administrative area of North Somerset District Council means North Somerset District Council or for land within the administrative area of Bristol City Council means Bristol City Council or any successor planning authority to those authorities;

"the section drawings" means the drawings certified as the section drawings by the Secretary of State for the purposes of this Order;

"statutory undertaker" has the same meaning as in 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 (traffic authorities) of the 1984 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means—

(a) North Somerset District Council; and

(b) subject to articles 9 (benefit of Order), 10 (consent to transfer benefit of Order) and 11 (agreements with Network Rail) any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person;

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

"the works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

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

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

(4) References in this Order to points identified by letters, with or without numbers, are to be construed as references to points so lettered on the relevant plans.

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

Incorporation of the Railway Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**a**) are incorporated in this Order—

(**a**) 1845 c 20 Section 46 was amended by sections 109(1) and (3) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c 39) Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c 101) Section 78 was amended by section 39(3) of, and Schedule 7 to, the Compulsory Purchase Act 1965 (c 56) and articles 5(1) and (2) of, and paras 1 and 3 of Schedule 1 to, S I 2009/1307 Section 105 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c 101), and section 31(6) of the Criminal Law Act 1977 (c 45), and sections 37 and 49 of the Criminal Justice Act 1982 (c 48) There are other amendments to the 1845 Act not relevant to this Order

(a) section 46 (crossing of roads – level crossings), subject to paragraph (4);

(b) section 58 (company to repair roads used by them), except for the words from "and if any question" to the end;

(c) section 61 (company to make sufficient approaches and fences to highways crossing on the level);

(d) section 68 (accommodation works by company);

(e) section 71 (additional accommodation works by owners), except for the words "or directed by such justices to be made by the company" and "or, in case of difference, as shall be authorised by two justices";

(f) sections 72 and 73 (supplementary provisions relating to accommodation works);

(g) section 77 (presumption that minerals excepted from acquisition of land);

(h) sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(**a**); and

(i) section 105 (carriage of dangerous goods on railway), except for the words from "and if any person" to "for every such offence".

(2) The following provisions of the Railways Clauses Act 1863(**b**) are incorporated in this Order—

(a) sections 5 and 7 (level crossings); and

(b) section 12 (signals, watchmen etc.).

(3) In those provisions, as incorporated in this Order—

"the company" means the undertaker and, for land that is within that part of the Order limits which is either existing operational railway or which will become operational railway, Network Rail;

"goods" includes anything conveyed on the railway authorised to be constructed by this Order;

"lease" includes an agreement for a lease;

"prescribed" in relation to any such provision means prescribed by this Order for the purposes of that provision;

"the railway" means any railway authorised to be constructed by this Order and any other authorised development; and

"the special Act" means this Order.

(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order, for the proviso there is substituted "provided always that, with the consent of the relevant highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level".

PART 2

Principal powers

Application and modification of legislation

4.—(1) The provisions of Chapter 1 of Part 2 of the 2017 Act do not apply as regards the temporary possession or use of land under articles 33 and 34 of this Order or to anything else done under this Order.

(**a**) 1923 c 20 Section 15 was amended by section 10(1) of the Decimal Currency Act 1969 (c 19)
(**b**) 1863 c 92

(2) 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 deemed 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.

Development consent etc. granted by the Order

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

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 development authorised by this Order,

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

(2) The provisions of this Order do not preclude or apply to any development, or any part of a development, which is carried out by, or used by, Network Rail on any land (whether or not within the Order limits)—

(a) that is or will become operational railway land and is carried out in accordance with any planning permission granted under the 1990 Act including a planning permission granted under article 3 and Class A of Part 8 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(**b**); or

(b) that is carried out in accordance with any planning permission granted under the 1990 Act including a planning permission granted under article 3 and Class A of Part 18 of Schedule 2 to that Order.

Limits of deviation

7.—(1) In constructing or maintaining Works Nos. 1, 1A, 1B and 1C the undertaker may deviate—

(a) laterally from the lines or situations shown on the works plans to the extent of the limits of deviation so shown for the work; and

(b) vertically from the levels shown on the section drawings—

(i) to any extent upwards not exceeding 0.5 metres; and

(ii) to any extent downwards not exceeding 0.5 metres.

(2) In constructing or maintaining any other work comprised in the authorised development the undertaker must construct any such work within the extents of work shown on the works plans for the relevant work.

(**a**) S I 2010/948, amended by S I 2011/987; there are other amending instruments but none are relevant
(**b**) S I 2015/596

Maintenance of authorised development

8.—(1) 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.

(2) Paragraph (1) does not authorise any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

Benefit of Order

9. Subject to article 10 (consent to transfer benefit of Order), article 11 (agreements with Network Rail) and article 27 (6) (compulsory acquisition of rights or imposition of covenants) the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

10.—(1) The undertaker may—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

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

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

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

(4) The consent of the Secretary of State and the consent of Network Rail are required for a transfer or grant under this article unless such transfer or grant is to Network Rail in accordance with an agreement made under article 11 (agreements with Network Rail).

Agreements with Network Rail

11.—(1) The undertaker and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

(a) the authorised development or any part of the authorised development; and

(b) any works required for the purposes of or in connection with the authorised development

by Network Rail or by the undertaker, or by the undertaker and Network Rail jointly.

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be agreed, including (but without limitation on the scope of paragraph (1)), provisions—

(a) with respect to the defraying of, or the making of contributions towards, the cost of such construction, maintenance, use and operation as are referred to in paragraph (1) by the undertaker or by Network Rail or by the undertaker and Network Rail jointly;

(b) for the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of all or any of the powers and rights of Network Rail and the undertaker (as the case may be) in respect of any of the authorised development and any works required for the purposes of, or in connection with, those works; and

(c) without limitation on the scope of sub-paragraph (b), for the exercise by Network Rail, or by Network Rail and the undertaker jointly, of all or any of the powers under this Order for, or relating to, the compulsory acquisition or the taking of temporary possession of any land or rights over land.

(3) The exercise by the undertaker or Network Rail or by the undertaker and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (1) is subject to all statutory and contractual provisions relating to it as would apply if such powers and rights were exercised by the undertaker or Network Rail (as the case may be) alone, and accordingly such provisions, with any necessary modifications, apply to the exercise of such powers and rights by the undertaker or Network Rail or by the undertaker and Network Rail jointly, as the case may be.

(4) The undertaker and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the undertaker, or the undertaker and Network Rail jointly of—

(a) any of the authorised development or any part of that development; or

(b) any works, lands or other property required for the purposes of the authorised development or in connection with such development,

together with any rights and obligations (whether or not statutory) of Network Rail or the undertaker relating to them.

PART 3

Streets, Highways and Level Crossings

Application of the 1991 Act

12.—(1) Works carried out 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 of the 1991 Act (street works in England and Wales) as major transport works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (highway authorities, highways and related matters) of that Act (which defines what highway authority works are major highway works); or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts)(**a**).

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

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

(a) section 56 (directions as to timing)(**b**);

(b) section 56A (power to give directions as to placing of apparatus)(**c**);

(c) section 58 (restrictions following substantial road works)(**d**);

(d) section 58A (restriction on works following substantial street works)(**e**);

(e) section 73A (power to require undertaker to re-surface street);

(f) section 73B (power to specify timing etc. of re-surfacing);

(**a**) 1980 c 66 Section 64 was amended by Schedule 17 to the Local Government Act 1985 (c 51) and Schedule 9 to the New Roads and Street Works Act 1991 (c 22)

(**b**) 1991 c 22 Section 56(1), (1A) and (3A) were amended by section 43 of the Traffic Management Act 2004 (c 18) Section 56(3) was amended by Schedule 1 to the Traffic Management Act 2004 (c 18)

(**c**) 1991 c 22 Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c 18)

(**d**) 1991 c 22 Sections 58(1) (2) (4) (7) and (7A) were amended by section 51 of the Traffic Management Act 2004 (c 18) Section 58(3) was amended by section 51(4) of the Traffic Management Act 2004 (c 18) Section 58(6) was amended by Schedule 1 to the Traffic Management Act 2004 (c 18)

(**e**) 1991 c 22 Section 58A was inserted by section 52(1) of the Traffic Management Act 2004 (c 18)

(g) section 73C (materials, workmanship and standard of re-surfacing);

(h) section 78A (contributions to costs of re-surfacing by undertaker); and

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

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the carrying out 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 the carrying out of works under article 13 (street works and power to alter the layout etc. of streets) whether or not the carrying out of such works constitutes street works within the meaning of that Act or any stopping up, alteration or diversion of a street under article 15 (temporary stopping up of streets and public rights of way).

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

(a) section 54 (advance notice of certain works), subject to paragraph (4)(**b**);

(b) section 55 (notice of starting date of works), subject to paragraph (4)(**c**);

(c) section 57 (notice of emergency works)(**d**);

(d) section 59 (general duty of street authority to co-ordinate works)(**e**);

(e) section 60 (general duty of undertakers to co-operate)(**f**);

(f) section 68 (facilities to be afforded to street authority)(**g**);

(g) section 69 (works likely to affect other apparatus in the street);

(h) section 76 (liability for cost of temporary traffic regulation)(**h**); and

(i) 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 included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Street works and power to alter the layout etc. of streets

13.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

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

(b) tunnel or bore under the street or carry out any works to strengthen or repair the carriageway;

(c) remove or use all earth and material in or under the street;

(d) place and keep apparatus under the street;

(e) maintain, alter or renew apparatus in the street or change its position;

(f) demolish, remove, replace and relocate any street furniture within the street;

(g) execute any works to 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;

(**a**) 1991 c 22 Schedule 3A was amended by Schedule 4 of the Traffic Management Act 2004 (c 18)
(**b**) 1991 c 22 Section 54 was amended by sections 40(1) and (2) and 49 of and Schedule 1 to the Traffic Management Act 2004 (c 18)
(**c**) 1991 c 22 Section 55 was amended by sections 40(1) and (2), 49 and 51 of and Schedule 1 to the Traffic Management Act 2004 (c 18)
(**d**) 1991 c 22 Section 57 was amended by section 52 of and Schedule 1 to the Traffic Management Act 2004 (c 18)
(**e**) 1991 c 22 Section 59 was amended by section 42 of the Traffic Management Act 2004 (c 18)
(**f**) 1991 c 22 Section 60 was amended by Schedule 1 to the Traffic Management Act 2004 (c 18)
(**g**) 1991 c 22 Section 68 was amended by Schedule 1 to the Traffic Management Act 2004 (c 18)
(**h**) 1991 c 22 Section 69 was amended by Schedule 1 to the Traffic Management Act 2004 (c 18)

(j) remove and install temporary and permanent signage;

(k) make and maintain crossovers and passing places;

(l) execute any works of surfacing or re-surfacing of the highway; and

(m) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (l).

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to paragraph (4), the undertaker may, for the purposes of constructing and maintaining any part of 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 that power, the undertaker may—

(a) increase the width of the carriageway of the street by reducing the width of any kerb, splitter island, footpath, footway, cycle track or verge within the street;

(b) alter the level or increase the width of any such kerb, splitter island, footpath, footway, cycle track or verge; and

(c) reduce the width of the carriageway of the street.

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

(4) The powers conferred by paragraph (2) are not to be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.

Permanent stopping up of streets

14.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

(a) stop up the street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets to be stopped up) to the extent specified in column (3) of that part of that Schedule; and

(b) stop up the streets specified in columns (1) and (2) of Part 2 of Schedule 4 to the extent specified in column (3) of that part of that Schedule.

(2) The street specified in columns (1) and (2) of Part 1 of Schedule 4 is not 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 (4) of that Part of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or

(b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the relevant highway 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 extinguishment of any private right of way or private means of access under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Temporary stopping up of streets and public rights of way

15.—(1) Subject to paragraph (4) the undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street or public right of way or any part of a street or public right of way within the Order limits and may for any reasonable time—

(a) divert the traffic from the street or public right of way; and

(b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

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

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

(4) The street specified in columns (1) and (2) of Part 1 of Schedule 5 (streets to be stopped up temporarily) is not to be wholly or partly stopped up under this article to the extent specified, by reference to the letters and numbers shown on the permanent and temporary stopping up and diversion plan, in column (3) of that Schedule, unless the temporary alternative route to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use.

(5) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up the public rights of way described in Part 2 of Schedule 5 (streets to be stopped up temporarily) to the extent specified in column (3) of that part of that Schedule.

(6) The undertaker may not temporarily stop up, alter, divert or use as a temporary working site—

(a) any street or public right of way specified as mentioned in Schedule 3 (streets subject to street works) or paragraphs (4) or (5) without first consulting the street authority; and

(b) any other street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent in relation to the placing of street notices and traffic signs.

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

Bridleways, cycle tracks and footpaths

16.—(1) With effect from the date of coming into force of this Order, the public right of way (being a footpath) specified in columns (1) and (2) of Part 1 of Schedule 6 (bridleways, cycle tracks and footpaths) and all private rights of way (if any) are stopped up to the extent specified in column (3) of that Part of that Schedule.

(2) With effect from the date of coming in to force of this Order the section of footpath specified in column (4) of Part 1 of Schedule 6 is created.

(3) Unless otherwise agreed with the relevant planning authority, the new public rights of way set out in Part 2 of Schedule 6 and identified on the new highways plan are to be constructed by the undertaker in the specified locations and open for use from the date that part of the authorised development consisting of the new railway is first open for use.

Access to works

17. The undertaker may, for the purposes of the authorised development—

(a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 7 (access to works) and shown on the compounds, haul roads and access to works plan; and

(b) with the approval of the relevant planning authority after consultation with the relevant highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

18.—(1) A street authority and the undertaker may enter into agreements with respect to—

(a) the construction of any new street, including any structure carrying the street over or under a railway authorised by the Order;

(b) the strengthening, improvement, repair or reconstruction of any street under the powers of this Order;

(c) the maintenance of the structure of any bridge or tunnel carrying a street over or under any authorised railway;

(d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or

(e) the carrying out in the street of any of the works referred to in article 13(1) (street works and power to alter the layout etc. of streets);

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

Construction and maintenance of new or altered streets

19.—(1) Any street to be constructed under this Order must be completed to the reasonable satisfaction of the street authority and unless otherwise agreed with the street authority, must be maintained by and at the expense of the undertaker for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(3) The date of completion of any works referred to in paragraphs (1) and (2) is to be agreed between the undertaker and the street authority, acting reasonably.

Closure of level crossings and crossings over disused railway

20.—(1) Subject to paragraph (3), the crossings specified in columns (1) and (2) of Part 1 of Schedule 8 (closure of crossings) are to be permanently stopped up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of any crossing referred to in paragraph (1), all public or private rights of way (if any) over the part of the crossing specified in relation to it in column (3) of Part 1 of Schedule 8 are extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to the permanent stopping up and discontinuance of a crossing specified in columns (1), (2) and (3) of Part 1 of Schedule 8 until the replacement specified in relation to it in column (4) of that Part of that Schedule has been constructed and completed to the reasonable satisfaction of the street authority and is open for use.

(4) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily stop up the crossing specified in columns (1), (2) and (3) of Part 2 of Schedule 8 in accordance with paragraph (5).

(5) Any temporary stopping up of the crossing specified in columns (1), (2) and (3) of Part 2 of Schedule 8 must not take place until a temporary alternative route is first provided by the undertaker in relation to it as specified in column (4) of that Part of that Schedule, to the reasonable satisfaction of the relevant highway authority, and such replacement route (or any subsequently agreed variation or substitute for that route) must be maintained and available for use at all reasonable times (unless the temporary alternative route is closed because it cannot be used safely) until Work No. 7 is completed and open for use.

(6) The crossings specified in columns (1) and (2) of Part 3 of Schedule 8 (closure of crossings) are permanently stopped up and discontinued to the extent specified in column (3) of that part of that Schedule on the date this Order comes in to force.

(7) Upon the permanent closure of each of the crossings referred to in paragraph (6), all public or private rights of way (if any) over the part of the crossings specified in relation to it in column (3) of Part 3 of Schedule 8 are extinguished.

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

(9) In this article and in Schedule 8 "crossing" includes a level crossing, a former level crossing and a permissive crossing of the railway or disused railway.

Accommodation and occupation crossings

21.—(1) Subject to paragraph (2) and regardless of anything in section 68 (accommodation works by Company) of the Railways Clauses Consolidation Act 1845 as incorporated in the Portishead Railway Acts or any other enactment or instrument, all public or private rights of way (if any) afforded by means of the accommodation or occupation facilities specified in columns (1) and (2) of Parts 1 and 2 of Schedule 9 (accommodation and occupation crossings), including those specified in column (3) of Parts 1 and 2 of that Schedule, are extinguished.

(2) Paragraph (1) does not take effect with respect to the extinguishment of the public or private rights of way (if any) by means of a facility specified in columns (1) and (2) of Part 1 of Schedule 9 (accommodation and occupation crossings) until the works specified in relation to it in column (4) of Part 1 of that Schedule have been provided.

(3) Paragraph (1) takes effect with respect to the extinguishment of the public or private rights of way (if any) specified in column (3) of Part 2 of Schedule 9 by means of the facilities specified in column (1) and (2) of Part 2 of that Schedule 9 on the date this order comes into force.

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

PART 4

Supplemental powers

Discharge of water

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

(**a**) 1961 c 33 Section 1 was amended by S I 2009/1307

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 pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**a**) (right to communicate with public sewers).

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

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(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 under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) 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 a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991(**c**) have the same meaning as in that Act.

Authority to survey and investigate land

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

(a) survey or investigate the land;

(b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

(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 authority to do so; and

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(**a**) 1991 c 56 Section 106 was amended by section 35(1) and (8) and section 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c 43) and 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 2016 (c 29)

(**b**) S I 2016/1154 There are amendments to regulation 12 which are not relevant to this Order

(**c**) 1991 c 57

(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.

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

(a) on land located within the highway boundary without the consent of the relevant highway authority; or

(b) in a private street without the consent of the street authority.

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

PART 5

Powers of acquisition

Compulsory acquisition of land

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

(2) This article is subject to paragraph 27(3) of article 27 (compulsory acquisition of rights or imposition of covenants) article 31 (acquisition of subsoil or airspace only) and paragraph 33(8) of article 33 (temporary use of land for carrying out the authorised development).

Modification of Part 1 of the 1965 Act

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

(2) In section 4A(1) (extension of time limit during challenge)(**b**) 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 4" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily or take land temporarily) of the Portishead Branch Line (MetroWest Phase 1) Order 202*".

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

(a) in subsection (1)(a), after "land" insert "under that provision";

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 24 of the Portishead Branch Line (MetroWest Phase 1) Order 202*".

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

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

"(2) But see article 31(3) (acquisition of subsoil, etc., only) of the Portishead Branch Line (MetroWest Phase 1) Order 202* , which excludes the acquisition of subsoil or airspace only from this Schedule;"

and

(**a**) 2008 c 29 Section 125 is amended by Schedule 16 to the Housing and Planning Act 2016 (c 22)
(**b**) 1965 c 56 Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c 22)
(**c**) 1965 c 56 Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c 22)
(**d**) 1965 c 56 Schedule 2A was amended by Schedule 17 to the Housing and Planning Act 2016 (c 22)

(b) after paragraph 29, end insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the Portishead Branch Line (MetroWest Phase 1) Order 202*."

Time limit for exercise of authority to acquire land compulsorily or take land temporarily

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

(a) no notice to treat may be served under Part 1 of the 1965 Act; and

(b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act(**a**) as applied by article 30 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights or imposition of covenants

27.—(1) Subject to paragraphs (3) and (4) the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) The undertaker may impose restrictive covenants affecting any part of the Order land which—

(a) adjoins or will, on completion of the authorised railway works, adjoin Works Nos. 1, 1A, 1B or 1C or as may be required for the purpose of protecting the authorised railway works; or

(b) is required for the purposes of ecological or other mitigation.

(3) In the case of the Order land specified in column (1) of Schedule 10 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights in the land for the purpose specified in relation to that land in column (2) of that Schedule or the imposition of restrictive covenants in accordance with paragraph (2).

(4) Subject to Schedule 2A (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5 of Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictions)) where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 11 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.

(**a**) 1981 c 66 Section 4 was amended by sections 184,185 and 199(2) of, and paragraphs 1 and 2 of Part 1 of Schedule 13 to, the Housing and Planning Act 2016 (c 22)

(6) In any case where the acquisition of new rights under paragraph (1) or the imposition of a restriction under paragraph (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, then

(a) the undertaker or,

(b) where the land acquisition powers are exercisable by Network Rail pursuant to an agreement made under article 11 (agreements with Network Rail), Network Rail,

may transfer the power to acquire such rights or impose such restrictions to the relevant statutory undertaker.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (6) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(8) Subject to paragraph (9), where any power is transferred to a statutory undertaker in accordance with a transfer under paragraph (6) and the statutory undertaker—

(a) is liable to pay compensation for the exercise of that power, and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(9) Nothing in this article affects any agreement between the undertaker or Network Rail and any statutory undertaker receiving the benefit of any power transferred under paragraph (6).

Private rights over land subject to compulsory acquisition or temporary possession

28.—(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 onto the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act(**a**)

whichever is the earlier.

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

(a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker , whether compulsorily or by agreement; or

(b) on the date of entry 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 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.

(4) Any person who suffers loss by the extinguishment or suspension of any private right 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 does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act(**a**) or article 37 (Statutory undertakers and electronics communications code network operators) applies.

(**a**) 1965 c 56 Section 11(1) was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of the Housing and Planning Act 2016 (c 22), Schedule 4 to the Acquisition of Land Act 1981 (c 67) and section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2206 No 1)

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person

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

(8) 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

29.—(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) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or Network Rail or by any person authorised by them) 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

(3) The interests and rights to which this article applies 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 includes restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraphs (1) or (2) compensation—

(a) is payable under section 10 (further provision as to compensation for injurious affection) of the 1965 Act as applied by section 152 (compensation in cases where no right to claim in nuisance) of the 2008 Act(**b**); 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

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(**a**) 2008 c 29 Section 138 was amended by section 23(4) of the Growth and Infrastructure Act 2013 (c 27) and regulation 2 of, and paragraph 12 of, Part 1 of Schedule 1 to S I 2017/1285

(**b**) 2008 c 29 Section 152 was amended by paragraph 293 of Schedule 1 to S I 2009/1307

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a relevant person—

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) 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 paragraphs (1) or (2) of this article.

(7) Nothing in paragraph (6) affects any agreement between the undertaker and the relevant person receiving the benefit of the authorisation under paragraphs (1) or (2).

(8) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers and electronic communications code network operators) applies.

(9) In this article—

"authorised activity" means—

(i) the erection, construction or maintenance of any part of the authorised development;

(ii) the exercise of any power authorised by this Order; or

(iii) the use of any Order land (including the temporary use of land) for the purposes of the authorised development.

"relevant person" means—

(iv) a person deriving title under the undertaker;

(v) Network Rail; or

(vi) a person deriving title under Network Rail.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

(5) In section 5B (extension of time limit during challenge)(**c**) 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 26 of the Portishead Branch Line (MetroWest Phase 1) Order 202*".

(6) In section 6 (notices after execution of declaration)(**d**), 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".

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

(**a**) 1981 c 66 Section 5 was amended by section 183 of, and Schedule 15 to, the Housing and Planning Act 2016 (c 22)
(**b**) 1981 c 66 Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c 22)
(**c**) 1981 c 66 Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 (c 22)
(**d**) 1981 c 66 Section 6 was amended by section 183 of, and paragraphs 4 and 7 of Schedule 15 to, the Housing and Planning Act 2016 (c 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c 11)
(**e**) 1981 c 66 Section 7 was amended by section 199(2) of, and paragraphs 1 and 3 of Part 1 of Schedule 18 to, the Housing and Planning Act 2016 (c 22)

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

"(2) But see article 31 (3) (acquisition of subsoil, etc., only) of the Portishead Branch Line (MetroWest Phase 1) Order 202* , which excludes the acquisition of subsoil or airspace only from this Schedule."

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

31.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 24(1) (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 under 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 25 of this Order;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act(**b**).

(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

32.—(1) The undertaker may enter upon 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 air-space for the purposes of the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker 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 by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(**a**) 1981 c 66 Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c 22)

(**b**) 1990 c 8 Section 153(4A) was inserted by section 200(2) of the Housing and Planning Act 2016 (c 22)

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing of 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.

Temporary use of land for carrying out the authorised development

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

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 12 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

(ii) any of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act(**a**) (other than in connection with the acquisition of rights or the imposition of covenants) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

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

(c) construct temporary works (including the provision of means of access), security fencing and buildings on that land;

(d) construct any works as are mentioned in Schedule 1 (authorised development);

(e) carry out any other mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works on that land; or

(f) provide any temporary car parking or storage facilities on that land.

(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)(i).

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

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 12; or

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

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

(**a**) 1965 c 56 Section 11(1) was amended by section 186(1) and (2), section 187(1) and (2) and section 188 of the Housing and Planning Act 2016 (c 22), Schedule 4 to the Acquisition of Land Act 1981 (c 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No 1), and articles 5(1) and (2) of, and paragraphs 59 and 64 of Schedule 1 to, S I 2009/1307

(c) remove statutory undertakers' apparatus or connections to such apparatus or any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or

(d) remove any mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works which have been placed on the land to

(i) facilitate construction of the authorised development;

(ii) protect any existing operational railway; or

(iii) mitigate the effects of the authorised development.

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

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

(7) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

(a) acquiring new rights over or imposing restrictive covenants affecting any part of that land under article 27 (compulsory acquisition of rights or imposition of covenants); or

(b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil or of airspace over) that land under article 31 (acquisition of subsoil or airspace only).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority)(**a**) 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.

Temporary use of land for maintaining the authorised development

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

(a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Unless paragraph (4) applies, the undertaker must serve notice of the intended entry on the owners and occupiers of the land not less than 28 days before entering upon and taking temporary possession of land under this article and that notice must state the purpose for which the undertaker intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be taken.

(**a**) 1965 c 56 Section 13 was amended by section 139(4)-(9) and section 62(3) of, paragraphs 27 and 28(1)-(3) of Schedule 13 to, and Part 13 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c 15)

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

(a) the authorised development or any of its parts;

(b) the public; or

(c) the surrounding environment,

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

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

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

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

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

(9) Without affecting article 41 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

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

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

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

Disregard of certain interests and improvements

35.—(1) In assessing the compensation payable to any person on the acquisition from that person of 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 executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration 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 executed or the improvement or alteration made, directly or indirectly concerned.

Set-off for enhancement in value of retained land

36.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to

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

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

(a) any increase in value of the land over which the new rights are acquired or restrictive covenants are imposed; and

(b) any increase in the 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.

Statutory undertakers and electronics communications code network operators

37.—(1) Subject to Schedule 16 (protective provisions), and paragraph (2) the undertaker may—

(a) exercise the powers conferred by articles 24 (compulsory acquisition of land) and 27 (compulsory acquisition of rights or imposition of covenants) in relation to so much of the Order land as belongs to statutory undertakers; and

(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

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

(a) Part 3 (street works in England and Wales) of the 1991 Act; or

(b) article 42 (apparatus and rights of statutory undertakers in stopped up streets).

Recovery of costs of new connections

38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 37 (statutory undertakers and electronic communications code network operators) 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 37 (statutory undertakers and electronic communications code network operators), 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) In this article—

"public communications provider" has the same meaning as in section 151(1) (interpretation of chapter 1) of the 2003 Act(**a**); and

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(**a**) 2003 c 21 There are amendments to section 151(1) which are not relevant to this Order

"public utility undertaker" has the same meaning as in the 1980 Act.

PART 6

Operations

Operation and use of railways

39.—(1) Network Rail may operate and use the railway authorised by this Order as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 of the Railways Act 1993(**a**) (the provision of railway services).

Operational land for purposes of the 1990 Act

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

PART 7

Miscellaneous and general

No double recovery

41. 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 or different provisions of this Order.

Apparatus and rights of statutory undertakers in stopped up streets

42.—(1) Where a street is stopped up under articles 14 (permanent stopping up of streets) or 15 (temporary stopping up of streets and public rights of way), 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 permanently stopped up under article 14 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**) 1993 c 43

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

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

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

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

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

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

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

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

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (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 1990 Act or a public communications provider as defined in section 151(1) (interpretation) of the 2003 Act.

Felling or lopping of trees

43.—(1) The undertaker may fell, prune, coppice, pollard, reduce in height or width 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) subject to paragraph (4), from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to passengers or other persons using the authorised development.

(2) The powers in paragraph (1) may be exercised in relation to any tree or shrub which is situated within a conservation area (designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990)(**a**).

(3) Action may not be taken under paragraph (2) unless the undertaker has given written notice to the relevant planning authority of the intended action (with sufficient particulars to identify the tree), and either—

(a) the relevant planning authority has indicated in writing that it has no objection to the works or that they fall within an exemption in paragraph (4) or (5), or

(b) six weeks have elapsed from the date of the notice and a tree preservation order has not been made in respect of the tree or shrub.

(4) Paragraph (3) does not apply where consent would not be needed for the proposed action if the tree or shrub were subject to a tree preservation order.

(5) Paragraph (3) shall not apply to any action which would be exempt in accordance with regulations under section 212 of the 1990 Act (disapplication of tree preservation offences).

(6) The duty contained in section 213(1) of the 1990 Act (replacement of trees) does not apply to the undertaker in carrying out any activity authorised by paragraphs (2) and (3).

(7) The authority given by paragraphs (2) and (3) constitutes an authorisation by an order granting development consent for the purposes of section 211(1A) of the 1990 Act.

(8) In carrying out any activity authorised by paragraph (1) or paragraphs (2) and (3), the undertaker must not unnecessarily damage any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(9) Any dispute as to a person's entitlement to compensation under this article, or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(10) The undertaker must not exercise the powers under paragraph (2) of this article after completion of construction.

(11) Nothing in paragraph (1)(a) authorises works to any tree or shrub within the Avon Gorge Woodlands SAC in contravention of the Avon Gorge Vegetation Management Plan.

Hedgerows

44.—(1) The undertaker may, for the purposes of the authorised development—

(a) subject to requirement 6 of Schedule 2 (landscaping scheme – disused railway) and paragraph (2) below, remove those hedgerows specified in Part 1 of Schedule 13 (hedgerows to be removed);

(b) remove any other hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development where it is demonstrated by the undertaker to the relevant planning authority, and the relevant planning authority certifies accordingly, that the removal of the hedgerow would not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.; and

(c) remove the important hedgerow within the Order limits and specified in Part 2 of Schedule 13 (important hedgerow).

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not unnecessarily damage the hedgerow 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, must be determined under Part 1 of the 1961 Act.

(4) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerows Regulations 1997(**a**).

(**a**) 1990 c 9

Defence to proceedings in respect of statutory nuisance

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

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974(**d**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

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

Traffic regulation

46.—(1) Subject to the provisions of this article, the undertaker may at any time for the purposes of the construction, operation or maintenance of the authorised project permanently regulate traffic as described in Schedule 14 (traffic regulation), in the manner specified in column (3) on those roads specified in column (1) and along the lengths and between the points specified, or to the extent otherwise described in column (2) of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to the opening of the authorised development for use—

(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, parking, 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.

(**a**) 1997 S I 1160

(**b**) 1990 c 43 There are amendments to this section which are not relevant to this Order

(**c**) 1990 c 43 Section 79(1) was amended by section 101 and 102 of the Clean Neighbourhood and Environment Act 2005 (c 16) There are other amendments to the Act which are not relevant to this Order

(**d**) 1974 c 40 Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c 55) Section 61(9) was amended by Schedule 24 to the Environment Act 1995 (c 25), and section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c 43) There are other amendments to the 1974 Act which are not relevant to this Order

(3) The undertaker must not exercise the powers in paragraph (1) unless it has—

(a) given not less than 12 weeks' notice in writing of its intention to do so 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 7 days of its receipt of notice of the undertaker's intention in the case of sub–paragraph (a).

(4) Any prohibition, restriction or other provision made by the undertaker under paragraphs (1) or (2)—

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

(i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act(**a**),

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 14) 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 to the Traffic Management Act 2004(**b**) (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time.

(6) Before exercising the provisions of paragraph (2) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.

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

Application of the Land Compensation Act 1973

47.—(1) Any regulations made by the Secretary of State under section 20 (sound proofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973(**c**) which apply to a railway provided or used in the exercise of statutory powers apply to the railway comprised in the authorised development as if that railway was provided or used in the exercise of statutory powers.

(2) Section 28 (power to pay expenses) of the Land Compensation Act 1973 has effect as if any works comprised in the authorised development were public works for the purposes of that section.

Application of landlord and tenant law

48.—(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

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(**a**) 1984 c 27 Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c 51) There are other amendments to section 32 which are not relevant to this Order

(**b**) 2004 c 18

(**c**) 1973 c 26 Section 20 was amended by subsection (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984 (c 27) Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highway Act 1980 (c 66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c 42) Section 20A was inserted by Schedule 15 to the Planning and Compensation Act 1991 (c 34) There are other amendments to the 1973 Act which are not relevant to this Order

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Procedure in relation to further approvals, etc.

49.—(1) Where any application is made to a relevant authority, the consent, agreement, certification or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application 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 received, the relevant authority is deemed to have given its consent, agreement, certification or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) If before this Order comes into force the undertaker or any other person has taken any step in relation to an application to which this article applies, that step may be taken into account to determine whether the consent, agreement, certification or approval concerned should be granted provided that step would have been a valid step for the purpose of the application if it had been taken after this Order came into force.

(5) Where any application is made to a relevant authority and the application includes submissions relating to the discharge of an obligation under Part 3 of Schedule 16 (protective provisions) at the same time, paragraph (2) does not apply to that application.

(6) Where a consent, agreement or approval is required or requested by the undertaker from a relevant planning authority under a requirement in Schedule 2 (requirements) then the procedure set out in Part 2 of Schedule 2 (requirements) for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, applies.

(7) In this article—

"application" means an application or request for any consent, agreement, certification or approval required or contemplated by articles 13 (street works and power to alter the layout etc. of streets), 15 (temporary stopping up of streets and public rights of way), 17 (access to works), 19 (construction and maintenance of new or altered streets), 22 (discharge of water), 23 (authority to survey and investigate land) and 46 (traffic regulation); and

"relevant authority" means the owner of a watercourse, public sewer or drain, a local authority, a traffic authority, a highway authority or a street authority.

Service of notices

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

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) 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 may 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 must provide such a copy as soon as reasonably practicable.

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

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

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(**a**) 1978 c 30

(9) This article must 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.

Crown rights

51.—(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 Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or

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

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is 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.

Amendment of local byelaws

52.—(1) The local byelaws specified in Schedule 15 (amendment of local legislation) are hereby excluded and do not apply insofar as inconsistent with a provision of, or a power conferred by, this Order.

(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 the power;

(b) action taken in pursuance of the power 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;

(c) action taken in pursuance of a power or duty under the provision 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) 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.

Protective provisions

53. Schedule 16 (protective provisions) has effect.

Special category land

54.—(1) On the exercise by the undertaker of the relevant Order power, the cycle track special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article—

"the relevant Order power" means the powers exercisable over the cycle track special category land by the undertaker under article 24 (compulsory acquisition of land);

"the cycle track special category land" means the land numbered 01/213 and 01/223 in the book of reference and on the land plan and forming part of an open space which may be acquired compulsorily under this Order.

Documents to be certified

55.—(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 17 (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 17 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) The undertaker must, following certification of the plans and documents in accordance with paragraph (1), make those plans and documents available in electronic form for inspection by members of the public.

Arbitration

56. 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Head of the Infrastructure Planning Unit

Date Department for Transport

Comment [ERR4]: *Warning only Low impact [e00120] The signature date has not yet been completed*

SCHEDULES

SCHEDULE 1

Article 5

Authorised development

A nationally significant infrastructure project as defined in sections 14 and 25 of the 2008 Act comprising—

In the district of North Somerset:

Work No. 1 – a railway of 2,264 metres in length shown on sheets 1, 1A, 2, and 3 of the works plans commencing at a point 96 metres north of the junction of Quays Avenue and Galingale Way,

Portishead, using the track bed of the disused Portishead Branch Line railway, and terminating at a point 57 metres to the east of the bridge carrying Station Road (Portbury) over the disused Portishead Branch Line railway;

Work No. 1A – a railway of 2,498 metres in length shown on sheets 3, 4, 5 and 6 of the works plans commencing at a junction with the termination of Work No. 1 at a point 57 metres to the east of the bridge carrying Station Road (Portbury) over the disused Portishead Branch Line railway, using the track bed of the disused Portishead Branch Line railway and terminating at a point 49 metres to the west of the bridge carrying the Parson Street to Royal Portbury Dock railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill;

Work No. 1B – a railway of 796 metres in length shown on sheets 6 and 7 of the works plans commencing at a junction with the termination of Work No. 1A at a point 49 metres west of the bridge carrying the Parson Street to Royal Portbury Dock railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill and terminating at a junction with Work No. 1C, at a point 86 metres to the north of the junction of the highways of Ham Green and Westward Drive, Pill; and

Work No. 1C – a realignment of existing railway for a distance of 1,003 metres in length shown on sheets 6 and 7 of the works plans, commencing at a point 262 metres north west of the bridge carrying that railway over public footpath LA8/5/40 between Avon Road and Lodway Close, Pill then terminating at a new junction with the Parson Street to Royal Portbury Dock railway, at a point 86 metres to the north of the junction of the highways of Ham Green and Westward Drive, Pill, being part of the existing railway between Parson Street and Royal Portbury Dock.

Associated development within the meaning of section 115(2) of the 2008 Act (development for which development consent may be granted)(**a**) and within Order limits comprising—

In the district of North Somerset:

Work No. 2 – diversion of the highway of Quays Avenue, Portishead, of 181 metres in length, shown on sheets 1 and 1A of the works plans, from the junction of Quays Avenue and Galingale Way to a point west of the existing gyratory junction of Quays Avenue, Harbour Road and Phoenix Way, Portishead, together with connections to existing highways, widening of the southern footway of Harbour Road, landscaping, new bus waiting facilities, signage, lighting, pedestrian crossing facilities, pipes, drains, cables, ducts, troughs, telecommunications apparatus, conduits and apparatus for utilities as well as footways, and a connection to the pedestrian and cycle track forming part of Work No. 4;

Work No. 2A – surface water drain, of 27 metres in length, shown on sheets 1 and 1A of the works plans north from Phoenix Way, Portishead into the watercourse known as the Cut;

Work No. 3 – a foot and cycle track, of 63 metres in length, shown on sheet 1 of the works plans, commencing at a junction with Work No. 4 east of the watercourse known as the Portbury Ditch, to a point west of Portbury Ditch, together with associated landscaping, signage, fencing, lighting, cables, ducts, troughs, telecommunication apparatus, conduits and apparatus for utilities;

Work No. 4 – a car park of 4,841 square metres in area, foot and cycle track of 275 metres in length and a new vehicular access to the highway of Harbour Road, shown on sheets 1 and 1A of the works plans, south of Harbour Road, Portishead and east of the Portbury Ditch, together with landscaping, lighting, signage, fencing, drainage in to the adjacent Portbury Ditch, to the west of Quays Avenue, Portishead;

Work No. 5 – railway station, of 396 square metres in area, shown on sheets 1 and 1A of the works plans, to the south of Phoenix Way, Portishead, comprising platform, shelter, office, waiting area, storage and refuse area, seating, ticket vending machine, closed circuit television equipment, passenger help point, toilets, utilities connections, telecommunications equipment,

(**a**) 2008 c 29 Section 115(2) was amended by section 160(3) of the Housing and Planning Act 2016 (c 22)

public address system, information boards and displays, signage, lighting columns, fencing, acoustic barrier, landscaping, railway communications mast and surface water drain in to the adjacent watercourse known as the Cut;

Work No. 6 – car park, of 4,419 square metres in area, shown on sheets 1 and 1A of the works plans, to the south of Phoenix Way, Portishead, including mobility impaired spaces, drainage, lighting, fencing, landscaping, signage, cycle parking facilities and utilities apparatus, together with access from the highway of Phoenix Way;

Work No. 7 – public foot and cycle track bridge over Work No. 1 shown on sheets 1 and 1A of the works plans to the south west of Trinity Primary School, Portishead together with connections to cycle tracks, lighting, drainage, signage, fencing and hardstandings;

Work No. 7A – public foot and cycle track, of 273 metres in length, shown on sheets 1 and 1A of the works plans, from Phoenix Way, Portishead to connect with Works Nos.7 and 7C, to the south of Tansy Lane and north of Work No. 1, together with signage, drainage, lighting, fencing and landscaping;

Work No. 7B – public foot and cycle track, of 150 metres in length, shown on sheets 1 and 1A of the works plans, from the diverted Quays Avenue, Portishead, to connect with Work No. 7 to the north of Galingale Way and to the south of Work No. 1, together with signage, drainage, lighting, fencing and landscaping;

Work No. 7C – public foot and cycle track, of 18 metres in length, shown on sheets 1 and 1A of the works plans, from Work No. 7 north to Tansy Lane, Portishead, together with signage, drainage, lighting, fencing and landscaping;

Work No. 7D – temporary construction compound, of 2,876 square metres in area, shown on sheet 1 of the works plans, to the south of Tansy Lane, Portishead and to the north of Work No. 1;

Work No. 7E – underground electrical supply cables of 39.07 metres in length connecting from Work No. 7 to Tansy Lane, Portishead, shown on sheet 1 and 1A of the works plans;

Work No. 8 – temporary construction haul road of 486 metres in length, shown on sheets 1 and 2 of the works plans, to the south of, and parallel to, Work No. 1, from a point south of Fennel Road, Portishead, to the highway known as Sheepway, Portbury;

Work No. 9 – permanent vehicular compound of 1,862 square metres in area, road/rail vehicle access point and access road from the highway of Sheepway, shown on sheet 2 of the works plans, to the north-west of the bridge carrying the highway of Sheepway over Work No.1, a permanent diversion of the existing permissive cycle path and works to the existing car parking area to the north-west of Sheepway, together with fencing, drainage, communications apparatus, ducts, troughs, utilities apparatus, hardstanding and means of access to the highway of Sheepway;

Work No. 10 – temporary diversion of the existing permissive cycle path, of 156 metres in length, shown on sheet 2 of the works plans, on the north west side of the highway of Sheepway, opposite Shipway Gate Farm, Portbury;

Work No. 10A – temporary construction compound of 2,179 square metres in area shown on sheet 2 of the works plans, to the north-west of the highway of Sheepway opposite Shipway Gate Farm, Portbury;

Work No 10B – temporary construction haul road to the north of the highway of Sheepway of 125 metres in length shown on sheet 2 of the works plans opposite Shipway Gate Farm, Portbury;

Work No. 11 – improvements to the existing agricultural access from Shipway Gate Farm, Portbury to the highway of Sheepway, shown on sheet 2 of the works plans, south of the disused Portishead Branch Line railway, including hardstanding, gate and visibility splays;

Work No. 11A – temporary construction haul road, of 590 metres in length, shown on sheet 2 of the works plans, east from the highway of Sheepway, to the south of and parallel to the disused

Portishead Branch Line railway to Work No. 12A together with temporary field accesses and hardstanding;

Work No. 11B – temporary construction haul road of 269 metres in length shown on sheet 2 of the works plans, to the south of the highway of Sheepway at Shipway Gate Farm, Portbury, together with temporary field accesses and hardstanding;

Work No. 12 – permanent vehicular access to the A369 classified road known as Portbury Hundred, shown on sheet 3 of the works plans, including hardstanding, gate and visibility splays;

Work No. 12A – temporary construction compound of 113,467 square metres in area, shown on sheets 2, 2B and 3 of the works plans, to the north of the A369 classified road known as Portbury Hundred and to the south of the disused Portishead Branch Line railway;

Work No. 13 – improvement of the existing access and parking area, shown on sheet 4 of the works plans, at The Drove, Portbury, to the north of the A369 classified road known as Portbury Hundred, including hardstanding and gates;

Work No. 13A – temporary vehicle turning space of 575.6 square metres in area, shown on sheet 4 of the works plans, south of the disused Portishead Branch Line railway, Portbury;

Work No. 14 – improvement to bridleway LA15/21/20, shown on sheet 4 of the works plans, at its junction with the highway of Royal Portbury Dock Road, Portbury;

Work No. 14A – improvement to bridleway LA8/66/10, shown on sheet 4 of the works plans, at its junction with the highway of Royal Portbury Dock Road, Portbury;

Work No. 14B – realignment of the existing permissive cycling route of 144.36 metres in length, shown on sheet 4 of the works plans, under Royal Portbury Dock Road, Portbury;

Work No. 15 – temporary path of 11 metres in length to connect bridleway LA8/66/10 with the highway of Marsh Lane, shown on sheet 5 of the works plans, on the western side of Marsh Lane, Easton in Gordano, and north of the disused Portishead Branch Line railway;

Work No. 16 – realignment of the existing permissive cycling route, shown on sheet 5 of the works plans, of 90.35 metres in length parallel to the disused Portishead Branch Line railway passing under the highway of Marsh Lane, Easton in Gordano, and connecting with bridleway LA8/67/10;

Work No. 16A – temporary construction compound of 7,509 square metres in area shown on sheet 5 of the works plans, beneath the Avonmouth Bridge of the M5 Special Road, Easton in Gordano;

Work No. 16C – road rail access point shown on sheet 5 of the works plans, west of the Avonmouth Bridge of the M5 Special Road, Easton in Gordano;

Work No. 17 – temporary construction compound of 89,293 square metres in area shown on sheets 5 and 6 of the works plans, at Lodway Farm, Pill, together with access to the highway of the Breaches, Easton in Gordano;

Work No. 17A – temporary construction haul road, of 1,078.35 metres in area shown on sheet 6 of the works plans between Work No. 17 and footpath LA8/5/40, Pill;

Work No. 18 – bridleway of 211 metres in length shown on sheet 5 of the works plans, commencing at a point to the west of the M5 Special Road and passing under the Avonmouth Bridge of the M5 to join National Cycle Way Network Route 41 between the Avonmouth Bridge of the M5 Special Road and Pill;

Work No. 19 – installation of new and alteration of existing railway signal equipment, troughs and cables, as shown on sheets 5 and 6 of the works plans, on the Bristol Port Company's railway from Portbury Junction and a new railway signal at the Bristol Port Company's Royal Portbury Dock;

Work No. 20 – temporary diversion of part of National Cycle Network Route 41 of 83 metres in length shown on sheet 6 of the works plans, north from its existing alignment on the street north of the Parson Street to Royal Portbury Dock railway, west of Avon Road, Pill to connect with the western turning head of Avon Road, Pill;

Work No. 20A – demolition of existing bridge carrying the Parson Street to Royal Portbury Dock railway over footpath LA8/5/40 and construction of new bridge and abutments, shown on sheet 6 of the works plans, south of Avon Road Pill and north of Lodway Close, Pill;

Work No. 20B – demolition of existing garages and temporary construction compound of 1,990 square metres in area, as shown on sheet 6 of the works plans, at Avon Road, Pill;

Work No. 21 – car park of 2,004 square metres in area, as shown on sheet 6 of the works plans, to the south of Severn Road and Monmouth Road, Pill, including landscaping, accesses to highway, drainage and attenuation tanks, signage, lighting, fencing, drainage, ducts, troughs, communications apparatus and utilities apparatus;

Work No. 21A – road/rail access point, permanent railway maintenance compound of 820 square metres in area and principal supply point building, as shown on sheet 6 of the works plans, south of Severn Road, Pill, including landscaping, lighting, fencing, drainage, ducts, troughs, communications apparatus, utilities apparatus and associated access;

Work No. 22 – railway station, shown on sheet 6 of the works plans, comprising platform, ramp, signage, seating, ticket vending machine, closed circuit television equipment, demolition of No. 7 Station Road, passenger help point, information boards and displays, passenger refuge area, car park drop off point (including mobility impaired spaces) and cycle parking facilities, lighting, fencing, landscaping, ground strengthening and stability works, communications apparatus, drainage and utilities apparatus, to the north west of Station Road, Pill;

Work No. 22A – improved bus waiting facility, shown on sheet 6 of the works plans, on the highways of Lodway and Heywood Road, Pill, north of the Pill Memorial Club, Pill, together with retaining wall, lighting, drainage and alteration of utilities apparatus;

Work No. 22B – temporary construction compound of 1,067 square metres in area shown on sheet 6 of the works plans, within the car park of Pill Memorial Club, Lodway, Pill;

Work No. 23 – temporary construction compound of 151 square metres in area, as shown on sheet 6 of the works plans, beneath and to the north of Pill Viaduct, Underbanks, Pill;

Work No. 24 – permanent vehicular compound of 2,011 square metres in area, shown on sheet 8 of the works plans, south of Ham Green Lake, together with a road rail vehicle access point, permanent access south from the highway of Chapel Pill Lane to the compound and new fencing, lighting, landscaping, utilities connections, laying of electricity, water, drainage and communications conduits and apparatus together with a new access to Ham Green Lake and improvements to Chapel Pill Lane;

Work No. 24A – temporary construction compound of 6,653 square metres in area, shown on sheet 8 of the works plans, accessed from the highway of Chapel Pill Lane, Ham Green, Pill; and

Work No. 25 – reconstruction of accommodation bridge known as Quarry Bridge No. 2, temporary construction compound and temporary ramp for construction access to the Parson Street to Royal Portbury Dock railway, shown on sheet 12 of the works plans.

In the City and County of Bristol:

Work No. 26 – permanent vehicular access, ramp, flood mitigation works and railway maintenance compound, of 2,948 square metres in area shown on sheet 15 of the works plans, east of the highway of the A369 classified road known as Clanage Road, Ashton, north of the Bedminster Cricket Club;

Work No. 26A – temporary construction compound of 3,346 square metres in area, shown on sheet 15 of the works plans, east of the highway of the A369 classified road known as Clanage Road, Ashton, north of the Bedminster Cricket Club,

Work No. 26B – permanent vehicular access to the highway of the A369 classified road known as Clanage Road, Ashton from the land to the north of the Bedminster Cricket Club, shown on sheet 15 of the works plans;

Work No. 27 – not used;

Work No. 28 – improvement of the highway of Winterstoke Road at its junction with Ashton Vale Road, as shown on sheet 16 of the works plans, including extension of existing left turn lane in to Ashton Vale Road, retaining wall, works to divert and install utility apparatus and installation of a new traffic signal control system, Ashton; and

Work No. 29 – temporary construction compound of 3,176 square metres within the rail freight facility at Liberty Lane, Bristol, shown on sheet 17 of the works plans.

And in connection with such works further associated development within the Order limits consisting of—

(a) permanent way (rail tracks) electrical equipment, power supply cubicles, cables, telecommunications apparatus, railway mobile communications masts and apparatus and signalling;

(b) ramps, means of access (including temporary haul roads) and construction compounds;

(c) embankments, aprons, abutments, shafts, foundations, retaining walls and structures, drainage, wing walls, fences, acoustic fences, catch fences, paths, access steps and culverts;

(d) works to alter, divert, maintain, replace and repair apparatus (including statutory undertakers' apparatus), including mains, sewers, pipes, drains and cables or for their protection;

(e) works to clear, maintain and interfere with water courses other than a navigable water course;

(f) landscaping and other works (including the creation of ponds) to mitigate any adverse effects of the construction, maintenance or operation of the authorised development described in the environmental statement;

(g) works for the benefit or protection of land affected by the authorised development;

(h) works required for the strengthening, improvement, maintenance or reconstruction of any streets;

(i) works to level crossings;

(j) works for the temporary diversion of public footpaths shown in the permanent and temporary stopping up and diversion plan;

(k) trenching and cabling associated with the new signalling and communications masts;

(l) strengthening earthworks and reconstructing retaining walls;

(m) vegetation clearance, rock bolting and rock dowels and safeguarding of unstable slopes or rock faces by stone-picking and removal of loose rocks;

(n) replacement or renewal of fencing;

(o) repairs to existing underbridges and overbridges, adding barriers to bridge parapets and raising of bridge parapets;

(p) alteration of the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by increasing or reducing the width of any kerb, footway, cycle track or verge within the street, extending any footway or removing replacing, altering or providing splitter islands in streets;

(q) works to place alter remove or maintain road furniture;

(r) works to place, alter, divert, relocate, protect, remove or maintain the position of apparatus (including statutory undertakers' apparatus), services, plant and other equipment in, under or above a street, or in other land, including mains, sewers, drains, pipes, lights, cables, cofferdams, fencing and other boundary treatments and to provide connections to adjoining land and buildings;

(s) landscaping, re-grading, re-profiling, contouring, noise barriers, works associated with the provision of ecological and archaeological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development:

(t) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling);

(u) establishment of site construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, drainage systems, temporary bridges over watercourses, storage ponds, processing plant, works and conveniences;

(v) pavement, kerbing and paved areas;

(w) signing, signals, street lighting, road markings, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and

(x) such other works, including working sites and works compounds, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which do not give rise to any materially new or materially worse adverse environmental effects to those assessed in the environmental statement.

SCHEDULE 2

Article 5 and 49

Requirements

PART 1

Requirements

1. In this Part—

"Ashton Vale Road and Winterstoke Road Highway Works Plan" means the plan to be certified as the Ashton Vale Road highway works plan by the Secretary of State for the purposes of this Order;

"Bridleway Extension under the Elevated M5 Plan" means the plan certified as the bridleway extension under the elevated M5 plan by the Secretary of State for the purposes of this Order;

"Cattle Creep Proposed General Arrangement drawing" means the plan certified at the Cattle Creep Proposed General Arrangement drawing by the Secretary of State for the purposes of this Order;

"Council's archaeologist" means the chief archaeologist for the relevant planning authority;

"currently operational railway land" means any part of the existing operational national railway network owned and managed by Network Rail that is within Order limits;

"environmental master plan" means the plans certified as the environmental master plan by the Secretary of State for the purposes of this Order;

"first commercial use" means the first use of Works Nos. 1, 1A and 1B for the carriage for fare paying passengers;

"fencing grades summary" means the summary of fencing types, based on plate 4.8 of the environmental statement and certified as the fencing grades summary by the Secretary of State for the purposes of this Order;

"general arrangement plans" means the plans certified as the general arrangement plans by the Secretary of State for the purposes of this Order;

"GSM-R mast" means Global System for Mobile Communications-Railway mast provided for the purposes of driver- signaller communications;

"Habitat impacted by construction works within the Avon Gorge Woodlands SAC plan" means the plans certified as the habitat impacted by construction works within the Avon Gorge Woodlands SAC plan by the Secretary of State for the purposes of this Order;

"MOVA" means a traffic control strategy designed to maximise the operational efficiency of a highway junction or crossing by adjusting the green time required for each approach and assessing the number of vehicles approaching the signals, whilst determining the impact that queuing vehicles would have on the overall operation of the junction;

"Portbury Hundred location of additional tree planting plans" means the plans certified as such by the Secretary of State for the purposes of this Order;

"preparatory activities" means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works;

"railway landscape plans (disused line)" means the plans certified as the railway landscape plans (disused line) by the Secretary of State for the purposes of this Order; and

"stage" means one of the stages of the authorised development and such other associated development as is connected with that stage as is described in paragraph 3.

Time limits

2. The authorised development must not commence after 5 years of the date of this Order.

Stages of authorised development

3.—(1) The following stages apply to the authorised development in the District of North Somerset—

(a) Stage 1 comprises Works Nos. 1, 1A, 5, 7, 7E, 9, 11, 11A, 12, 13, 14, 14A, 14B and 16C, being the new railway between Portishead and Station Road, Portbury; the new railway between old Portbury Station and Portbury Junction, the new Portishead Station; Trinity Primary School bridge; works at The Drove at Portbury; a road rail access point, at Easton in Gordano; works to bridleway at Royal Portbury Dock Road and Marsh Lane, Easton in Gordano, and flood attenuation works west of the M5 at Easton in Gordano;

(b) Stage 1A comprises Works Nos. 7D, 8, 10, 10A, 12A, 13A, 15, 16A, 17 and 17A being haul roads south of Work No. 1, cycle path diversions and compounds at Sheepway together with any use of neighbouring Order land as a temporary compound, a temporary construction compound north of the A369 at Portbury; construction haul roads; a permanent access from A369 at Portbury, temporary vehicle turning circle east of the Drove and north of the A369 Portbury Hundred, a temporary construction compound under the M5 Special Road Avonmouth Bridge; a temporary construction compound and haul road at Lodway;

(c) Stage 1B comprises Works Nos. 20, 20B, 23 and 24A and being demolition of garages at Avon Road, Pill, temporary diversion of bridleway to the west of Avon Road, Pill, temporary compound beneath Pill Viaduct, and a temporary construction compound at

Chapel Pill Lane, Ham Green together with any use of neighbouring Order land as a temporary compound;

(d) Stage 1C comprises Works Nos. 10B and 11B, being temporary haul roads to the north and south of Shipway Gate Farm, Sheepway;

(e) Stage 2 comprises Works Nos. 2, 2A, 3, 4, 6, and 7A-C being the diversion of Quays Avenue, Portishead, highway works at Harbour Road and Quays Avenue, Portishead; new highway drain; footpaths parallel to the disused Portishead Branch Line railway; public realm works and car parks at Portishead;

(f) Stage 3 comprises Work No. 11, being improvements to the existing agricultural access from Shipway Gate Farm, Sheepway;

(g) Stage 4 comprises Works Nos. 1B, 1C, 19, 20A, 21, 21A and 22 being works to the existing railway and to construct a railway between Portbury Junction and Pill Junction, installation of signalling equipment on the Bristol Port Company's railway, works to replace an underbridge to the north of Avon Road, Pill; Pill Station; car park at Pill Station and permanent maintenance compound and road rail access point;

(h) Stage 4A comprises Work No. 18 being a bridleway from under the M5 Avonmouth Bridge to meet National Cycle Network route no. 41 on the east side of the M5 Special Road, Pill;

(i) Stage 4B comprises Work No. 24 being a permanent maintenance access at Ham Green;

(j) Stage 5 comprises Works Nos. 22A and 22B being modifications to an existing bus stop and temporary compound at Pill Memorial Club, Lodway;

(k) Stage 6 comprises Work No. 25 being the reconstruction of Quarry Bridge No. 2 and the associated temporary compound in the Avon Gorge, together with the minor works to the railway between Pill Tunnel and Clifton Overbridge.

or such other stages of the Works that are agreed in writing with the relevant planning authority.

(2) The following stages apply to the authorised development in the City and County of Bristol:

(a) Stage 7 comprises Works Nos. 26, 26A and 26B, being a permanent road rail access point and compound, temporary construction compound at Clanage Road and new permanent access to the highway of Clanage Road, at Bower Ashton in Bristol;

(b) Stage 8 – not used;

(c) Stage 9 comprises Work No. 28, being works to the public highway at the junction of Winterstoke Road and Ashton Vale Road, Bristol; and

(d) Stage 10 comprises Work No. 29 being a temporary construction compound at the rail freight facility at South Liberty Lane, Bristol;

or such other stages of the Works that are agreed in writing with the relevant planning authority.

(3) The undertaker may submit for approval such part or parts of a stage as may be agreed with the relevant planning authority, and with the approval of the relevant planning authority carry out the approved parts of a stage without securing approval of those elements of a stage that are agreed with the relevant planning authority as remaining to be determined.

(4) Any restriction in a requirement in this Schedule that prevents a stage from commencing until details regarding that stage have been approved by the relevant planning authority does not prevent the undertaker carrying out any preparatory activities for that stage or the use of land within Order limits as a temporary construction compound.

Submission and approval of detail design

4.—(1) Those elements of the authorised development comprising the works listed in column (1) of the table in sub-paragraph (5) must not commence until the detail design for that element has been approved by the relevant planning authority.

(2) The detail designs submitted to the relevant planning authority in accordance with paragraph (1) must reflect the principles of the relevant design drawings listed in column (3) of the table in paragraph (5) unless otherwise agreed with the relevant planning authority.

(3) Any changes from the design drawings must be in accordance with the principles set out in the environmental statement.

(4) The relevant Work must be carried out in accordance with the detail designs approved by the relevant planning authority.

(5) The elements of the authorised development to which paragraph (1) applies are:

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(1) *Work No(s)*	*(2)* *Description*	*(3)* *Design drawing(s)*	*(4)* *Relevant planning authority*
2, 2A, 3, 4, 6, 7A-7D	Portishead highways and car parks	467470.BQ.04.20-100 467470.BQ.04.20-101 467470.BQ.04.20-102	North Somerset District Council
5	Portishead Station	W1097B-ARP-DRG-EAR-300001 W1097B-ARP-DRG-EST-300003 W1097B-ARP-DRG-EST-300004 W1097B-ARP-DRG-EST-300005	North Somerset District Council
7	Trinity Primary School bridge and electrical connection	W1097B-ARP-DRG-EST-300006 W1097B-ARP-DRG-EST-300007 W1097B-ARP-DRG-EPT-300001	North Somerset District Council
9	Sheepway Compound	467470.BQ.04.20-400 467470.BQ.04.20-401	North Somerset District Council
12	Portbury Hundred Access	467470.BQ.04.20-600	North Somerset District Council
13	Wessex Water Compound Access	467470.BQ.04.20-570	North Somerset District Council
14, 14A	Works to bridleways at Royal Portbury Dock Road	467470.BQ.04.20-530	North Somerset District Council
14B, 16	Realignment of permissive cycle path at Royal Portbury Dock Road	467470.BQ.04.20-550 467470.BQ.04.20-551 467470.BQ.04.20-552	North Somerset District Council
21	Pill Station – Severn Road Car Park	467470.BQ.04.20-207	North Somerset District Council
22	Pill Station and Forecourt	467470.BQ.04.20-209 W1097B-ARP-DRG-EST-300011	North Somerset District Council
22A, 22B	Bus stop on Heywood Road and Lodway, Pill at Pill Memorial Club	467470.BQ.04.20-290 467470.BQ.04.20-291	North Somerset District Council
24	Pill Tunnel Eastern Portal Compound	467470.BQ.04.20-219 467470.BQ.04.20-220 467470.BQ.04.20-221	North Somerset District Council

26, 26B	Clanage Road Compound and replacement access	467470.BQ.04.20-621	Bristol City Council

Construction Environmental Management Plan etc.

5.—(1) A stage of authorised development must not commence until the written Construction Environmental Management Plan (CEMP) for that stage has been approved by the relevant planning authority.

(2) The CEMP for a stage must be in accordance with the principles set out in the environmental statement, the Master CEMP, the COCP and the CTMP - Construction Traffic Management Plan.

(3) The CEMP for a stage must, where relevant to that stage, in particular include the following—

(a) an external communications plan;

(b) a pollution incident prevention and control plan;

(c) a site waste management plan;

(d) a construction traffic management plan;

(e) a construction workers travel plan;

(f) a materials management plan;

(g) a plan for storage for reuse of stripped soils within land forming part of haul roads or temporary compounds;

(h) a construction flood plan and flood emergency preparedness plan for any construction site and compound located within undefended flood zone 2 or flood zone 3;

(i) a surface water management plan;

(j) measures for the protection of wildlife;

(k) a reptile and amphibian mitigation strategy; and

(l) nuisance management plans regarding noise and vibration, dust, air pollution and lighting;

(4) The construction traffic management plan when required for a stage under sub-paragraph (3) must in particular and where relevant address—

(a) construction traffic routes and operational hours;

(b) site accesses;

(c) the management of junctions to and crossings of the public highway and other public rights of way;

(d) the scheduling and timing of abnormal load movements;

(e) temporary warning signs;

(f) restrictions on vehicle turning movements in to and out of compounds on the A369 Portbury Hundred classified road; and

(g) measures to minimise dust and mud.

(5) The relevant stage must be carried out in accordance with the COCP and the approved CEMP and construction traffic management plan for that stage;

(6) Where a part of the authorised development—

(a) is not within a relevant stage or associated development connected with a relevant stage; or

(b) does not consist of preparatory activities

then that part of the authorised development must be carried out in accordance with the COCP, the Master CEMP and the CTMP - Construction Traffic Management Plan.

Landscaping scheme – disused railway

6.—(1) Work Nos. 1 and 1A must not commence until a written landscaping scheme for those works, prepared in accordance with the principles of the railway landscape plans (disused line), has been submitted to and approved by the relevant planning authority. Works Nos. 1 and 1A must be carried out in accordance with the approved scheme or any variation to the scheme that has been approved by the relevant planning authority.

(2) The submitted landscaping scheme must include details of—

(a) location, number, species, size and planting density of any proposed planting;

(b) cultivation, importing of materials and other operations to ensure plant establishment;

(c) vegetation to be retained;

(d) implementation timetables for all landscaping; and

(e) proposals to take account of the presence of trees with trunks of a diameter of 100 millimetres or more and to minimize the loss of such trees.

(3) The written landscaping scheme for Work No. 1A must also contain measures to limit the impacts of the authorised development on the important hedgerow located between Work Nos. 1A and 17 and for the restoration of the important hedgerow following the cessation of use of Work No. 17.

(4) Any tree or shrub planted as part of the approved railway landscaping scheme that, within a period of five years after the date that it is planted, is removed, uprooted, destroyed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives consent to any variation.

Landscaping – other works

7.—(1) All landscaping shown in principle on the relevant design drawings must be carried out in accordance with the landscaping details shown on the relevant drawing submitted to and approved by the relevant planning authority in accordance with requirement 4. The relevant work must not commence until an implementation timetable relevant to the approved landscaping has been submitted to and approved by the relevant planning authority. The landscaping must be carried out in accordance with the approved details and the approved implementation timetable.

(2) Any tree or shrub planted as part of the approved landscaping scheme that, within a period of five years after the date that it is planted is removed, uprooted, destroyed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives consent to any variation.

(3) This requirement does not apply to Work Nos. 1, 1A, 1B or 1C or works subject to the Avon Gorge Vegetation Management Plan.

Temporary fencing

8.—(1) Prior to the commencement of a stage of the authorised development (or such part of that stage as may be agreed with the relevant planning authority) the relevant planning authority must receive for its approval a plan indicating the extent of temporary fencing that must be erected for the authorised development, together with a timetable for its installation and removal.

(2) A part of the authorised development within a stage (or such part of that stage as may be agreed with the relevant planning authority) and being an area where temporary fencing is so indicated must not commence without the temporary fencing approved by the relevant planning authority having first been erected.

(3) The approved temporary fencing must be retained and maintained to the reasonable satisfaction of the relevant planning authority until the cessation of works in that area.

(4) The fencing must be removed in accordance with the approved removal timetable to the satisfaction of the relevant planning authority.

Highway accesses

9.—(1) A stage of the authorised development must not commence until details of the siting, design and layout of any new or altered, permanent or temporary, access, and any temporary haul roads for that stage have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The submitted details must also include a timetable for carrying out the relevant activities.

(2) The approved highway alterations and improvements, including any altered or new accesses and any temporary haul roads, for that stage must be implemented in accordance with the approved details and timetable.

(3) Where the details submitted under paragraph (1) include details of temporary accesses and haul roads, the submitted details for such temporary accesses and haul roads must also include details for the removal of the temporary access and haul road and restoration of the land used for such access together with a timetable for removal of the accesses and haul road upon cessation of its use for the purposes of the authorised development.

Archaeology

10.—(1) Work Nos. 5, 9, 10, 10A, 12A, 17, 24, 24A, 26, 26A and 26B must not commence until a written scheme of investigation (WSI) for a watching brief covering any areas of archaeological interest identified by the environmental statement relevant to that work has, after consultation with the Council's archaeologist, been submitted to and approved by the relevant planning authority.

(2) The WSI must identify areas where a watching brief is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Where a WSI is required it must include a programme for post-investigation assessment and reporting and make provision for the publication and dissemination and for the archive deposition of the analysis and records of the site investigation as appropriate and commensurate with the archaeological material recovered.

(4) The watching brief carried out under the WSI must be carried out by a suitably qualified person or body approved by the relevant planning authority.

(5) The watching brief and post-investigation assessment and reporting must be completed in accordance with the programme set out in the approved WSI and the provision made for analysis, publication and dissemination of results and archive deposition has been secured where appropriate.

(6) In addition to the WSI required for Work No. 17, any part of Work No. 17 must not commence until details of a temporary fence to be erected to protect the linear earthworks feature reference number HER47401 as identified on the environmental master plan has, after consultation with the Council's archaeologist, been submitted to and approved by the relevant planning authority.

(7) The fence approved pursuant to paragraph (6) must be erected in accordance with the approved details and in accordance with a programme specified by the relevant planning authority and must be maintained to the reasonable satisfaction of the relevant planning authority until the land is restored following cessation of use of Work No. 17.

Surface and foul water drainage

11.—(1) A stage of the authorised development must not commence until written details of the surface and (if any) foul water drainage system (including means of pollution control) have, after consultation with the lead local flood authority and the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The approved drainage systems for the relevant stage must be constructed in accordance with the approved details and thereafter managed and maintained in accordance with the approved details for the lifetime of the development unless otherwise agreed with the relevant planning authority after consultation with the lead local flood authority and the Environment Agency.

(3) This requirement does not apply to currently operational railway land.

Trees

12.—(1) A stage of the authorised development must not commence until the relevant planning authority has confirmed that it has approved an arboricultural method statement for that stage prepared in accordance with BS:5837:2012 and detailing the proposed methods for protecting trees proposed to be retained, including a timetable for the installation and removal of the proposed protective measures.

(2) The plan submitted must also identify areas of tree protective fencing to be erected prior to commencement of that stage of the authorised development.

(3) The fencing shown on the approved plan is to be erected in accordance with the relevant arboricultural method statement and thereafter maintained and retained in its approved position during the construction period to the reasonable satisfaction of the relevant planning authority.

(4) The protective fencing must be removed to the satisfaction of the relevant planning authority in accordance with the time period specified in the arboricultural method statement for that stage.

Control of invasive plants outside of Avon Gorge Woodlands SAC

13.—(1) A stage of the authorised development must not commence until, after consultation with the relevant planning authority, a written scheme to prevent the spread or emanation of invasive plant species from the authorised development has been submitted to and approved in writing by the relevant planning authority.

(2) The approved scheme to prevent the spread or emanation of invasive plant species must be implemented before and maintained during the construction of the relevant stage of the authorised development.

(3) This requirement does not apply to the Avon Gorge Woodlands SAC.

Avon Gorge Woodlands SAC

14.—(1) Any part of the authorised development within the Avon Gorge Woodlands SAC must be carried out in accordance with the Avon Gorge Vegetation Management Plan.

(2) Any part of the authorised development within the Avon Gorge Woodlands SAC consisting of—

(i) foot accesses and steps;

(ii) GSMR masts, antennae and associated equipment boxes;

(iii) signal and associated equipment box;

(iv) catch fences;

(v) works to retaining walls and structures; or

(vi) rock stabilization works

must not commence before details of the location, siting and design of the relevant work, together with any required site clearance, working space and lay down areas, have been submitted to and approved by the relevant planning authority in consultation with Natural England. The details submitted for approval must be located within the areas shown for the relevant works on the general arrangement plans. The works must be carried out in accordance with the approved details.

(3) Work to remove, install or replace security fencing in the Avon Gorge Woodlands SAC must not commence before details of the location, siting, colour and design of the fencing, together with any required site clearance and working space, have been submitted to and approved by the relevant planning authority in consultation with Natural England. The details submitted for approval must be located within the areas shown for fencing in the habitat impacted by construction works within the Avon Gorge Vegetation Management Plan and any permanent security fencing to be installed must be of a nature substantially in accordance with the details set out in the relevant part of the general arrangement plans and the fencing grades summary. The works must be carried out in accordance with the approved details and the installed fencing thereafter retained unless alternative type fencing is required for railway operational safety reasons.

(4) Any temporary works within the Avon Gorge Woodlands SAC consisting of compounds or construction welfare facilities (including the temporary works that are part of Work No. 25) must not commence before the location, siting duration of use and details for the removal of the relevant facility has been approved by the relevant planning authority in consultation with Natural England.

(5) The facilities described in paragraph (4) must be carried out as approved and the relevant facility must at the conclusion of the temporary works be removed to the satisfaction of the relevant planning authority in consultation with Natural England and in accordance with the approved details.

(6) The mitigation and compensation measures specified in the Avon Gorge Vegetation Management Plan must be carried out in accordance with the timetables set out in that document. The measures must thereafter be managed in accordance with the Avon Gorge Vegetation Management Plan to the satisfaction of the relevant planning authority in consultation with Natural England.

(7) The undertaker must provide monitoring reports to the relevant planning authority and Natural England no later than 12 months following first commercial use in accordance with the provisions of the Avon Gorge Vegetation Management Plan. Thereafter monitoring reports must be provided as specified in the Avon Gorge Vegetation Management Plan.

External lighting and control of artificial light emissions during construction

15.—(1) A stage of the works (or such part of that stage as may be agreed with the relevant planning authority) must not commence until written details of any temporary external lighting to be installed in connection with the construction of that stage, including measures to prevent light spillage, have been submitted to and approved by the relevant planning authority; and any approved means of lighting must be installed in accordance with the approved details and retained for the duration of the construction period.

(2) Any means of construction lighting approved under sub-paragraph (1) must be removed on completion of the relevant stage.

Construction hours

16.—(1) Except for—

(a) works on any existing highway,

(b) works on currently operational railway land; or

(c) activities associated with such works within the compounds authorised by this Order

to which no restriction on working hours applies under this Order, works to construct the authorised development must not take place other than within normal daytime working hours (6.30am to 6pm Monday to Saturday) unless paragraph (2) applies.

(2) Construction work must not take place—

(a) on Sundays, Bank or Public Holidays; or

(b) outside the times specified in paragraph (1)

except for such working which has been notified to and approved by the relevant planning authority and communicated to affected residents by an agreed notification procedure.

(3) Nothing in this requirement prevents use of construction compounds for:

(a) necessary preparation, before and after each shift, for items such as the management of materials and machinery,

(b) staff briefings,

(c) maintenance and cleaning of site welfare facilities;

(d) Stockpile management and removal or redundant material; or

(e) arrival of personnel on site and parking

after 6am Monday to Saturday.

Contaminated land and groundwater

17.—(1) Any stage of the authorised development must not commence until a written scheme applicable to that stage to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The scheme must include an investigation and assessment report (including a desk based study), prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken with respect to any contaminants on the site.

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

(4) Where the scheme sets out remedial measures to be taken with respect to any contaminants on the site, a verification plan must also be submitted providing details of the data that will be collected in order to demonstrate that the remedial measures are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

(5) If, during development, contamination not previously identified is found to be present at the site, no further development (unless otherwise agreed in writing with the relevant planning authority) is to be carried out, until a remediation strategy detailing how this unsuspected contamination will be dealt with has, after consultation with the relevant planning authority and the Environment Agency, been submitted to and approved by the relevant planning authority. The remediation strategy must be implemented as approved.

(6) Paragraphs (1) to (5) do not apply to any currently operational railway land.

Works to Winterstoke Road, Bristol

18.—(1) Work No. 28 (Winterstoke Road and Ashton Vale Road Junction) must not commence until the relevant planning authority, in consultation with the relevant highway authority, has approved the detail design for Work 28, to include—

(a) an extended left turn lane on Winterstoke Road for vehicles in to Ashton Vale Road; and

(b) details for the installation of a MOVA system or other traffic control measures designed to maximise the operational efficiency of the Winterstoke Road and Ashton Vale Road junction including provision for the movement of trains over the level crossing at Ashton Vale Road.

(2) The detail design required by paragraph (1) to be submitted to the relevant planning authority must be in substantial accordance with the Ashton Vale Road and Winterstoke Road Highway Works Plan.

(3) Work No. 28 must be carried out in accordance with the approved details to the satisfaction of the relevant planning authority in consultation with the relevant highway authority prior to first commercial use.

Temporary path south of Trinity Primary School, Portishead

19.—(1) Work to lay out a temporary path between the points T1 and T2 on sheet 1 of the crossings to be extinguished plans must not commence until—

(a) details of the siting, design and method of construction of the proposed temporary path; and

(b) a statement detailing the times at which the temporary path (or any replacement temporary path for which siting, design and method of construction has previously been approved by the relevant planning authority) will be available for use.

have been approved in writing by the relevant planning authority.

(2) The statement to be submitted in accordance with sub-paragraph (1)(b) must in particular explain that the temporary path (or any approved replacement)—

(a) will be available for use between the hours of 08:00-16:30 Monday to Friday; and

(b) will be available for use between daylight hours on Saturdays and Sundays.

(3) The temporary path (or any replacement temporary path approved by the relevant planning authority) must be constructed in accordance with the approved details and must, following its construction, be retained and maintained as approved and available for use in accordance with the approved statement to the satisfaction of the relevant planning authority.

(4) Any temporary path must be removed within a period of 6 months following the opening of Work No. 7 for public use.

Path at Marsh Lane, Easton in Gordano

20.—(1) Work No. 15 must not commence until written details of the levels and surfacing of the Work have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The Work must be carried out in accordance with the approved details.

(2) Following cessation of the construction haul road between Marsh Lane and the compounds located under the M5 Avonmouth Bridge and on Lodway Farm, Work No. 15 must be removed within 6 months to the satisfaction of the relevant planning authority in consultation with the relevant highway authority.

Temporary path at Avon Road, Pill

21.—(1) Work No. 20 must not commence until written details of the levels and surfacing of the Work have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The Work must be carried out in accordance with the approved details prior to commencement of Work No. 20A or 20B. Work No. 20 must thereafter be retained and available for use for the duration of the use of Work No. 20B as a construction compound.

(2) Following cessation of use of Work No. 20B, Work No. 20 must be removed within 6 months to the satisfaction of the relevant planning authority.

Restoration of land used temporarily for construction

22.—(1) Any land within the Order limits which is used temporarily for construction of the authorised development and not ultimately used for the purposes of the permanent works or approved landscaping, must be reinstated in accordance with such details the relevant planning authority in consultation with (if relevant) the relevant highway authority may approve, as soon as

reasonably practicable and in any event within twelve months of completion of that part of the authorised development for which the land is used.

(2) Paragraph (1) does not apply to any mitigation, ground or rock stability, catch fencing, geotechnical or strengthening works to which article 33(4)(d) (temporary use of land for carrying out the authorised development) applies and which have been placed on land which is used temporarily for the authorised development.

Watercourses

23.—(1) Work Nos. 1 and 1A must not commence until a scheme and programme (including timescale) for works proposed to any watercourse flowing under the authorised development has been submitted to and approved in writing by the relevant planning authority in consultation with, if relevant, the lead local flood authority, Environment Agency and IDB. The scheme submitted for approval must include details of the proposed clearance and repair works together with proposals for any temporary obstructions within the watercourse and any over pumping or other proposals for the maintenance of flow during the works.

(2) The works to a watercourse to which paragraph (1) applies must be carried out and the watercourse subsequently reinstated in accordance with the approved scheme and programme.

(3) Unless otherwise permitted under paragraph (1), throughout the period of construction, all watercourses must be maintained so that the flow of water is not impaired or the drainage on to and from adjoining land rendered less effective.

For the protection of bats

24.—(1) Work Nos. 1, 1A, 1B and 1C must not commence until written details of the proposed tree planting on the A369 Portbury Hundred classified road have been approved in writing by the relevant planning authority in consultation with the relevant highway authority and Natural England. The details submitted for approval must accord with the Portbury Hundred location of additional tree planting plans.

(2) The proposed tree planting on the A369 Portbury Hundred classified road must be carried out in accordance with the approved details to the reasonable satisfaction of the relevant planning authority in the first planting season after the details have been approved by the relevant planning authority unless the planting has already been carried out to the reasonable satisfaction of the relevant planning authority.

(3) The required planting must be maintained to the reasonable satisfaction of the relevant planning authority for five years following completion.

(4) No part of the authorised development must commence in the Avon Gorge Woodlands SAC until—

(a) five artificial bat roosts have been installed in the locations shown on sheets 14, 17, 18 and 19 of the environmental master plan; and

(b) a grille has been installed at the entrance to the cave known as Adit Cave 7 in the location shown on sheet 19 of the environmental master plan

to the satisfaction of the relevant planning authority.

Permanent fencing outside of Avon Gorge Woodlands SAC

25.—(1) Subject to paragraphs (2) and (3) and without affecting requirement 31(4), a stage of the works must not commence until written details of any permanent security fencing to be installed in connection with that stage, together with a timetable for its installation, have been submitted to and approved by the relevant planning authority.

(2) Where new fencing is to be provided that does not fall within a stage, and is outside of the Avon Gorge Woodlands SAC any permanent security fencing to be installed must be of a nature substantially in accordance with the details set out in the general arrangement plans and the fencing grades summary.

(3) Any new permanent security fencing must be installed in accordance with the approved details and thereafter retained unless alternative type fencing is required for railway operational safety reasons.

Permanent acoustic fencing

26.—(1) Work Nos. 1 and 1A must not commence until written details of the proposed permanent acoustic mitigation fences, to be located to the south of the proposed Portishead station and at the disused Portbury Station at the locations shown on the general arrangement plans have been submitted to and approved by the relevant planning authority.

(2) The dimensions of the acoustic mitigation fences must be—

(a) between 200 and 210 metres in length and 2 metres in height from track bed level for the fence to be located to the south of the proposed Portishead station; and

(b) between 35 and 55 metres in length and 2.4 metres in height from track bed level for the fence to be located at the former Portbury Station.

(3) The permanent acoustic fencing, or other means of enclosure, must be installed as approved prior to first commercial use of Work Nos. 1 and 1A and thereafter retained.

Portishead Station

27.—(1) Work No. 5 (Portishead Station) must not commence until written details of any permanent lighting to be installed in connection with that work, including measures to minimise light spillage, have been submitted to and approved by the relevant planning authority, the authority acknowledging the necessity for the lighting to comply with Railway Industry Standards.

(2) Work No. 5 must not commence until written details of any GSM-R mast to be located at Portishead Station have been submitted to and approved by the relevant planning authority. The GSM-R mast must not exceed 12 metres in height from the proposed track bed level of Work No. 1 at Portishead Station.

(3) Work No. 5 must not commence until written details of proposals for the inclusion of on-site energy generation to be incorporated within the detail design for Portishead Station have been submitted to and approved by the relevant planning authority.

(4) Work No. 5 must not commence until a Flood Risk Assessment (FRA) for this work has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency. If the FRA concludes that Work No. 5 is at risk of flooding then the FRA must include details of the mitigation, such as a flood emergency and evacuation plan, that would be required for the station and users to remain safe should a flood event occur.

(5) Work No. 5 must be carried out in accordance with the approved details.

(6) First commercial use must not occur prior to the approval of a station travel plan for Portishead Station by the relevant planning authority. The content of the station travel plan must substantially reflect the outline station travel plan for Portishead station submitted as part of the Environmental Statement, as Volume 4, Technical Appendices, Appendix 16.1 Transport Assessment (Part 17 of 18) – Appendix M, Outline Station Travel Plans.

Pill Station

28.—(1) Work No. 22 (Pill Station) must not commence until written details of any permanent lighting to be installed in connection with that Work, including measures to minimise light spillage, have been submitted to and approved by the relevant planning authority in consultation with Natural England, both acknowledging the necessity for the lighting to comply with Railway Industry Standards.

(2) The submitted details must demonstrate to the reasonable satisfaction of the relevant planning authority that the lighting levels on the northern platform of the former Pill Station will not be above 0.5 lux as a result of the permanent lighting proposed or the provision of lighting screens to restrict light spill on to the northern platform.

(3) Work No. 22 must not commence until written details of works to minimise light spill into the arches of the former stepped access to the northern platform of the former Pill Station have been submitted to and approved by the relevant planning authority in consultation with Natural England.

(4) The approved works must be installed in accordance with the approved details prior to first commercial use and thereafter maintained to the reasonable satisfaction of the relevant planning authority for ten years.

(5) First commercial use must not occur prior to the approval of a station travel plan for Pill Station by the relevant planning authority. The content of the station travel plan must substantially reflect the outline station travel plan for Pill station submitted as part of the Environmental Statement, as Volume 4, Technical Appendices, Appendix 16.1 Transport Assessment (Part 17 of 18) – Appendix M, Outline Station Travel Plans.

Operational lighting – highways, bridges, paths and car parks

29.—(1) Any part of the authorised development which includes—

(a) new highway lighting;

(b) new permissive paths or public rights of way including new lighting;

(c) lighting of Work No. 7; or

(d) new car parks at Portishead or Pill including new lighting

must not commence until written details of any permanent lighting to be installed in connection with the relevant work, including measures to prevent light spillage, have been submitted to and approved in writing by the relevant planning authority.

(2) Any approved means of lighting must be installed in accordance with the approved details.

Works affecting M5 Junction 19

30.—(1) Works Nos. 1- 24A must not commence until the undertaker has created a Traffic Management Working Group (J19 TMWG) to consider the impacts of the authorised development on Junction 19 of the M5 special road which must be organised by the undertaker and to which Highways England, Bristol Port Company, Network Rail and the relevant highway authority will be invited to participate. Unless agreed otherwise by the parties J19 TMWG will meet on a monthly basis for the duration of the construction period.

(2) Works Nos. 1- 24A must not commence until the local planning authority has approved in writing a construction traffic management plan having first consulted with Highways England in respect of those works as they affect Junction 19 of the M5 ("J19 CTMP") and detailing—

(a) construction traffic routes (including HGV routes, construction traffic profile (for the duration of construction period disaggregated by daily movements, vehicle type (including abnormal loads) and construction activity) and operational hours;

(b) the construction compounds to which the J19 CTMP will apply ("the J19 compounds");

(c) the management of junctions to and crossings of the public highway and other public rights of way;

(d) the scheduling and timing of abnormal load movements;

(e) temporary warning signs;

(f) a scheme to encourage the use of public transport amongst contractors;

(g) a monitoring strategy to include the provision of a monitoring report to be submitted to the J19 TMWG a minimum of one week in advance of the J19TMWG monthly meeting

(h) a change process (in the event that any changes to the J19 CTMP are proposed during the construction phase) and a process to implement corrective measures if required; and

(i) a construction worker travel plan, including car parking arrangements for staff and contractors.

(3) All morning shift construction staff arriving by private car at the J19 compounds will be told in advance not to arrive between the hours of 7.30am and 9am (Monday to Friday) ("the restricted hours").

(4) Except in exceptional circumstances morning shift construction staff arriving by private car at the J19 compounds must not arrive within the restricted hours.

(5) The undertaker must record and report to Highways England in the CTMP monitoring and reporting strategy the numbers of morning shift staff arriving by private car at the J19 compounds within the restricted hours together with the exceptional circumstances for such arrival;

(6) The numbers of staff arriving by private car within the restricted hours at the J19 compounds in the absence of any exceptional circumstances must be reported to Highways England in accordance with (5) above together with the proposed steps to be taken by the undertaker to avoid any further such arrivals within the restricted hours.

Clanage Road, Bristol

31.—(1) Works 26, 26A and 26B must not commence until a flood plan which details—

(a) the emergency and evacuation procedures for use of the temporary and permanent compound;

(b) the location, height above ground level and the duration on site of the welfare facility on the temporary compound; and

(c) the means to remove materials stored at the temporary and permanent compound in the event of flooding;

have been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency and the lead local flood authority. The approved flood plan must thereafter be complied with to the satisfaction of the relevant planning authority.

(2) The landscaping and planting forming part of Work No. 26 must be carried out in accordance with the relevant design drawing prior to first use of Work No. 26 as a permanent maintenance compound. Any tree or shrub planted as part of the landscaping that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives written consent to any variation.

(3) The regrading of the levels forming part of Work No. 26 must be carried out, in accordance with the Clanage Road, compound, landscaping and access plan prior to first use of Work No. 26 as a permanent maintenance compound. The levels must thereafter be maintained.

(4) Prior to the first use of Work No. 26 as a permanent maintenance compound details of the permanent paladin type fencing including colour height and location must be submitted to and approved by the relevant planning authority and once installed must be permanently maintained.

New bridleway east of M5 Avonmouth Bridge

32.—(1) Work No. 18 must not commence until the siting, design, landscaping and method of construction of the proposed bridleway have been submitted to and approved by the relevant planning authority. The submitted details must adhere to the principles shown on the Bridleway Extension under the Elevated M5 Plan.

(2) Work No. 18 must thereafter be carried out in accordance with the approved details.

Cattle Creep Bridge, Easton in Gordano

33.—(1) Work No. 1B must not commence before the undertaker has provided to the relevant planning authority and the Environment Agency a topographic survey setting out the existing ground levels at Cattle Creep bridge, Easton in Gordano.

(2) Works to Cattle Creep Bridge must be carried out and retained thereafter in accordance with the principles set out in the Cattle Creep Proposed General Arrangement drawing and in particular the arch of the Cattle Creep Underbridge must not be altered and the ground level beneath the Cattle Creep Underbridge must not be raised without the prior consent in writing of the relevant planning authority following consultation with the Environment Agency and (if relevant) the lead local flood authority.

Trinity Primary School Bridge

34.—(1) Work No 7 must not commence until details of any permanent lighting to be installed in connection with that work, including measures to minimise light spillage, have been submitted to and approved by the relevant planning authority.

(2) Work No 7 must not commence until details of the location, design and colour of privacy screens, if required by the relevant planning authority, have been submitted to and approved by the relevant planning authority.

(3) Work No7 must be carried out in accordance with the approved details and thereafter the required details must be permanently retained.

Perimeter Track between Marsh Lane and the compounds under the M5 Avonmouth Bridge and on Lodway Farm

35.—(1) Work Nos 16A and 17 must not commence until a pre-commencement survey of the perimeter track between Marsh Lane and Work Nos 16A and 17 (The Marsh Lane Track) has been undertaken and submitted to and approved by the relevant planning authority. The pre-commencement survey must include but not be limited to:

(a) details of the current surfacing material;

(b) details of the sub-structure; and

(c) an assessment of whether the Marsh Lane Track as currently constructed would be able to take the volume of construction traffic for the authorised development that will need to access these works.

(2) Based on the results of the pre-commencement survey a strategy (the Marsh Lane Track Strategy) must be submitted to and approved by the relevant planning authority. The Marsh Lane Track Strategy must include but not be limited to:

(a) details of what, if any, measures are required to minimise damage to the perimeter track by construction vehicles using the Marsh Lane Track to access Work Nos 16A and 17;

(b) a timescale for the implementation of any necessary measures;

(c) a strategy for on-going maintenance and management of the Marsh Lane Track during construction of the authorised development;

(d) a strategy for using the Marsh Lane Track in conjunction with the owner of the Marsh Lane Track and other parties permitted to use it by the owner; and

(e) details of management measures to minimise dust generation from construction traffic for the authorised development.

(3) Work Nos 16A and 17 must be carried out in accordance with the Marsh Lane Track Strategy.

(4) Within six months of the cessation of the use of Marsh Lane Track for construction traffic for the authorised development a post-construction survey must be submitted to the relevant planning authority for approval. The post-construction survey must include but is not limited to:

(a) details of the state of the Marsh Lane Track post construction;

(b) details of what measures/repairs, if any, are required to ensure that the Marsh Lane Track is returned in the same or similar state to pre-commencement; and

(c) a timetable for the implementation of any measures/repairs that would be required.

(5) Any measures/repairs (including, without limitation, any physical works required as a result of the pre-commencement strategy or the post-construction survey) must thereafter be carried out as approved by the relevant planning authority unless the permission of the street authority (as street authority and as owner) for the relevant measures/repairs to the Marsh Lane Track is not forthcoming.

Pill Tunnel Eastern Portal Compound Access, Ham Green

36. Work No 24 must not commence until written details of the levels and surfacing of the Work have been submitted to and approved by the relevant planning authority. Work No 24 must thereafter be carried out and retained in accordance with the approved details.

Requirement for written approval

37. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

38.—(1) With respect to any requirement which requires the authorised development or any part of it to be carried out in accordance with the details, plans or schemes approved under this Schedule, the approved details, plans or schemes are taken to include any amendments that may subsequently be approved in writing by the relevant planning authority in consultation with any other consultee specified in the requirement in question, or approved in writing by the relevant planning authority or another approval authority.

(2) Any amendments to or variations from the approved detail, plans or schemes must be unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Anticipatory steps towards compliance with any requirement

39. If before this Order came into force the undertaker or any other person took 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.

PART 2

Procedure for discharge of requirements

Applications made under requirements

40.—(1) Where a valid application has been made to the relevant planning authority for any consent, agreement or approval required or contemplated by a requirement (including agreement or approval in respect of part of a requirement) included in this Order, the relevant planning authority 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 relevant planning authority acknowledge the application;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 41 (further information);

or such longer period as may be agreed between the undertaker and the relevant planning authority.

(2) Subject to sub-paragraphs (3) and (4), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority 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 relevant planning authority for any consent, agreement or approval required by a requirement included in this Order;

(b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and

(c) the application is accompanied by a report that considers it likely that the subject matter of the application is to give rise to any materially new or materially worse environmental effects in comparison with the authorised development as approved,

then the application is taken to have been refused by the relevant planning authority at the end of that period.

(4) Sub-paragraph (2) will only apply to an application made under requirements if—

(a) at least 6 weeks have elapsed since the application was received by the relevant planning authority,

(b) the undertaker has served on the relevant planning authority written notice that sub-paragraph (2) will apply from a date specified in the notice (such date not being less than 8 weeks from the date the application was received by the relevant planning authority), and

(c) by the date specified in the notice (or such later date as the relevant planning authority may agree with the undertaker) the relevant planning authority has not determined the relevant application.

Further information

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

(2) In the event that the relevant planning authority considers such further information to be necessary, the relevant planning authority must, within 20 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant planning authority does not give such notification within this 20 day period the relevant planning authority is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 40 (applications made under requirements) and in this paragraph.

Appeals

42.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required or contemplated by any of the provisions of this Order or grants it subject to conditions;

(b) the relevant planning authority does not give notice of its decision to the undertaker within the decision period specified in sub-paragraph 40(1) (applications made under requirements);

(c) on receipt of a request for further information under paragraph 41 (further information) the undertaker considers that either the whole or part of the specified information

requested by the relevant planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(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 determination, or (where no determination has been made) expiry of the decision period as determined under paragraph (1);

(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 relevant planning authority and the requirement consultees;

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal ("the appointed person")(**a**) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person's attention should be sent;

(d) the relevant planning authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations 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 shall make any counter-submissions to the appointed person within 20 business days of receipt of written representations under paragraph (d).

(3) The appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(4) The appointment of the appointed person may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(5) If the appointed person considers that further information is necessary to enable consideration of 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.

(6) Any further information required under sub-paragraph (5) is to 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. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.

(7) 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 relevant planning 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.

(8) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person under this paragraph.

(9) The appointed person may proceed to a decision even though no written representations have been made within the prescribed 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.

(**a**) Appointed by the Planning Inspectorate on behalf of the Secretary of State

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

(11) If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the Order or for the purpose of this Schedule as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person are to be met by the undertaker**(a)**.

(13) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. 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 Planning Practice Guidance published by the Department for Communities and Local Government on 6th March 2014 or any circular or guidance which may from time to time replace it.

Interpretation of Part 2 of Schedule 2

43. In this part of this Schedule—

"the appeal parties" means the discharging authority, the undertaker and any requirement consultees;

"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**(b)**;

"requirement consultee" means any body named in a requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that requirement.

SCHEDULE 3

Article 13

Streets subject to street works

(1) *Area*	*(2)* *Street subject to street works*
In the District of North Somerset	Harbour Road, Portishead
In the District of North Somerset	Haven View, Portishead
In the District of North Somerset	Phoenix Way, Portishead
In the District of North Somerset	Quays Avenue, Portishead
In the District of North Somerset	Tansy Lane, Portishead
In the District of North Somerset	Galingale Way, Portishead
In the District of North Somerset	Conference Avenue, Portishead
In the District of North Somerset	Sheepway, Portbury
In the District of North Somerset	Station Road, Portbury
In the District of North Somerset	The Portbury Hundred, Portbury
In the District of North Somerset	Royal Portbury Dock Road, Portbury

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(**a**) The costs of the appointed person are calculated based on the applicable day rate for a Single Inspector as if he or she were appointed under section 78 and section 79 of the 2008 Act See the National Infrastructure Planning website for more information: https://infrastructure planninginspectorate gov uk/application-process/application-fees/

(**b**) 1971 c 80

In the District of North Somerset	Marsh Lane, Easton in Gordano
In the District of North Somerset	Access road to the M5 Avonmouth Bridge east of Marsh Lane, Easton in Gordano
In the District of North Somerset	Severn Road, Pill
In the District of North Somerset	Access road to the M5 Avonmouth Bridge, west of Avon Road, Pill
In the District of North Somerset	Avon Road, Pill
In the District of North Somerset	Monmouth Court, Pill
In the District of North Somerset	Monmouth Road, Pill
In the District of North Somerset	Newport Road, Pill
In the District of North Somerset	Crusty Lane, Pill
In the District of North Somerset	Back Lane, Pill
In the District of North Somerset	Station Road, Pill
In the District of North Somerset	Chapel Row, Pill
In the District of North Somerset	Myrtle Hill, Pill
In the District of North Somerset	Sambourne Lane, Pill
In the District of North Somerset	Heywood Road, Pill
In the District of North Somerset	Lodway, Pill
In the District of North Somerset	Underbanks, Pill
In the District of North Somerset	Watchhouse Road, Pill
In the District of North Somerset	Macrae Road, Pill
In the District of North Somerset	Fitzharding Road, Pill
In the District of North Somerset	Ham Green, Pill
In the District of North Somerset	The Green, Ham Green, Pill
In the District of North Somerset	Hart Close, Ham Green, Pill
In the District of North Somerset	Chapel Pill Lane, Ham Green, Pill
In the City and County of Bristol	Clanage Road, Bower Ashton
In the City and County of Bristol	Ashton Road, Ashton
In the City and County of Bristol	Ashton Gate Underpass, Ashton
In the City and County of Bristol	Winterstoke Road, Ashton
In the City and County of Bristol	Marsh Road, Ashton
In the City and County of Bristol	Ashton Vale Road, Ashton

SCHEDULE 4

Article 14

Streets to be stopped up

PART 1

Street for which a substitute is to be provided

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New Highway to be substituted*
District of North Somerset	Quays Avenue, Portishead	160 metres of Quays Avenue shown by vertical zebra stripes the points marked A-A and B-B on sheet 1 of the permanent and temporary stopping up and diversion plan	127 metres of new all-purpose highway shown by stipple hatch between the points marked C-C and D-D on sheet 1 of the permanent and temporary stopping up

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	and diversion plan (Work No. 2)

PART 2

Streets for which no substitute is to be provided

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*
In the District of North Somerset, Portishead	All rights to use the former Moor Lane crossing south of Trinity Primary School Portishead	Between the points marked S7 and S8 on sheet 1of the permanent and temporary stopping up and diversion plan
In the District of North Somerset, Portbury	All rights to use crossing forming part of the Drove, north of the highway known as Portbury Hundred	Between the points marked S17 and S18 on sheet 4 of the permanent and temporary stopping up and diversion plan

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SCHEDULE 5

Article 15

Streets to be stopped up temporarily

PART 1

Street to be stopped up temporarily for which a substitute is to be provided

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*	*(4)* *Replacement to be provided*
In the District of North Somerset, Pill	Unnamed street from Avon Road, Pill to the Avonmouth Bridge of the M5 Special Road	Between the points marked TS4 and TS5 on sheet 6 of the permanent and temporary stopping up and diversion plan	Temporary route for non-motorised users and motorised vehicles of less than 50 cc engine capacity between the points marked TS4 and TS4A shown on sheet 6 of the permanent and temporary stopping up and diversion plan

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PART 2

Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension

(1) *Area*	*(2)* *Bridleways and footpaths to be temporarily suspended*	*(3)* *Extent of temporary suspension*
In the District of North Somerset, Easton in Gordano	Public bridleway LA8/67/10 from its junction with Marsh	Between the points marked TS1 and TS2 on sheet 5 of the

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	Lane to its termination point under the Avonmouth Bridge of the M5 Special Road	permanent and temporary stopping up and diversion plan
In the District of North Somerset, Easton in Gordano	Public footpath LA8/68/10 from its junction with public bridleway LA8/67/10 to its junction with public footpaths LA8/6/5 and LA8/6/10 under the Avonmouth Bridge of the M5 Special Road	Between the points marked TS2 and TS3 on sheet 5 of the permanent and temporary stopping up and diversion plan
In the District of North Somerset, Pill	Public footpath LA8/5/40 between Lodway Close and Avon Road, Pill	Between the points marked TS6 and TS7 on sheet 6 of the permanent and temporary stopping up and diversion plan
In the District of North Somerset, Pill	Public footpath LA8/4/10 between Avon Road and Severn Road, Pill	Between the points marked TS7 and TS8 on sheet 6 of the permanent and temporary stopping up and diversion plan

SCHEDULE 6

Article 16

Bridleways, cycle tracks and footpaths

PART 1

Footpath to be diverted

(1) *Area*	*(2)* *Footpath to be stopped up*	*(3)* *Extent of Stopping up*	*(4)* *New Footpath to be substituted*
City and County of Bristol, Ashton	Part of footpath BCC/422/10 known as Barons Close Level Crossing or Ashton Containers Crossing, Ashton, Bristol	Between the points marked S31 and S32 on sheet 16 of the permanent and temporary stopping up and diversion plan	507.50 metres of footpath BCC/422/10 shown on sheet 16 of the permanent and temporary stopping up and diversion plan

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PART 2

New public rights of way to be created

(1)	*(2)*
Cycle track	Between points CT1 and CT2 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT2 and CT3 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT4 and CT5 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT5 and CT6 shown on Sheet 1 of the new highways plan
Cycle track	Between points CT6 and CT8 shown on Sheet 1 of the new highways plan

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Bridleway	Between points B1 and B2 shown on Sheet 5 of the new highways plan

SCHEDULE 7

Article 17

Access to works

(1) *Area*	*(2)* *Description of access*
In the District of North Somerset	Access from Harbour Road, Portishead shown as AW1.1 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Quays Avenue, Portishead shown as AW1.2 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Phoenix Way, Portishead shown as AW1.3 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from Quays Avenue, Portishead shown as AW1.4 on sheet 1 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway to field to the north of the highway, south of the disused Portishead branch line, shown as AW2.1 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway north of the disused Portishead branch line, shown as AW2.2 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway to field to the south of the highway, south of the disused Portishead branch line, shown as AW2.3 on sheet 2 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Portbury Hundred, west of Station Road Portbury, shown as AW3.1 on sheet 3 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Sheepway, Portbury, shown as AW3.2 on sheet 3 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Station Road, Portbury, shown as AW3.3 on sheet 3 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Portbury Hundred, east of Station Road, Portbury, shown as AW4.1 on sheet 4 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch Line railway, shown as AW5.1 on sheet 5 of the compounds, haul roads

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	and access to works plan
In the District of North Somerset	Access from the highway known as the Breaches, Easton in Gordano, shown as AW5.2 on sheet 5 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch Line railway, shown as AW5.3 on sheet 5 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Avon Road, Pill shown as AW6.1 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Monmouth Road, Pill shown as AW6.2 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Underbanks, Pill AW6.3 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Station Road, Pill AW6.4 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Lodway, Pill AW6.5 on sheet 6 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Chapel Pill Lane to new maintenance compound (and temporary construction compound), Ham Green, Pill, shown as AW8.1 on sheet 8 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the highway known as Chapel Pill Lane to the unadopted part of Chapel Pill Lane, Ham Green, Pill, shown as AW8.2 on sheet 8 of the access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW10.1 on sheet 10 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access on foot from the River Avon Tow Path, shown as AW11.1 on sheet 11 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the A369 classified road known as Abbots Leigh Road, shown as AW11C.1 on sheet 11C of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW12.1 on sheet 12 of the compounds, haul roads and access to works plan
In the District of North Somerset	Access from the River Avon Tow Path, shown as AW12.2 on sheet 12 of the compounds, haul roads and access to works plan

In the District of North Somerset	Access on foot only from the River Avon Tow Path, shown as AW13.1 on sheet 13 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Rownham Hill, shown as AW14.1 on sheet 14 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Clanage Road, Bower Ashton, shown as AW15.1 on sheet 15 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Clanage Road, Bower Ashton, shown as AW15.2 on sheet 15 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as Winterstoke Road, Ashton, shown as AW16.1 on sheet 16 of the compounds, haul roads and access to works plan
In the City and County of Bristol	Access from the highway known as South Liberty Lane, Ashton, shown as AW17.1 on sheet 17 the compounds, haul roads and access to works plan

SCHEDULE 8

Article 20

Closure of crossings

PART 1

Crossings: works required

(1) *Area*	*(2)* *Crossing to be discontinued*	*(3)* *Street or way to be stopped up*	*(4)* *Replacement*
District of North Somerset, Portishead	Quays Avenue, Portishead	Crossing known as Quays Avenue Portishead between the points marked S1 and S2 on sheet 1 of the crossings to be extinguished plans	Work No. 2
District of North Somerset, Portishead	Pedestrian and cycle crossing between Galingale Way and Tansy Lane, Portishead at 129 miles, 16 chains	Crossing, between the points marked S5 and S6 on sheet 1 of the crossings to be extinguished plan	Work No. 7

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PART 2

Crossings: temporary suspension

(1) *Area*	*(2)* *Crossing to be discontinued*	*(3)* *Street or way to be temporarily stopped up*	*(4)* *Temporary Replacement*
District of North Somerset, Portishead	Pedestrian and cycle crossing between Galingale Way and Tansy Lane, Portishead at 129 miles, 16 chains	Crossing, between the points marked S5 and S6 on sheet 1 of the crossings to be extinguished plans	Pedestrian and cycle crossing on any reasonably direct route previously agreed by the relevant highway authority between the points marked T1 and T2 on sheet 1 of the crossings to be extinguished plan

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PART 3

Crossings: No works required

(1) *Area*	*(2)* *Level Crossing to be stopped up*	*(3)* *Extent of stopping up*
In the District of North Somerset, Portishead	The former Moor Lane crossing south of Trinity Primary School Portishead	Between the points marked S7 and S8 on sheet 1 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	The crossing forming part of The Drove, north of the highway known as Portbury Hundred	Between the points marked S17 and S18 on sheet 4 of the crossings to be extinguished plans

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SCHEDULE 9

Article 21

Accommodation and occupation crossings

PART 1

Crossings extinguished: works required

(1) *Area*	*(2)* *Accommodation facility to be discontinued*	*(3)* *Rights to be extinguished*	*(4)* *Works to be provided*
In the District of North Somerset, Portbury	Crossing at 128 miles 46 chains at Shipway Gate Farm	All rights (if any) to use the crossing at Shipway Gate Farm between points S9 and	New gate and works on the highway known as Sheepway marked N1 on sheet 2

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		S10 shown on sheet 2 of the crossings to be extinguished plans	of the crossings to be extinguished plan
In the District of North Somerset, Portbury	Crossing at 128 miles 39 chains at Shipway Gate Farm	All rights (if any) to use the crossing at Shipway Gate Farm between the points S11 and S12 shown on sheet 2 of the crossings to be extinguished plans	New gate and works on the highway known as Sheepway marked N1 on sheet 2 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 128 miles 17 chains at Elm Tree Farm, Portbury	All rights (if any) to use the crossing to the South of Sheepway and to the west of Elm Tree Farm between the points S13 and S14 shown on sheet 3 of the crossings to be extinguished plans	New gate and works on the highway known as Portbury Hundred marked N2 on sheet 3 of the crossings to be extinguished plans

PART 2

Crossings for which no substitute is to be provided

(1) *Area*	*(2)* *Crossing to be discontinued*	*(3)* *Right to be extinguished*
In the District of North Somerset, Portishead	Crossing at 129 miles 22 chains, south of the Wessex Water pumping station, east of Quays Avenue Portishead	All rights (if any) to use the crossing between the points marked S3 and S4 on sheet 1 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 71 chains north of the A369 Portbury Hundred classified road	All rights (if any) to use the crossing between the points marked S15 and S16 on sheet 3 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 41 chains north of the A369 Portbury Hundred classified road known as Portbury No.3 crossing	All rights (if any) to use the crossing between the points marked S19 and S20 on sheet 4 of the crossings to be extinguished plans
In the District of North Somerset, Portbury	Crossing at 127 miles 12 chains north of Court House Farm, Portbury	All rights (if any) to use the crossing between the points marked S21 and S22 on sheets 4 and 5 of the crossings to be extinguished plans
In the District of North Somerset, Easton in Gordano	Crossing at 126 miles 74 chains known as Manor Farm No.2 crossing, east of Marsh Lane, Easton in Gordano	All rights (if any) to use the crossing between the points marked S25 and S26 on sheet 5 the crossings to be extinguished plans
In the District of North Somerset, Easton in Gordano	Crossing at 126 miles 74 chains known as Manor Farm No.1 crossing, east of Marsh	All rights (if any) to use the crossing between the points marked S27 and 28 on sheet 5

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	Lane, Easton in Gordano	the crossings to be extinguished plans
In the District of North Somerset, Pill	Crossing at 126 miles 56 chains, south east of M5 Avonmouth Bridge, Easton in Gordano	All rights (if any) to use the crossing between the points marked S29 and S30 on sheet 5 of the crossings to be extinguished plans

SCHEDULE 10

Article 27

Land in which only new rights, etc., may be acquired

(1) *Number of land shown on the land plan*	*(2)* *Purpose for which rights may be acquired*
01/97	To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, repair, cleanse, retain, renew, replace and remove a drainage pipe for the purpose of draining water from the adjoining highway.
01/215, 01/225	To access (with or without vehicles plant and machinery) and to install, maintain, use, retain, repair, inspect, cleanse, renew, replace and remove a drainage pipe for the purpose of draining water from adjoining land.
01/230, 01/231, 01/232	To access (with or without vehicles plant and machinery) and to install, maintain, use, repair, inspect, renew, replace and remove cables and other conduits for the purposes of the supply and distribution of electricity through the cables to adjoining land.
01/252, 01/255, 01/260, 01/270	To access, pass and repass and remain upon the land (with or without vehicles plant and machinery) for all purposes in connection with access to adjoining land.
02/19	To access and remain upon the land (with or without vehicles, plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
02/117	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
02/121	To access, pass and repass and remain upon the land (with or without vehicles plant and machinery) for all purposes in connection with access to adjoining land.
03/31	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert,

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	watercourse and head wall.
03/69, 03/77, 03/78	To access and remain upon the land (with or without vehicles plant and machinery) for the purpose of inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing a culvert, watercourse and head wall.
05/75, 05/85, 05/86	To access, pass and repass and remain upon the land with or without vehicles, plant and machinery and for all purposes in connection with inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing, (a) an accommodation bridge and associated walls, embankments and structures; and (b) a culvert, watercourse and head wall.
05/100, 05/103, 05/105, 05/112	To access, pass and repass and remain upon the land with or without vehicles, plant and machinery (including road and rail vehicles) to access the national railway network and for all purposes in connection with access to neighbouring land.
05/104, 05/165, 05/171	(i) To access, pass and repass and remain upon the land with or without vehicles, plant and machinery; (ii) To install, lay, maintain, use, transmit, retain, renew, repair, replace, inspect and remove railway signalling and communications apparatus; and (iii) To pass and repass with or without vehicles, plant and machinery (including rail vehicles) to access the national railway network.
05/107, 05/108	To access, pass and repass and remain upon the land with or without vehicles, plant and machinery (including road and rail vehicles) and to access the national railway network, together with the right to use the land for the purpose of transferring road and rail maintenance vehicles onto the railway and removing road and rail maintenance vehicles from the railway.
06/25, 06/55	(i) To access, pass and repass and remain upon the land with or without vehicles, plant and machinery; (ii) To alter or remove existing railway and to install, lay, retain, renew, repair, inspect and replace railway track and apparatus; (iii) To install , lay, inspect, maintain, use, transmit, retain, renew, repair, replace and remove railway signalling and communications apparatus; and

	(iv) To pass and repass with or without vehicles, plant and machinery (including rail vehicles) to access the national railway network.
06/160, 06/280, 06/285, 06/290, 06/295, 06/300, 06/305, 06/310, 06/315 06/320, 06/325, 06/330, 06/335, 06/340, 06/345, 06/350, 06/355, 06/360, 06/365, 06/370, 06/375, 06/380, 06/385, 06/390, 06/395, 06/400, 06/405, 06/410, 06/415, 06/420, 06/425, 06/430, 06/435, 06/440, 06/445, 06/450, 06/455, 06/460, 06/465, 06/470, 06/475, 06/480, 06/485, 06/490, 06/495, 06/500, 06/510, 06/520	(i) To insert, inspect, maintain, adjust, repair, remove, retain and renew soil nails at a depth at least 1 metre below the current surface of the land together with access for all necessary workmen, vehicles, machinery and other apparatus at any time in, through and under the land for those purposes; (ii) To enter, with any necessary workmen, contractors or other authorised persons and bring necessary plant, equipment, materials and vehicles onto the land and to remain thereon for so long as is reasonably required for the purposes of— (a) carrying out site soil and environmental surveys and environmental mitigation measures and geotechnical ecological archaeological and site investigations; and (b) making trial holes in such positions to investigate the nature of the surface layer and subsoil and taking soil samples. (iii) To undertake works to upgrade, stabilise, repair, improve, install or replace fences; and (iv) A restrictive covenant not to do anything or allow anything to be done on the land which may cause damage to the soil nails or other subsoil works or affect their proper and efficient operation.
06/566	To install, lay, maintain, use, operate, retain, renew, repair, replace, inspect and remove electrical apparatus and to distribute electricity through the installed cables..
06/634, 06/644	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining renewing, replacing and removing railway and the abutment and arches of a viaduct on adjoining land.
06/640	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining, renewing, replacing and removing the abutment and arches of a viaduct on adjoining land.
06/641, 06/642, 06/643	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing,

	maintaining renewing, replacing and removing a railway and the abutment and arches of a viaduct on adjoining land.
06/646	To access, pass and repass and remain upon the land with or without plant and machinery for the purposes of inspecting, repairing, maintaining, renewing, replacing and removing a railway and the abutment and arches of a viaduct on adjoining land.
07/71, 07/73, 07/77, 07/78, 07/130	To access, pass and repass with or without vehicles (such vehicles being limited to no more than 3.5 tonnes laden in weight) to access the adjoining railway.
08/12, 08/13	To access, pass and repass and remain upon the land with or without vehicles to access adjoining land.
08/45	To access, pass and repass and remain upon the land with or without vehicles to access adjoining land.
09/12, 09/13, 09/14	To access, remain upon, pass and repass and access adjoining land for the inspection, construction, operation, use and maintenance of the authorised development.

SCHEDULE 11

Article 27

Modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictions

Compensation enactments

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

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

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

"(5A) If—

(a) the acquiring authority enters on land for the purpose 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 11 to Portishead Branch Line (MetroWest Phase 1) Order 202X(a) ("the 202X 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 11 to the 202X Order) to acquire an interest in the land; and

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

(**a**) 1961 c 33 Section 5A(5A) was inserted by paragraph 4(2) of Schedule 17(2) to the Housing and Planning Act 2016 (c 22)

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where 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 Part 1 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 25 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27(1) (compulsory acquisition of rights or imposition of covenants)—

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

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

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

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

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

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

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the 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 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.

(**a**) 1973 c 26

(5) Section 11 (powers of entry) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 19 (construction and maintenance of new or altered streets)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restriction; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date)(**a**), 12 (penalty for unauthorised entry)(**b**) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) (modification of Part 1 of the 1965 Act) 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 to the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve 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 have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Portishead Branch Line (MetroWest Phase 1) Order 202X in respect of the land to which the notice to treat relates.

(2) But see article 31 (acquisition of subsoil or airspace only) of the Portishead Branch Line (MetroWest Phase 1) Order 202X 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 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.

(**a**) 1965 c 56 Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c 22)
(**b**) 1965 c 56 Section 12 was amended by paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c 22)
(**c**) 1965 c 56 Section 20 was amended by paragraph 4 of Schedule 15(1) to the Planning and Compensation Act 1991 (c 34) and paragraph 70 of Schedule 1 to S I 2009/1307

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 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 authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve 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 use to be made of the right or covenant proposed to be acquired or imposed, and

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

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

13. If the Upper Tribunal determines that the 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 authority ought to be required to take some or all of the house, building or factory, the 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 they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

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

SCHEDULE 12

Article 33

Land of which temporary possession may be taken

(1) *Location*	*(2)* *Number of land shown on land plan*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
In the District of North Somerset, Portishead	01/70, 01/75, 01/76, 01/77	Working space and access for construction	Work No. 2
In the District of North Somerset, Portishead	01/91	Working space and access for construction	Work No. 2A
In the District of North Somerset, Portishead	01/111, 01/112	Access, working space, materials storage, compound and lay down area for construction	Work Nos. 1, 7, 7A, 7C, 7D and 7E
In the District of North Somerset, Portishead	01/210	Access, working space for construction and ecological mitigation	Work Nos. 1, 7 and 7B
In the District of North Somerset, Portishead	01/211, 01/212, 01/216	Access, working space for construction and ecological mitigation	Work Nos. 1, 7 and 7B
In the District of North Somerset, Portishead	01/220, 01/221	Access, working space and materials storage, compound, lay down area for construction and diversionary route for path	Work Nos. 1, 7, 7C, 7D and 7E
In the District of North Somerset, Portishead	01/222	Access, working space for construction	Work Nos. 1, 5, 7, 7A and 7D
In the District of North Somerset, Portishead	01/226	Access, working space, and ecological mitigation for construction	Work Nos. 1, 5 and 7A
In the District of North Somerset, Portishead	01/240, 01/241, 01/250	Access, working space for construction and ecological mitigation	Work Nos. 1 and 7
In the District of North Somerset, Portishead	01/251, 01/265	Access, working space for construction and diversionary route for path	Work Nos. 1 and 7
In the District of North Somerset, Portishead	01/296, 01/297	Access, working space for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portishead	01/310	Access, haul road, materials storage and working space for	Work Nos. 1, 1A, 1B, 1C and 8

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		construction	
In the District of North Somerset, Portbury	02/05, 02/06, 02/07, 02/08, 02/10, 02/20 02/26, 02/27	Access and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/30	Access, working space for construction and ecological mitigation	Work Nos. 1 and 9
In the District of North Somerset, Portbury	02/31, 02/32	Access and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/35	Temporary construction compound and materials storage	Work Nos. 1, 9 and 10A
In the District of North Somerset, Portbury	02/36, 02/37	Temporary diversion of permissive cycle path	Work Nos .9 and 10A
In the District of North Somerset, Portbury	02/40, 02/41, 02/45, 02/46, 02/75, 02/76, 02/82	Access, construction haul road, material storage and ecological mitigation works	Work Nos. 1, 1A, 1B, 1C and 8
In the District of North Somerset, Portbury	02/60, 02/65, 02/120	Access, haul road, material storage and working space for construction	Work Nos. 1, 1A, 1B, 1C and 11A
In the District of North Somerset, Portbury	02/85, 02/122	Access, haul road, visibility splays and working space for construction	Work Nos. 1, 1A, 1B, 1C and 11A
In the District of North Somerset, Portbury	02/116	working space and access for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/118	working space and access for construction and ecological mitigation	Work No. 1
In the District of North Somerset, Portbury	02/145	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22
In the District of North Somerset, Portbury	02a/10, 02a/15	Access, haul road visibility splays and working space	Work Nos. 8, 11 and 11A
In the District of North Somerset, Portbury	02b/05	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22
In the District of North Somerset, Portbury	03/10	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 7, 12, 12A, 20A and 22

In the District of North Somerset, Portbury	03/21	Access, working space and environmental mitigation works	Work No. 1
In the District of North Somerset, Portbury	03/35, 03/36, 03/37, 03/38	Access and environmental mitigation works	Work No. 1
In the District of North Somerset, Portbury	03/47, 03/67, 03/68	Access, working space and environmental mitigation works	Work No. 1
In the District of North Somerset, Portbury	03/65	Working space and works to adjacent disused station platform	Work No. 1
In the District of North Somerset, Portbury	03/71, 03/76	Access, material storage, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	03/80	Access, working space and visibility splay	Work No. 1A
In the District of North Somerset, Portbury	04/06, 04/07, 04/08	Access, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	04/10, 04/13, 04/15	Access, material storage, working space and environmental mitigation	Work No. 1A
In the District of North Somerset, Portbury	04/20	Access, turning space, materials storage, working space and environmental mitigation	Work Nos. 1, 1A, 1B, 1C and 13
In the District of North Somerset, Portbury	04/25, 04/46	Access, visibility splays, working space and environmental mitigation	Work No. 13
In the District of North Somerset, Portbury	04/41	Access, visibility splays, working space and environmental mitigation	Work No. 13
In the District of North Somerset, Portbury	04/42	Access, working space, materials storage and environmental mitigation	Work Nos. 1, 1A, 1B, 1C and 13
In the District of North Somerset, Portbury	04/55	Working space and vegetation clearance	Work No.14
In the District of North Somerset, Easton in Gordano	04/90	Working space and vegetation clearance	Work Nos. 1A, 14A and 14B

In the District of North Somerset, Easton in Gordano	04/105	Working space and vegetation clearance	Work No. 1A
In the District of North Somerset, Easton in Gordano	05/10	Working space, access and vegetation clearance	Work Nos . 1A and 15
In the District of North Somerset, Easton in Gordano	05/17, 05/18	Access to works	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/25, 05/106	Access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/26, 05/28	Working space, access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/113	Working space, access and vegetation clearance	Work Nos. 1, 1A, 16, 16A, 16C, 17, 18, 19, 20A and 22
In the District of North Somerset, Easton in Gordano	05/150, 05/152	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 17, 17A, 18, 20A and 22
In the District of North Somerset, Easton in Gordano	05/170	Temporary construction compound, materials storage	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 18, 19, 20A and 22
In the District of North Somerset, Lodway	06/15	Working space, access and vegetation clearance	Work No. 1A
In the District of North Somerset, Lodway	06/30	Access, materials storage, temporary construction compound and working space	Work Nos. 1, 1A, 1B, 1C, 16, 16A, 16C, 17, 17A, 18, 20A and 22
In the District of North Somerset, Lodway	06/35,06/36, 06/40, 06/45, 06/50, 06/65	Working space and access to works	Work Nos. 1A, 1B, 1C, 17, 17A, 18 and 20A
In the District of North Somerset, Pill	06/60, 06/105	Working space , oversail for crane and access to works	Work Nos. 1B, 1C, 20, 20A and 20B
In the District of North Somerset, Pill	06/61, 06/62, 06/63	Temporary diversion of cycle path	Work Nos. 1B, 1C, 20, 20A and 20B
In the District of North Somerset, Pill	06/70, 06/75, 06/85, 06/90, 06/95, 06/100, 06/140, 06/145, 06/155	Working space and access to works	Work Nos. 1B, 1C, 20A and 20B
In the District of North Somerset, Pill	06/190	Access to works	Work Nos. 1B, 1C, 20A and 20B
In the District of North Somerset, Pill	06/532, 06/535	Working space and access to works	Work Nos. 22A and 22B
In the District of North Somerset, Pill	06/533	Temporary compound	Work Nos. 22A and 22B
In the District of North Somerset, Pill	06/550, 06/555, 06/556	Access to Works	Work Nos. 1B, 1C and 22

In the District of North Somerset, Pill	06/596, 06/597, 06/598	Access to Works, demolition and replacement of wall	Work Nos. 1B, 1C and 20A
In the District of North Somerset, Pill	06/632, 06/633, 06/636	Access to Works	Work Nos. 1B and 1C
In the District of North Somerset, Pill	06/647, 06/661, 06/666, 06/705, 06/710, 06/730	Working space and access to works	Work Nos. 1B and 1C
In the District of North Somerset, Pill	07/05, 07/10, 07/15, 07/20, 07/25, 07/30, 07/35, 07/36, 07/44, 07/46, 07/51, 07/52, 07/53, 07/55, 07/56, 07/58, 07/59, 07/60, 07/65, 07/70, 07/80, 07/85, 07/90, 07/100, 07/105, 07/110, 07/111, 07/112, 07/113, 07/114, 07/116, 07/117, 07/121	Working space access to works and embankment strengthening	Work Nos. 1B and 1C
In the District of North Somerset, Ham Green	08/11, 08/20, 08/26	Working space and access to works	Work Nos. 24 and 24A
In the District of North Somerset, Ham Green	08/21, 08/22, 08/23, 08/24	Access to works	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Pill	08/50, 08/60, 08/61	Access to works	Work Nos. 24 and 24A
In the District of North Somerset, Abbots Leigh	08/71	Access to works and materials storage	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/11	Access to works and materials storage	Installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/20	Access to works and materials storage	Storage of materials, installation of fencing and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	09/22, 09/23, 09/25	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/06	Access to works	Installation of fencing, works to retaining walls and minor

			works to Parson Street to Royal Portbury Dock railway
In the City and County of Bristol, Abbots Leigh	10/11	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the City and County of Bristol, Abbots Leigh	10/25	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/30	Access to works	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway
In the District of North Somerset, Abbots Leigh	10/35	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/06	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting, and rock picking for the protection of the adjacent Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works
In the District of North Somerset, Abbots Leigh	11/07	Access to works working space and environmental mitigation	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol, Abbots Leigh	11/10, 11/15	Access to works and working space	Installation of fencing, works to retaining walls and minor works to Parson Street

			to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol, Abbots Leigh	11/20	Access to works and working space	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol, Abbots Leigh	11/25	Access to works and working space	Installation of fencing, works to retaining walls and minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/41, 11/42	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent railway, installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation.
In the District of North Somerset, Abbots Leigh	11/61	Access to works	Vegetation clearance and rock picking for the protection of Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/65, 11/70, 11/75,	Access to works	Vegetation clearance and rock picking for the protection of Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11/80	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the adjacent railway, installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11a/05	Access to works, rock picking, rock bolting, vegetation clearance,	Vegetation clearance, rock bolting and rock picking for the

		working space and environmental mitigation	protection of Parson Street to Royal Portbury Dock railway, ecological mitigation.
In the District of North Somerset, Abbots Leigh	11a/10, 11a/15	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11b/05, 11b/10, 11b/15, 11b/20, 11b/30, 11b/35	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11b/25	Access to works	Micro compound, access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	11c/05, 11c/10, 11c/15	Access to works	Access for vegetation clearance and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the District of North Somerset, Abbots Leigh	12/07 12/10, 12/20, 12/21, 12/30	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Work No. 25, vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the City and County of Bristol, Abbots Leigh	12/25	Access to works	Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock

			railway, ecological mitigation, installation of fencing and access for minor works to railway.
In the District of North Somerset, Abbots Leigh	13/07, 13/31, 13/32	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the City and County of Bristol, Abbots Leigh	13/33, 13/36, 13/40	Access to works	Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to railway
In the District of North Somerset, Abbots Leigh	13/55	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access for minor works to existing railway
In the District of North Somerset, Abbots Leigh	14/05	Access to works, rock picking, rock bolting, vegetation clearance, working space and environmental mitigation	Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation
In the City and County of Bristol	14/10, 14/25, 14/35	Access to works	Work No. 25 Vegetation clearance, rock bolting and rock picking for the protection of the Parson Street to Royal Portbury Dock railway, ecological mitigation, installation of fencing and access

			for minor works to railway
In the City and County of Bristol	15/15	Temporary construction compound, materials storage and access to works	Work Nos. 26, 26A, installation of fencing and access for minor works to Parson Street to Royal Portbury Dock railway
In the City and County of Bristol	16/56, 16/57. 16/58, 16/61, 16/62, 16/63, 16/75, 16/80, 16/85	Access to works	Work No. 28
In the City and County of Bristol	17/05, 17/20	Temporary construction compound, materials storage and access to works	Work No. 29
In the City and County of Bristol	17/10, 17/15	Access to works	Work No. 29

SCHEDULE 13

Article 44

Hedgerows

PART 1

Hedgerows to be removed

(1) *Location of hedgerow*	*(2)* *Work to be carried out*	*(3)* *Relevant part of the authorised*
North of Sheepway and east of Fennel Way along the south side of the disused railway line shown marked H2/1 on sheet 2 of the hedgerow location plan.	Removal of part of a hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work no. 8
North side of Sheepway west of bridge over disused railway line shown marked H2/2 on sheet 2 of the hedgerow location plan.	Removal of part of a hedgerow to allow for the temporary construction haul road crossing over Sheepway. Hedgerow to be replanted on completion of works.	Work no. 8
South side of Sheepway west of bridge over disused railway line shown marked H2/3 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road east of Sheepway. Hedgerow to be replanted on completion of works.	Work no. 11A
South side of the disused railway line east of Shipway Gate Farm shown marked H2/4 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work no. 11A

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South side of the disused railway line east of Shipway Gate Farm shown marked H2/5 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work no. 11A
South side of the disused railway line east of Shipway Gate Farm shown marked H2/6 on sheet 2 of the hedgerow location plan.	Removal of end of the hedgerow to allow for the temporary construction haul road. Hedgerow to be replanted on completion of works.	Work no. 12A
South of the disused railway line and north of the Portbury Hundred, shown marked H3/1 on sheet 2 of the hedgerow location plan.	Removal of part of hedgerow for access within the construction compound. Hedgerow to be replanted on completion of works.	Work no. 12A
Lodway Farm on southern boundary of the disused railway line, shown marked H5/1 on sheets 5 and 6 of the hedgerow location plan.	Removal of part of hedgerow adjacent to the disused line. Hedgerow to be replanted on completion of works.	Works no. 1A and 17
Lodway Farm, shown marked H5/2 on sheets 5 and 6 of the hedgerow location plan.	Removal of part of hedgerow for access within the construction compound. Hedgerow to be replanted on completion of works.	Work no. 17
South side of Chapel Pill Lane, Ham Green, Pill, shown marked H8/1 on sheet 8 of the hedgerow location plan.	Removal of part of hedgerow for new access.	Work no. 24

PART 2

Important Hedgerow

(1) *Area*	*(2)* *Reference of hedgerow*
In the district of North Somerset, at Lodway, Pill	The important hedgerow marked 1 on the important hedgerow plan

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SCHEDULE 14

Article 46

Traffic Regulation

In the district of North Somerset

(1) *Road*	*(2)* *Extent*	*(3)* *Measure*
Harbour Road, Portishead	Between the junction of Harbour Road with Harbour Road (leading to Harbour Road Trading Estate) and the junction of Harbour Road with	Prohibition of waiting at any time.

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	re-aligned Quays Avenue, as shown coloured red on the permanent traffic regulation order plans (Portishead Station)	
Quays Avenue, Portishead	Between the junction of Quays Avenue with the realigned Harbour Road to the junction of Quays Avenue with Wyndham Way as shown coloured red on the permanent traffic regulation order plans (Portishead Station)	Prohibition of waiting at any time.
Phoenix Way, Portishead	Between the junction of Phoenix Way with the realigned Quays Avenue to a point 47 metres west of the junction of Phoenix Way with Marjoram Way as shown coloured red on the permanent traffic regulation order plans (Portishead Station)	Prohibition of waiting at any time (save for designated parking bays).
Portbury Hundred, Portbury	At a point 457 metres west of the junction of the A369 Portbury Hundred classified road and Station Road, Portbury, either on to or from the highway known as Portbury Hundred at the location shown on the permanent traffic regulation order plans (A369 Portbury Hundred)	Prohibition of right turn manoeuvres
Monmouth Road, Pill	From the junction of Monmouth Road with Crusty Lane to the junction of Monmouth Road with Station Road as shown coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
Station Road, Pill	From the junction of Station Road with Monmouth Road to the junction of Station Road with Heywood Road as shown in the locations coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
New Road, Chapel Row and Myrtle Hill, Pill	To the extent shown coloured red on the permanent traffic regulation order plans (Pill Station)	Prohibition of waiting at any time.
Sambourne Lane, Pill	To the extent shown coloured red on the permanent traffic regulation order plans (Pill	Prohibition of waiting at any time.

	Station)	
Macrae Road, The Sanctuary and Hart Close gyratory, Ham Green, Pill	At the junction of Macrae Road and Hart Close, as shown coloured red on the permanent traffic regulation order plans (Ham Green)	Prohibition of waiting at any time.
Junction of Ham Green and Macrae Road, Ham Green, Pill	At the junction of Ham Green and Macrae Road as shown coloured red on the permanent traffic regulation order plans (Ham Green)	Prohibition of waiting at any time.

SCHEDULE 15

Article 52

Amendment of Local Legislation

Byelaws

(1) *Title*	*(2)* *Byelaw to be disapplied*
North Somerset Levels Internal Drainage Board Land Drainage Byelaws 2004	Byelaw 3 (control of introduction of water and increases in flow or volume of water); Byelaw 7 (detrimental substances not to be put in watercourses); Byelaw 14 (vehicles not to be driven on banks); Byelaw 15 (banks not to be used for storage); Byelaw 17 (fences, excavations, pipes, etc.); Byelaw 24 (damage to property of the Board).

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SCHEDULE 16

Article 53

Protective Provisions

PART 1

Protection for Network Rail Infrastructure Limited

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 (licences) of the Railways Act l993(**a**);

(**a**) 1993 c 43 Section 8 was amended by regulation 2(2) and Part 1 paragraph 1(d) of the Schedule to S I 2015/1682, sections 216 and 274 of and Schedule 17 to the Transport Act 2000 (c 38), sections 1(1) and 59(6) of, and Schedule 1 and 13 to, the Railways Act 2005 (c 14), section 16(5) of, and Schedule 2 to, the Railways and Transport Safety Act 2003 (c 20)

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 (meaning of "subsidiary" etc.) of the Companies Act 2006(**a**)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by articles 24 (compulsory acquisition of land) or 27 (Compulsory acquisition of rights or imposition of covenants) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act(**b**), as applied by article 37 (statutory undertakers and electronic communications code network operators), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(**a**) 2006 c 46
(**b**) 1990 c 8 Section 272 was amended by section 406(1) of and paragraph 103 of Schedule 17 to the Communications Act 2003 (c 21)

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications sub-paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph (6).

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 56 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or the failure thereof or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of

the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the lands plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 10 (consent to transfer of benefit of order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must no later than 28 days from the date that the plans and documents submitted to and certified by the Secretary of State in accordance with article 55 (documents to be certified) are certified by the Secretary of State, provide a set of those plans and documents to Network Rail in the form of a computer disc with read only memory.

PART 2

Protection for Electricity, Gas, Water, Petroleum and Sewerage Undertakers

22. In this Part of this Schedule "North Somerset District Council" shall mean the undertaker and where relevant any person to whom the powers contained in this Order are conferred in so far as that person's activities in reliance on the powers in this Order affect the land and apparatus of the relevant statutory undertaker

23. For the protection of the undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between North Somerset District Council and the undertaker concerned, have effect.

24. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter 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(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act(**c**) or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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; and

"undertaker" means—

(**a**) 1989 c 29
(**b**) 1991 c 56
(**c**) 1991 c 56 Section 102(4) was amended by section 56 of and Schedule 7 to the Water Act 2014 (c 21), and section 96(1) of the Water Act 2003 (c 37)

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

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

(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.

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

26. Regardless of any provision in this Order or anything shown on the land plans, North Somerset District Council must not acquire any apparatus otherwise than by agreement.

27.—(1) If, in the exercise of the powers conferred by this Order, North Somerset District Council acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an 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 undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, North Somerset District Council requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) North Somerset District Council must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of North Somerset District Council 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 undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of North Somerset District Council under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56 (arbitration), and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by North Somerset District Council to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if North Somerset District Council gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of North Somerset District Council, that work, instead of being executed by the undertaker, must be executed by

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(**a**) 1989 c 29 A new section 6 was substituted by section 30 of the Utilities Act 2000 (c 27) and was further amended by sections 136 and 145(5) – (7) of and Schedules 19 and 23(1) to the Energy Act 2004 (c 20), S I 2012/2400 and S I 2011/2704 There are other amendments to section 6 but none are relevant to this Order

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

North Somerset District Council without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) authorises North Somerset District Council to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

28.—(1) Where, in accordance with the provisions of this Part of this Schedule, North Somerset District Council affords to an undertaker facilities and rights for the construction and maintenance in land of North Somerset District Council 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 North Somerset District Council and the undertaker in question or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway, the arbitrator must—

(a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway which forms or is to form part of Network Rail's network and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or North Somerset District Council or the traffic on the railway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by North Somerset District Council 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 undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by North Somerset District Council to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

29.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 27(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by North Somerset District Council under paragraph 27(2), North Somerset District Council must submit to the undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by an undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub–paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by North Somerset District Council, reasonably requires the removal of any apparatus and gives written notice to North Somerset District Council of that requirement, paragraphs 23 to 28 apply as if the removal of the apparatus had been required by North Somerset District Council under paragraph 27(2).

(5) Nothing in this paragraph precludes North Somerset District Council 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) North Somerset District Council is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

30.—(1) Subject to the following provisions of this paragraph, North Somerset District Council must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 27(2).

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

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

(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;

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 North Somerset District Council 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 undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

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

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) 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 undertaker 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.

31.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 27(2), any damage is caused to any 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 an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, North Somerset District Council must—

(a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

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

(3) An undertaker must give North Somerset District Council reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of North Somerset District Council which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

32. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between North Somerset District Council or Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to North Somerset District Council or Network Rail on the date on which this Order is made.

PART 3

Protection for Operators of Electronic Communications Code Networks

33.—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

(2) In this Part of this Schedule—

"conduit system" has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

"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(**a**);

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit 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 Secretary of State is providing or proposing to provide;

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

"operator" means the operator of an electronic communications code network.

34. The exercise of the powers of article 37 (statutory undertakers and electronic communications code network operators) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(**b**).

35.—(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 the works comprised in the authorised development—

(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,

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(**a**) See section 106
(**b**) 1984 c 12

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

(c) make reasonable compensation to an operator for loss sustained by it; and

(d) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator 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 may be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph is to be referred to and settled by arbitration under article 56 (arbitration).

36. 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 damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

PART 4

Protection for the Environment Agency

38.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

"the Agency" means the Environment Agency;

"emergency" means a situation which—

(a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;

(b) is a serious event presenting a risk of harm or damage to people, property or the environment; and

(c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation; and

"relevant watercourse" has the same meaning as in article (powers in relation to relevant watercourses).

(3) Where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Agency to a relevant watercourse, it must give the Agency 56 days' written notice of that requirement.

39.—(1) Where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Agency to a relevant watercourse, it must give the Agency 56 days' written notice of that requirement.

(2) Except in cases of emergency where the undertaker interferes with or obstructs access by the Agency to a relevant watercourse and it is not possible for the undertaker to give the Agency the notice required under sub-paragraph (1), a suitable alternative access must be provided prior to and for the duration of any such interference.

40. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest of the Agency in any land or proposes to interfere with, or remove, any of the Agency's apparatus it must give the Agency 56 days' written notice before any such interest is acquired or any apparatus is interfered with or removed.

41. The undertaker must indemnify the Agency in respect of all costs, charges and expenses which it may reasonably incur or which it may sustain in the examination of plans or other matters under this Part of this Schedule.

42. Any dispute arising between the undertaker and the Agency under this Part of this Schedule is to be determined by arbitration in accordance with article 56 (arbitration) of this Order.

PART 5

Protection for First Corporate Shipping Limited

43. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and BPC.

44. In this Part—

"access works" means works—

(a) on, over or under or otherwise affecting a private street or any public right of way on BPC's property, including the kerbs, splitter islands, footways, verges and carriageway of such street and any road markings, signing, signals, and other street furniture;

(b) to alter, modify, improve, create or provide any means of access (whether temporary or otherwise) on or across BPC's property or to or from any private street or any other part of BPC's property or to or from any dock public road;

(c) to alter the layout of any private street or any public right of way on BPC's property; and

(d) to position or install plant or equipment on or over any private street or any public right of way on BPC's property,

and includes, without limitation on the scope of the foregoing, any works under article 13 (street works and power to alter layout etc., of streets) or article 17 (access to works) in respect of or affecting any private street or any public right of way on BPC's property;

"ancillary works" means embankments, earthworks, retaining structures or works, planting, landscaping or other mitigation, fencing and all other works falling within the descriptions of the further associated development set out in paragraphs (a) to (x) (inclusive) of Schedule 1;

"BPC" means First Corporate Shipping Limited (registered company number 2542406), trading as The Bristol Port Company, being the statutory harbour authority and competent harbour authority for the Port;

"BPC's apparatus" means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil water, electricity, telephone, television, data and information transmission or any other service) on BPC's property;

"BPC's property" means the whole and each of every part of all the leasehold and freehold land and rights and the benefit of all covenants, owned by or vested in BPC at Avonmouth, Chittening and Portbury—

(a) upon, across, under, over or in respect of or affecting which any powers conferred by this Order may be exercised; or

(b) upon, across, under or over which there is situated anything over or in respect of which any such powers may be exercised,

and includes, without limitation on the scope of the foregoing, the Port's railway and any private street but does not include the Court House Farm terminable access;

"BPC's representative" means the person appointed by BPC from time to time to be its representative for the purposes of this Order;

"certified documents" means any and all of the plans and documents certified by the Secretary of State for the purpose of this Order;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"construction access rights" means any and all powers conferred on the undertaker by this Order to exercise temporary powers of access over any land with or without vehicles, plant and equipment including, without limitation on the scope of the foregoing, any ancillary powers to remove buildings and vegetation from that land and to construct works for the purpose of providing a means of access;

"Court House Farm easement" means a Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company;

"Court House Farm terminable access" means the existing crossing at grade over the disused Portishead Branch Line which is described in the Court House Farm easement;

"dock public road" means each of the streets known as Marsh Lane, Royal Portbury Dock Road (including the roundabout at its junction with Portbury Way and Gordano Way), Redland Avenue, Gordano Way, Garonor Way and Portbury Way to the extent that it is maintainable highway;

"drainage works" means works—

(a) to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on, over or under BPC's property or which drains water to or from BPC's property; and

(b) to make any opening or connection into any watercourse belonging to BPC or to lay down, take up or alter any pipes for that purpose;

"environmental protection works" means measures reasonably required to be carried out on or in respect of Work No. 18 to protect the scrub environment and water bodies established and managed by BPC;

"highway access land" means any and all of parcels 5/30, 5/61, 5/62, 5/65 and 5/70;

"maintainable highway" has the same meaning as in section 86(1) of the 1991 Act;

"Marsh Lane track" means the private street referred to in Schedule 3 and there described as Access Road to the M5 Avonmouth Bridge east of Marsh Lane, Easton-in-Gordano;

"Marsh Lane track land" means any and all of parcels 5/25, 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 and that part of parcel 5/28 which lies to the east of an imaginary line projected in a northerly direction across the disused railway at 126 miles 78 chains and includes the Marsh Lane track;

"plans" includes sections, elevations, designs and design data, drawings, calculations, specifications, programmes, method statements, assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work;

"Port" means the port and harbour of Bristol;

"Port's railway" means the railway owned by BPC leading from Portbury Junction, Pill to the Royal Portbury Dock;

"powers of temporary possession" means the powers conferred by article 33 (temporary use of land for carrying out the authorised development);

"preparatory activities" means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works but excluding any such activities carried out under article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property;

"private street" means any street on BPC's property which is not a maintainable highway;

"rail link land" means any and all of parcels 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55;

"railway rights land" means any and all of parcels 5/95, 5/100, 5/105, 5/122, 5/137, 5/140, 5/141, 6/10, 6/15, 6/20 6/55, 6/60 and 6/80;

"relevant works" means that part of Work 1C that is on the Port's railway and Works Nos. 14, 14A, 14B, 15, 16, 16A, 16C, 18, 19 and 20;

"specified work" means—

(a) that part of Work 1C that is on the Port's railway;

(b) the whole of Work Nos. 14, 14A, 15, 16, 16A, 16C, 18, 19 and 20;

(c) all access works and drainage works; and

(d) so much of all other parts of the authorised development and of any works to be carried out under the powers conferred by article 33 as is situated upon, across, under, over or within 5 metres of BPC's property, including all environmental mitigation and restoration measures;

(2) In this Part—

(a) references to the undertaker include references to any person to or in which any or all of the benefit of the provisions of this Order and any related statutory powers are transferred or are vested pursuant to any provision of this Order and any person which may by virtue of any agreement made pursuant to article 11 (agreements with Network Rail) whether alone or jointly with another exercise any or all of the powers contained in this Order;

(b) references to numbered parcels are to the parcels of land so numbered in the book of reference;

(c) references to a requirement to consult include that consultation must take place in good faith and in a timely manner with the provision of all reasonably necessary information and so that the party concerned must act reasonably in taking into account the reasonable comments made by the other party in response; and

(d) references to BPC's consent, agreement or approval are to BPC's prior consent, agreement or approval given in writing.

45. Nothing in this Order affects—

(a) any right of BPC to use the Court House Farm terminable access; or

(b) the provisions of the Court House Farm easement or any other agreement relating to the Court House Farm terminable access

and accordingly the following provisions of this Part of this Schedule do not apply as regards the Court House Farm terminable access.

46. The undertaker must give written notice to BPC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 10 (consent to transfer of benefit of order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

47.—(1) No agreement made under article 11 (agreements with Network Rail) may authorise or permit the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of any powers and rights of Network Rail and the undertaker (as the case may be) under any BPC contract or affecting any of BPC's property.

(2) In sub-paragraph (1), "BPC contract" means all and any contracts, licences, easements and other agreements, permissions and consents to which BPC is a party or of which it has the benefit.

Watercourses and drainage

48.—(1) No part of any impounded dock at the Port is included within the definition of "watercourse" for any purpose of this Order.

(2) The undertaker must not without BPC's consent (such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions) create any new discharges for water into any watercourse belonging to or used by BPC.

(3) Without limitation on the scope of sub-paragraph (2), any consent given by BPC under this paragraph—

(a) may be given subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse by the undertaker; and

(b) does not obviate the need for the undertaker to obtain any further consents required in relation to the activity concerned.

(4) In the exercise of any power under article 22 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse in, on, over or under BPC's property.

Surveys

49.—(1) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property—

(a) outside the Order limits except to the extent that BPC agrees for the purpose of carrying out non-intrusive surveys, investigations and monitoring only;

(b) other than to the extent that the exercise of such powers is necessary in connection with carrying out the authorised development; and

(c) other than by prior agreement with BPC on each and every occasion, such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions, and on at least 14 days' notice.

(2) When requesting BPC's agreement to access under sub-paragraph (1) the undertaker must provide to BPC full details of the property to which access is requested, the activities proposed (including risk assessments and method statements and intended duration of the activities), the identity of the persons who would undertake them and any apparatus that might be left on the affected property.

(3) BPC is, without limitation on the scope of sub-paragraph (1)(c)—

(a) entitled to refuse access as requested by the undertaker on any occasion for operational reasons, in which case BPC must act reasonably and without delay in seeking to offer alternative arrangements; and

(b) entitled as a condition of its agreement on any occasion to require the production of evidence of the existence of adequate insurance with insurers of repute, the proceeds of which will be available to cover all liability, costs, claims, expenses and demands which may arise as a result of that access.

(4) The undertaker must remove any equipment left on, over or under BPC's property as soon as reasonably possible after completion of the relevant surveys and investigations.

(5) The undertaker must, at its own expense, deliver to BPC as soon as reasonably practicable after their production on a non-reliance basis copies in an electronic format of all survey and ground investigation reports carried out in respect of BPC's property under the powers conferred by article 23 or the powers conferred by section 11(3) of the 1965 Act as applied by this Order, which reports BPC may use and provide to others (on a non-reliance basis) free of cost in connection with works and operations at the Port.

Streets, access and public rights of way

50.—(1) The undertaker must not in carrying out any works or exercising the powers conferred by this Order cause pedestrian or vehicular access to or across any of BPC's property (including access for cargo operations but excluding access over the Court House Farm terminable access) to be interfered with or obstructed, other than with the consent of BPC, not to be unreasonably withheld or delayed, or, if the carrying out of works or exercising the powers relate to a dock public road, unless the undertaker has first consulted with BPC.

(2) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under—

(a) article 13(1) (street works and power to alter layout etc., of streets) in respect of or so as to affect the Marsh Lane track other than by prior agreement with BPC such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions;

(b) article 13(1) in respect of or so as to affect any dock public road unless it has first consulted with BPC; or

(c) article 13(2) in respect of or so as to affect any private street on any part of BPC's property.

(3) With the exception of the locations specified in columns (1) and (2) of Schedule 7 and shown on sheet 5 of the compounds, haul roads and access to works plan as AW5.1 (access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch railway line) and AW5.3 (access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch railway line) the undertaker must not pursuant to any powers in this Order carry out any works to create or improve any means of access affecting any private street or any public right of way on BPC's property or any other part of BPC's property or any dock public road.

(4) In carrying out any access works, the undertaker must not so far as reasonably practicable interfere with or obstruct the free, uninterrupted and safe use by other traffic of any street or interfere with street furniture, signage and lighting masts.

(5) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under article 15(1) (temporary stopping up of streets and public rights of way) in respect of:

(a) the Marsh Lane track (except to the extent permitted by article 15(5)) or any other private street; or

(b) Royal Portbury Dock Road without BPC's consent, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

(6) Despite any provision in this Order, the undertaker must not, except with the agreement of BPC, exercise any power under article 15 or article 46 to use or to authorise the use of any private street or any dock public road or any public right of way on BPC's property as a temporary working site or as a parking place.

(7) The undertaker must exercise the power granted to it under paragraph (5) of article 15 to stop up public rights of way LA8/67/10 and LA/8/68/10 to the extent specified in column (3) of Part 2 of Schedule 5 (Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension), throughout the period of operation or use of the Lodway Farm construction compound to be constructed as Work No. 17 and the temporary construction compound located under the M5 Avonmouth Bridge.

(8) The undertaker must, before submitting any survey, proposed measures or strategy relating to the Marsh Lane track to the relevant planning authority for approval in accordance with requirement 35 of Schedule 2 (Requirements), consult with BPC in relation to the content of all such surveys, measures and strategies;

(9) Despite paragraphs (1) and (2) of article 19—

(a) any street constructed under this Order on BPC's property; and

(b) the altered or diverted part of any street altered or diverted under this Order on BPC's property

must be maintained by and at the expense of the relevant highway authority at all times from its completion.

(10) If the undertaker acquires, whether compulsorily or by agreement, any of BPC's property within the Order limits, or any right or interest in or over such property, which property is subject to a public right of way, from the date of the acquisition of the relevant land, right or interest or from 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, any liability or responsibility of BPC to the relevant highway authority for or in respect of the maintenance of that public right of way is extinguished and that public right of way shall after that date instead be maintained by and at the expense of the relevant highway authority.

(11) Without limitation on the scope of any other provision in this Part if any damage to any public right of way on BPC's property is caused in the exercise of any powers under this Order or by carrying out of, or in consequence of the construction of, any works under this Order, the undertaker must make good such damage and pay to BPC all reasonable expenses to which BPC may be put by reason of any such damage.

(12) The undertaker must not exercise any powers under article 13, article 15 or article 46 (traffic regulation) over or in respect of any part of BPC's property or any dock public road after completion of construction of the authorised development.

Acquisition and use of land

51.—(1) The undertaker must not exercise the powers conferred by section 271 (extinguishment of rights of statutory undertakers: preliminary notices) of the 1990 Act in relation to any rights of BPC over or in respect of the railway rights land or the highway access land; or any of BPC's apparatus.

(2) Despite any other provision of this Order, if the undertaker acquires any interest in the railway rights land or in the highway access land, whether compulsorily or by agreement, no rights of BPC over or in respect of the railway rights land or the highway access land so acquired must be extinguished.

Use of land and execution, maintenance and use of the authorised development

52.—(1) Despite any provision in this Order or anything shown on the land plan, the undertaker must not except with the agreement of BPC—

(a) exercise any powers of temporary possession over or in respect of parcel 5/75 or (if and to the extent they form part of BPC's property) parcel 5/85 or parcel 5/86 unless BPC fails, within 14 days of a request by the undertaker, to make available for exercise by the undertaker in substitution for the exercise of the relevant powers temporary rights of access over other land which are sufficient (whether alone or in conjunction with the exercise by the undertaker of other powers under this Order) to enable the undertaker to gain access in connection with the construction of the authorised development, with such vehicles, plant and equipment as may be necessary, from access point AW5.3 shown on the compounds, haul roads and access to works plan to the accommodation bridge (and associated walls, embankments and structures) on land adjacent to parcel 05/86 and to the culvert, watercourse and head wall situated on land adjacent to parcel 05/85; or

(b) other than any construction access rights which may be authorised by or pursuant to the terms of this Order over the Marsh Lane track, the rail link land or parcel 05/75, or over bridleways and footpaths that are open to the public, exercise any construction access rights over BPC's property or otherwise use any part of BPC's property for the purpose of gaining access to any part of the authorised development or to any other land or in connection with the construction or maintenance of the authorised development.

(2) Any exercise of powers of temporary possession by the undertaker in respect of the rail link land or the Marsh Lane track land which may be permitted pursuant to the terms of this Order is subject to, and in common with, the use of the rail link land and the Marsh Lane track land by BPC and by any other person acting with BPC's authority or which may have rights to use the rail link land and the Marsh lane track land.

53.—(1) If required to do so by BPC (acting reasonably), the undertaker must at its cost and expense procure that surveys are carried out to a specification approved by BPC (acting reasonably) to show the condition of any land of which temporary possession is taken under article 33 (together with all associated structures) before the undertaker's use of it begins and after that use ends.

(2) The undertaker must promptly after receipt of reasonable demand by BPC and at the undertaker's cost and expense make good any and all damage and wear and tear caused to any part of BPC's property which is used by the undertaker in connection with the construction or maintenance of the authorised development where in BPC's reasonable opinion the rectification of such damage, wear or tear is necessary in the interests of safety or security.

(3) If required to do so by BPC (acting reasonably), the undertaker must permit BPC to inspect the execution of all works of rectification being carried out under this paragraph in order to ensure compliance by the undertaker with the requirements of this paragraph.

54.—(1) The undertaker must present to BPC not less than three months before the intended date of commencing construction the draft programme for the execution of each part of the authorised development on BPC's property.

(2) The undertaker must consult with BPC in relation to the draft programme and must present its final programme for the execution of the authorised development on BPC's property to BPC not less than four weeks before the intended date of commencing construction.

(3) The undertaker must not enter on or take temporary possession of any part of BPC's property unless it has served at least 14 days' written notice on BPC of its intended entry onto that part.

(4) In this paragraph "intended date of commencing construction" means the first date on which the undertaker wishes to commence construction of any part of the authorised development on, under or over any part of BPC's property, including carrying out any preparatory activities.

(5) In the exercise of any powers of temporary possession in respect of any part of BPC's property and in the commencement and execution of the authorised development on BPC's property the undertaker must—

(a) proceed diligently with the works affecting each part of BPC's property; and

(b) notify BPC in writing of the completion of the relevant part of the authorised development affecting each part of BPC's property within fourteen days of its completion.

(6) In the exercise of any powers of temporary possession in respect of any part of BPC's property the undertaker must not—

(a) except with the agreement of BPC, provide or authorise the provision of car parking or storage (for materials or other items) facilities on any part of BPC's property other than within Work No. 16A;

(b) demolish or remove any buildings; or

(c) except as BPC agrees, construct or carry out on BPC's property any works comprising fencing, any mitigation works, ground or rock stability, geotechnical or strengthening works other than works which are of a temporary nature.

(7) In addition to and without limitation on the scope of the undertaker's other obligations under this Order (including those in article 33(4) and Schedule 2), before giving up possession of any part of BPC's property in respect of which any powers of temporary possession have been exercised the undertaker must remove any works constructed in contravention of sub-paragraph (6) or paragraph 55.

Works

55. Despite any provision of this Order or anything shown on the certified documents except as BPC may agree—

(a) no part of Work No. 14 or any ancillary works associated with Work No. 14 must be constructed or maintained on parcel 04/55; and

(b) other than works of a temporary nature, no ancillary works associated with any relevant works or with Work No. 1A or Work No. 1B must be constructed or maintained upon, across, under or over any of BPC's property of which only temporary possession is taken under this Order or over which the undertaker does not, under this Order, acquire rights authorising the retention of those ancillary works.

56.—(1) The undertaker must before commencing construction of any specified work supply to BPC proper and sufficient plans of that work for BPC's approval and the specified work must not be commenced or executed except in accordance with such plans as have been approved in writing by BPC.

(2) Subject to sub-paragraph (3), BPC's approval under sub-paragraph (1) must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions.

(3) BPC's approval to plans must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions—

(a) in respect of all or any of Work No. 1C on BPC's property and Work No. 19, if and in so far as the proposed works comprise and, following design development, are broadly consistent with the works shown on drawings W1097B-ARP-DRG-ECV-000305, W1097B-ARP-DRG-ECV-000330 and W1097B-ARP-DRG-ECV-000331;

(b) in respect of Work No. 18 if and in so far as the proposed works comprise and, following design development, are broadly consistent with the Bridleway Extension Under the Elevated M5 Plan, and

(c) in respect of Work No. 16C, if and in so far as the proposed works comprise only work necessary to renew the level crossing in modern equivalent form.

(4) Where under sub-paragraph (2) or (3) BPC's approval to plans submitted by the undertaker under sub-paragraph (1) cannot be unreasonably withheld or delayed if by the end of the period of 28 days beginning with the date on which such plans have been supplied to BPC, BPC has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon BPC written notice requiring BPC to intimate approval or disapproval within a further period of 28 days beginning with the date upon which BPC receives written notice from the undertaker. If by expiry of the further period of 28 days BPC has not intimated approval or disapproval, BPC is deemed to have approved the plans as submitted.

(5) When signifying approval of plans submitted under sub-paragraph (1), BPC may specify any protective works (whether temporary or permanent) which in BPC's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of BPC's property or the continuation of safe and efficient operation of the Port (including the Port's railway) and such protective works as may be reasonably necessary for those purposes are to be constructed by BPC but at the expense of the undertaker, or if BPC so desires such protective works must be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that the protective works have been completed to BPC's reasonable satisfaction.

(6) When signifying approval of plans submitted under sub-paragraph (1) in relation to Work No. 18, BPC may specify any environmental protection works which in BPC's reasonable opinion

should be implemented before the commencement of, or during, the construction of Work No. 18 and such environmental protection works as may be reasonably necessary for those purposes are to be implemented by BPC but at the expense of the undertaker, or if BPC so desires such environmental protection works must be implemented by the undertaker at its own expense with all reasonable dispatch, and except to the extent BPC may agree the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that any and all relevant environmental protection works have been implemented to BPC's reasonable satisfaction.

57.—(1) Any specified work and any protective works (and any environmental protection works connected with Work No. 18) to be constructed or implemented by virtue of paragraph 56(5) or 56(6) must, when commenced, be constructed and implemented with all reasonable dispatch in accordance with the plans approved or deemed to have been approved under paragraph 56—

(a) under BPC's supervision (where appropriate and if given) and to BPC's reasonable satisfaction;

(b) in such manner as to cause as little damage as is possible to BPC's property; and

(c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe and efficient operation of the Port (including use of the Port's railway or the traffic on it).

(2) If any damage to BPC's property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph 56(1), make good such damage and pay to BPC all reasonable expenses to which BPC may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

(a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of BPC or its servants, contractors or agents; or

(b) any liability on BPC with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

58. The undertaker must—

(a) at all times afford reasonable facilities to BPC's representative (or to a person nominated by BPC's representative) for access to a specified work during its construction; and

(b) supply BPC with all such information as BPC's representative may reasonably require with regard to a specified work or the method of constructing it.

59. BPC must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by BPC under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

60.—(1) If any permanent or temporary alterations or additions to BPC's property, or any protective works under paragraph 56(5), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by BPC and if BPC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to BPC all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by BPC in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing BPC's property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against-any sum payable by the undertaker to BPC under this paragraph.

61. The undertaker must repay to BPC all fees, costs, charges and expenses reasonably and properly incurred by BPC—

(a) in constructing any protective works under the provisions of paragraph 56(5) and in implementing any environmental protection works under the provisions of paragraph 56(6) including, in respect of any permanent protective works or permanent environmental protection works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of BPC's representative's approval of plans submitted by the undertaker and the supervision by BPC of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;

(c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting, watching and lighting BPC's property (including the Port's railway) and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work; and

(d) in respect of any additional temporary lighting of BPC's property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

62. If at any time after the completion of a specified work BPC gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation or use of any of BPC's property (including the Port's railway) in connection with carrying on BPC's statutory undertaking, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to adversely affect the operation or use of such property in that connection.

63. Any additional expenses which BPC may reasonably incur in altering, reconstructing, working, or maintaining under any powers existing at the making of this Order any of BPC's property in connection with carrying on BPC's statutory undertaking by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, working or maintenance has been given to the undertaker, are to be repaid by the undertaker to BPC.

64.—(1) The undertaker must pay to BPC all costs, charges, damages and expenses not otherwise provided for in this Part (but subject to article 41 (no double recovery)) which may be occasioned to or reasonably and properly incurred by BPC—

(a) by reason of the construction, working, maintenance of a specified work or the failure of such a work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work

and the undertaker must indemnify BPC from and against all costs, claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done BPC on behalf of the undertaker or in accordance with plans approved by BPC or in accordance with any requirement of BPC's representative or under BPC's representative's supervision will not (if it was done without negligence on the part of BPC or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) BPC must give the undertaker reasonable notice of any such claim or demand made by a third party as soon as reasonably practicable after BPC becomes aware of it and must make no settlement or compromise of such a claim or demand in excess of £10,000 without the prior consent of the undertaker (such consent not to be unreasonably withheld or delayed).

65. BPC must, on receipt of a request from the undertaker, from time to time provide free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably

enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

66. In the assessment of any sums payable to BPC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by BPC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

BPC's apparatus

67. Despite any provision of this Order or anything shown on the land plan—

(a) the undertaker must not acquire any of BPC's apparatus other than by agreement;

(b) any right of BPC to maintain and use any of BPC's apparatus in land must not be extinguished, suspended or interfered with other than with BPC's agreement; and

(c) the undertaker must not alter, divert, remove, replace, reposition, relocate or repair any of BPC's apparatus other than with BPC's consent (not to be unreasonably withheld or delayed in respect of any specified work).

The Port's railway

68. For the purpose of this Order—

(a) no part of the Port's railway is, or will become by virtue of this Order or the execution of the authorised development, existing operational railway or operational railway; and

(b) no part of BPC's property or of any other land over which the Port's railway is located (whether or not that land is owned by BPC) is, or will become by virtue of this Order or the execution of the authorised development, operational railway land or currently operational railway land or form part of the railway authorised by this Order to which article 39 (operation and use of railways) applies.

Trees and other vegetation

69.—(1) Despite any provision in this Order and anything shown on the certified documents, in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development the undertaker must not—

(a) plant new or replacement trees, hedges, hedgerows, shrubs or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed; or

(b) remove, cut back, fell or lop, prune or reduce in any way any other hedge, tree, shrub or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed.

General

70. The undertaker must in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development secure compliance with and implementation of all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part.

71. Article 49 (procedure in relation to further approvals, etc) will not apply in relation to any consent, agreement or approval from BPC required under this Order.

PART 6

Protection for Exolum Pipeline System Ltd

72. The provisions of this Part have effect for the protection of the Exolum undertaker referred to in this Part unless otherwise agreed in writing between the undertaker and the Exolum undertaker.

73. In this Part—

"alternative apparatus" means alternative apparatus adequate to enable the Exolum undertaker to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means the pipeline, or any part of it, belonging to or maintained by the Exolum undertaker, which is within the Order limits, and includes any structure in which that apparatus is or is to be lodged or which gives or will give access to apparatus;

"Exolum undertaker" means Exolum Pipeline System Ltd (registered company number 09497223) or any successor in title to the Exolum undertaker in respect of the apparatus;

"functions" includes powers and duties; and

"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.

74. Despite any provision of this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

75.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which the apparatus is placed, that apparatus must not be removed under this Part and any right of the Exolum 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 Exolum undertaker.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the Exolum undertaker written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed in the land referred to in sub-paragraph (2), the Exolum 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 other land in which the alternative apparatus is to be constructed.

(4) The Exolum undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56 (arbitration), and after the grant to the Exolum undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the Exolum undertaker that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the Exolum undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the Exolum undertaker.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

76.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 75(2) that are near to, or will or may affect, any apparatus the removal of which has

not been required by the undertaker under that sub-paragraph, the undertaker must submit to the Exolum undertaker a plan, section and description of the works to be executed.

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

(3) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of the apparatus or (wherever situated) will impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the information to be submitted to the Exolum undertaker under sub-paragraph 76(1) shall be submitted not less than 35 days before the works are started and shall include a method statement describing:

(a) the exact position of the works;

(b) the level at which the works are to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus

to permit the Exolum undertaker to assess whether any protective works or monitoring of adjoining activities or works are necessary, acting reasonably.

(4) Any requirements made by the Exolum undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) re-submitted to it.

(5) If the Exolum undertaker in accordance with sub-paragraph (4) 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, paragraph 75 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph (2) of that paragraph.

(6) 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the Exolum undertaker notice as soon as is reasonably practicable and a plan, section and description of the works referred to in sub-paragraph (1) as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) and sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(8) Where, in the reasonable opinion of the Exolum undertaker or the undertaker, anything done in the exercise of the powers conferred by this Order might interfere with the cathodic protection forming part of apparatus or any apparatus might interfere with the proposed or existing cathodic protection forming part of the undertaker's works, the Exolum undertaker and the undertaker must co-operate in carrying out any tests which they consider reasonably necessary for ascertaining the nature and extent of such interference, and measures reasonably necessary for providing or preserving such cathodic protection.

77.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the Exolum undertaker the proper and reasonable expenses reasonably incurred by the Exolum undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus.

(2) The value of any apparatus removed under the provisions of this Part of the Schedule is to be deducted from any sum payable under paragraph (1), that value being calculated after removal.

78.—(1) If in accordance with the provisions of this Part—

(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, 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 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 Exolum undertaker by virtue of paragraph 77(1) is to be reduced by the amount of that excess.

(2) For the purposes of sub-paragraph (1), the extension of the apparatus to a length greater than the length of the existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

(3) An amount which apart from this sub-paragraph would be payable to the Exolum undertaker in respect of works by virtue of paragraph 77(1) 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 Exolum undertaker 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.

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

PART 7

For the protection of Western Power Distribution Limited (South West) Plc

Application

80. For the protection of Western Power Distribution Limited (South West) plc as referred to in this Part 7 of Schedule 16 the following provisions, unless otherwise agreed in writing between the undertaker and Western Power Distribution Limited (South West) plc have effect.

Interpretation

81. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously;

"alternative rights" means all and any necessary legal easements, consents, or permissions required by WPD in order to permit or authorise a diversion;

"apparatus" means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by WPD;

"diversion" means an alteration to the WPD network in order to enable or facilitate the authorised development;

"functions" includes powers and duties;

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

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

"specified work" means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

"WPD" means Western Power Distribution (South West) plc (company number 02366894) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB;

"WPD network" means WPD's distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the Electricity Act 1989; and

for the avoidance of doubt, all other terms as defined in article 2 (interpretation) of this Order.

Precedence of 1991 Act in respect of apparatus in streets

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

No acquisition or extinguishment except by agreement

83. 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

84.—(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 WPD's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD in accordance with sub-paragraphs (2) to (11).

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

(a) If, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed.

(b) Should the undertaker not be able to obtain the alternative rights required under sub-paragraph (a) then the undertaker and WPD shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights.

(c) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (a) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph (b), WPD shall on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the

circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(3) Any alternative apparatus required pursuant to sub-paragraph (2) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 87.

(4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 87, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph (2), 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.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

(7) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 87.

(8) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.

(9) 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 expert less favourable on the whole to WPD than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

(10) If in accordance with the provisions of this Part of this Schedule WPD require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WPD must deduct the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph 86(1).

(11) For the purposes of sub–paragraph (10)—

(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.

85.—(1) Not less than 28 days before the undertaker intends to start the execution of any specified work, the undertaker must submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3).

(2) Subject to sub-paragraph (3) the undertaker must not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the plan so submitted, and identified any reasonable requirements it has in relation to the carrying out of the works such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it shall be deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by WPD and WPD is entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker must comply with WPD's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Edition) (2014) as the same may be replaced from time to time.

(6) If WPD, in accordance with sub–paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement subject to sub-paragraph (3), paragraphs 84(1) to (6) apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 84(2).

(7) Nothing in this paragraph 85 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub–paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub–paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

86.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any alternative apparatus arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

(a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and

(b) reimburse WPD for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by WPD of such damage, by reason or in consequence of any such damage or interruption.

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

(4) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) WPD shall not be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

87.—(1) Article 56 (arbitration) applies to any difference as to the legal interpretation of this Schedule and as provided for in sub–paragraph (7).

(2) Save as provided for in sub–paragraph (1) or sub–paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;

(c) issue a decision within 28 days of receipt of the submissions under sub-paragraph (5)(a); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 56.

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

89. The provisions of Part 2 of this Schedule do not apply in relation to WPD or any apparatus of WPD.

PART 8

For the mutual protection of National Grid and the Railway Undertaker

Preliminary

Application

90. For the protection of National Grid and the railway undertaker referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the railway undertaker and National Grid, have effect.

Interpretation

91. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"2016 Order" means the National Grid (Hinkley Point C Connection Project) Order 2016 as amended;

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable it to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

"commence" has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

"existing apparatus" means apparatus which is sited in, over, or under land on 19 April 2021 and belonging to or maintained by National Grid on that date "existing electricity tower" shall be construed accordingly;

"functions" includes powers and duties;

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

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

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

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

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid" means National Grid Electricity Transmission plc (registered company number 2366977);

"parent company" means a parent company of the railway undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

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

"railway property" means—

(a) any railway belonging to the railway undertaker;

(b) any stations, land, works, apparatus and equipment belonging to the railway undertaker and connected with any such railway; and

(c) any easement or other property interest held or used by the railway undertaker for the purposes of such railway or works, apparatus or equipment;

"railway undertaker" means the undertaker as defined in article 2 of this Order and, in relation to property owned by Network Rail, Network Rail;

"the relevant 2016 Order development" means so much of any of the development authorised under the 2016 Order as will or may be situated under, over or within 15 metres of, or which may in any way adversely affect, railway property;

"the relevant authorised development" means so much of any of the authorised development or activities undertaken in association with the authorised development as will or may be situated under, over, or within 15 metres measured in any direction of any apparatus proposed to be constructed or installed by National Grid under the powers of the 2016 Order; and

"specified railway works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any existing apparatus the removal of which has not been required by the railway undertaker under paragraph 99(2) or otherwise; and/or

(b) may in any way adversely affect any existing apparatus the removal of which has not been required by the railway undertaker under paragraph 99(2) or otherwise.

92. Except for paragraphs 96 (apparatus of National Grid in stopped up streets), 100 (retained existing apparatus), 101 (expenses) and 102 of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the railway undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the railway undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

93. The provisions of the 2016 Order take effect subject to the provisions of this Part.

94. The provisions of Part 2 of this Schedule do not apply in relation to National Grid or any apparatus of National Grid.

Duty to co-operate

95.—(1) The railway undertaker and National Grid will co-operate and work together to secure that the works proposed to be carried out by National Grid under the powers of the 2016 Order and the authorised works to be carried out by the railway undertaker under this Order will so far as reasonably possible be programmed, and arrangements for the carrying out of those works will be made, so as, so far as reasonably possible, to avoid undue delay or any conflict arising between the carrying out of those proposed works and the implementation of the authorised development.

(2) Any consent, agreement or approval by National Grid or the railway undertaker under this Part of this Schedule must not be unreasonably withheld or delayed.

Provisions for the protection of National Grid

Apparatus of National Grid in stopped up streets

96.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 14 (permanent stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the railway undertaker will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to it in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (temporary stopping up of streets and public rights of way), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as 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.

Acquisition of land

97.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the railway undertaker may not acquire or extinguish any land interest or apparatus or override any easement and/or other interest of National Grid, including any rights contained in the 2016 Order, otherwise than by agreement.

(2) The railway undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of existing apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(3) Any agreement or consent granted by National Grid under paragraph 100 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under paragraph (1).

Provisions relating to existing apparatus

Removal of existing apparatus

98.—(1) If, in the exercise of the agreement reached in accordance with paragraph 97 or in any other authorised manner, the railway undertaker acquires any interest in any land in which any apparatus is placed or requires that National Grid's existing apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that existing apparatus in that land must not be extinguished, until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the railway undertaker requires the removal of any existing apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the railway undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 99(1) below) the necessary facilities and

rights for the construction of alternative apparatus in other land of or land secured by the railway 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 or land secured by the railway undertaker, or the railway undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, as soon as is reasonably possible and on receipt of a written notice to that effect from the railway undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the railway undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the railway undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the railway undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

99.—(1) Where, in accordance with paragraph 98 of this Part of this Schedule, the railway undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the railway undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the railway undertaker and agreed with National Grid under paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter will be referred to arbitration in accordance with article 56 (arbitration) and the arbitrator shall make such provision for the payment of compensation by the railway undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained existing apparatus

100.—(1) Not less than 56 days before the commencement of any specified railway works that are near to, or will or may affect, any existing apparatus the removal of which has not been required by the railway undertaker under paragraph 98(2) or otherwise, the railway undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to specified railway works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any existing apparatus, or (ii) involve embankment works within 15 metres of any existing apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all existing apparatus as provided by National Grid under sub-paragraph (1);

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an existing electricity tower or between any two or more existing electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub- paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The railway undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted or they have been settled by arbitration under article 56 (arbitration).

(5) Any approval of National Grid required under sub-paragraphs (2) or (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any existing apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the railway undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the railway undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the railway undertaker, reasonably requires the removal of any existing apparatus and gives written notice to the railway undertaker of that requirement, paragraphs 90 to 92 and 94 to 96 apply as if the removal of the apparatus had been required by the railway undertaker under paragraph 98(2).

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

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

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the railway undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

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

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such existing apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 98(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the railway 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 National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the railway undertaker.

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

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

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

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

102.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the railway undertaker or in consequence of any act or default of the railway undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the railway undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the railway undertaker will—

(a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and

(b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker.

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

(3) Nothing in sub-paragraph (1) shall impose any liability on the railway undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents.

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

Enactments and agreements

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

Co-operation

104. Where in consequence of the proposed construction of any of the authorised works, the railway undertaker or National Grid requires the removal of apparatus under paragraph 98(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 100, the railway undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the railway undertaker for that purpose.

Access

105. If in consequence of the agreement reached in accordance with paragraph 97(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the railway undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction

Provisions for the protection of National Grid's proposed works and for the railway undertaker

106. As soon as reasonably practicable after the coming into force of this Order, and in any event no later than 70 days before commencing a part of the relevant 2016 Order development, National Grid will give the railway undertaker plans of the works to be carried out including in particular a method statement and the exact position of the works and sufficient details to enable the engineer to ascertain the impact of the works on railway property and on the carrying out of the authorised works and for the railway undertaker to give the details set out in paragraph 107.

107.—(1) As soon as reasonably practicable after the coming into force of this Order, and in any event no later than 56 days before commencing any of the relevant authorised development, the railway undertaker will give National Grid plans of the works to be carried out comprised in that development which must include a method statement and describe the position of the proposed apparatus as provided by National Grid under sub-paragraph (1) and the matters set out in paragraph 100(2)(a) to 100(2)(c) and 100(2)(e) to 100(2)(g).

(2) In relation to any works which will or may be situated on, over or within 10 metres of any part of the foundations of a proposed electricity tower or between any two or more proposed electricity towers, the plan to be submitted under sub- paragraph (1) must, in addition to the matters set out in that sub-paragraph, include a method statement describing the matters set out in paragraph 100(3) so far as relevant in this scenario.

(3) Paragraphs 100(4) to 100(8) and 100(10) to 100(12) apply in relation to works to which sub-paragraph (1) or (2) applies.

108. Part 4 of Schedule 15 to the 2016 Order (protection for railway interests) has effect as if any reference to Network Rail included a reference to the railway undertaker and if references to railway property included the authorised development.

General

Arbitration

109. Any difference or dispute arising between the railway undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the railway undertaker and National Grid, be determined by arbitration in accordance with article 56 (arbitration).

Notices

110. The plans submitted to National Grid by the railway undertaker pursuant to paragraph 100 must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the railway undertaker in writing.

PART 9

For the protection of Wales and West Utilities ("WWU")

111. In this Part of this Schedule "North Somerset District Council" shall mean the undertaker and where relevant any person to whom the powers contained in this Order are conferred in so far as that person's activities in reliance on the powers in this Order affect the land and apparatus of WWU.

112. For the protection of WWU in this Part of this Schedule the following provisions, unless otherwise agreed in writing between North Somerset District Council and WWU, have effect.

113. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable WWU to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by WWU for the purposes of gas supply 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; and

"WWU" means Wales & West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ, a gas transporter within the meaning of Part 1 of the Gas Act 1986(**a**).

114. This Part of this Schedule does not apply to apparatus in respect of which the relations between North Somerset District Council and WWU are regulated by the provisions of Part 3 of the 1991 Act.

115. Regardless of any provision in this Order or anything shown on the land plans, North Somerset District Council must not acquire any apparatus otherwise than by agreement.

116.—(1) If, in the exercise of the powers conferred by this Order, North Somerset District Council acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of WWU 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 WWU.

(**a**) 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)

(2) If, for the purpose of executing any works authorised by this Order in, on, over, or under any land purchased, held, appropriated or used under this Order, North Somerset District Council requires the removal of any apparatus placed in that land, it must give to WWU written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order WWU reasonably needs to remove any of its apparatus) North Somerset District Council must, subject to sub-paragraph (3), afford to WWU the necessary facilities and rights for the construction of alternative apparatus in other land of North Somerset District Council 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 North Somerset District Council, or North Somerset District Council 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, WWU must, on receipt of a written notice to that effect from North Somerset District Council, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, or agree with North Somerset District Council an alternative route for the alternative apparatus over land in respect of which it is possible for North Somerset District Council to obtain the relevant facilities and rights. For the avoidance of doubt, WWU shall not be obliged to exercise its compulsory purchase powers pursuant to the Gas Act 1986 in order to obtain any such facilities or rights and WWU shall retain an absolute discretion as to whether it shall choose to exercise those powers.

(4) Any alternative apparatus to be constructed in land of North Somerset District Council under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between WWU and North Somerset District Council, or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) WWU must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as referred to in sub-paragraph (4) in accordance with article 56 (arbitration), and after the grant to WWU of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed as soon as reasonably practicable to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by North Somerset District Council to be removed under the provisions of this Part of this Schedule.

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

(7) Nothing in sub-paragraph (6) authorises North Somerset District Council to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

117.—(1) Where, in accordance with the provisions of this Part of this Schedule, North Somerset District Council affords to WWU facilities and rights for the construction and maintenance in land of North Somerset District Council 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 North Somerset District Council and WWU or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of North Somerset District Council, the arbitrator must—

(a) give effect to all reasonable requirements of Network Rail and North Somerset District Council for ensuring the safety and efficient operation of the railway which forms or is to form part of Network Rail's network and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference

with any proposed works of Network Rail or North Somerset District Council or the traffic on the railway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by North Somerset District Council 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 WWU 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 North Somerset District Council to WWU as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

118.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 116(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by North Somerset District Council under paragraph 116(2), North Somerset District Council must submit to WWU a plan, section and description of the works to be executed.

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

(3) Any requirements made by WWU under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub¬paragraph (1) are submitted to it.

(4) If WWU in accordance with sub-paragraph (3) and in consequence of the works proposed by North Somerset District Council, reasonably requires the removal of any apparatus and gives written notice to North Somerset District Council of that requirement, paragraphs 111 to 116 apply as if the removal of the apparatus had been required by North Somerset District Council under paragraph116(2).

(5) Nothing in this paragraph precludes North Somerset District Council 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) North Somerset District Council is not required to comply with sub-paragraph (1) in a case of emergency, but in that case it must give to WWU notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable if possible before carrying out those works, or if not, as soon as reasonably practicable afterwards and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) For the avoidance of doubt, whenever North Somerset District Council carries out any works in the vicinity of any apparatus of WWU and whether or not WWU has made any requirements pursuant to sub-paragraph (2) above, North Somerset District Council shall comply with—

(a) all applicable health and safety laws, including the Construction (Design and Management) Regulations 2015;

(b) the Pipeline Safety Regulations 1996; and

(c) the safety guidance published from time to time by WWU and the HSE.

119.—(1) Subject to the following provisions of this paragraph, North Somerset District Council must repay to WWU the reasonable expenses incurred by WWU in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including: a) costs or compensation payable in connection with the acquisition of land for that purpose; and b) any reasonable legal or other professional costs properly incurred relating

to any such works to apparatus, or to the provision of alternative apparatus) which may be required in consequence of the execution of any such works as are referred to in paragraph 116(2).

(2) If in accordance with the provisions of this Part of this Schedule WWU require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WWU's requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WWU must deduct the cost of such additional requirements from the amount payable by North Somerset District Council pursuant to sub-paragraph 119(1).

(3) For the purposes of sub–paragraph 119(2) 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.

(4) For the avoidance of doubt and subject to paragraph 114, the provisions of paragraph 118(1) above shall require North Somerset District Council to repay the full costs of any works carried out to WWU's apparatus, or in order to protect that apparatus, or in consequence of any works carried out in the vicinity of that apparatus by North Somerset District Council.

120.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 116(2), any damage is caused to any 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 WWU, or there is any interruption in any service provided, or in the supply of any goods, by WWU, North Somerset District Council must—

(a) bear and pay the cost reasonably incurred by WWU in making good such damage or restoring the supply; and

(b) make reasonable compensation to WWU for any other expenses, loss, damages, penalty or costs incurred by WWU,

by reason or in consequence of any such damage or interruption.

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

(3) WWU must give North Somerset District Council reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of North Somerset District Council which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

121. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between North Somerset District Council or Network Rail and WWU in respect of any apparatus laid or erected in land belonging to North Somerset District Council or Network Rail on the date on which this Order is made.

122. The provisions of Part 2 of this Schedule do not apply in relation to WWU or any apparatus of WWU.

PART 10

For the protection of the National Trust

123.—(1) The provisions of this Part of this Schedule have effect for the protection of the Trust unless otherwise agreed in writing between the undertaker and the Trust.

(2) In this Part of this Schedule—

"activities" means vegetation clearance, removal of loose rocks, rock scaling, insertion of rock bolts and erecting catch fences and associated stays, cables and anchors;

"construction" includes execution, placing, erecting and insertion, and "construct" and "constructed" have corresponding meanings;

"emergency" means a situation which—

(a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;

(b) is a serious event presenting a risk of harm or damage to people, property or the environment; and

(c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work and details of the extent, timing and duration of any proposed occupation of property belonging to the Trust for the purpose of engaging in the activities;

"Quarry Bridge 2 works" means the reconstruction of the accommodation bridge under the railway at 122 miles 74 chains providing access to the property of the Trust;

"the Trust" means The National Trust for Places of Historic Interest or Natural Beauty (Registered Charity 205846); and

"Trust property" means any property belonging to the Trust.

Powers of compulsory acquisition

124. The powers of article 27 (compulsory acquisition of rights or imposition of covenants) and article 31 (Acquisition of subsoil or airspace only) may only be exercised in relation to Trust property with the consent of the Trust.

Works provisions

125.—(1) The undertaker must before commencing activities on Trust property or the Quarry Bridge 2 works under the powers of the Order supply to the Trust proper and sufficient plans and method statements for the proposed activities for the reasonable approval of the Trust and the activities must not be commenced except in accordance with such plans and method statements as have been approved in writing by the Trust or settled in accordance with paragraph 132.

(2) The approval of the Trust under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to the Trust the Trust has not indicated its disapproval of those plans and the grounds of disapproval the undertaker may serve upon the Trust written notice requiring the Trust to intimate its approval or disapproval within a further period of 14 days beginning with the date upon which Trust receives written notice from the undertaker. If by the expiry of the further 14 days the Trust has not intimated its approval or disapproval, the Trust will be deemed to have approved the plans as submitted.

126.—(1) Any activities to be carried out by virtue of paragraph 125 must, when commenced, be carried out—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 125;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the Trust;

(c) in such manner as to cause as little damage as is possible to the Trust's property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe access to Trust property.

(2) If any damage to Trust property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the entry on to Trust property, the undertaker must, notwithstanding any such approval, make good such damage and must pay to the Trust all

reasonable expenses to which the Trust may be put by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

(a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the Trust or its servants, contractors or agents; or

(b) any liability on the Trust with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

127. The undertaker must—

(a) at all times afford reasonable facilities to the Trust for access to inspect the activities of the undertaker on Trust property; and

(b) supply the Trust with all such information as the Trust may reasonably require with regard to activities of the undertaker on Trust property.

128.—(1) Subject to sub-paragraph (2) the undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any Trust property, unless preventing such access is with the consent of the Trust or is in the case of an emergency.

(2) Sub-paragraph (1) does not apply to the Quarry Bridge 2 works while they are under construction, save that access to any Trust property must not be prevented in the case of an emergency.

129.—(1) Subject to sub-paragraph (2) where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Trust to Trust property, it must give the Trust 56 days' written notice of that requirement.

(2) Sub-paragraph (1) does not apply in the case of an emergency.

130. Where under this Part of this Schedule the Trust is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions.

131. The undertaker must repay to the Trust all costs, charges and expenses which it may reasonably incur or which it may sustain—

(a) in the examination of plans under this Part of this Schedule;

(b) in respect of the approval of plans submitted by the undertaker and the supervision by the Trust of the carrying out or construction of any activities or the Quarry Bridge 2 works and otherwise in connection with the implementation of the provisions of this Part of this Schedule; and

(c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting and watching the activities of the undertaker on Trust property.

Expert determination

132.—(1) Article 56 (arbitration) applies to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub–paragraph (7).

(2) Save as provided for in sub–paragraph (1) or sub–paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use all reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;

(c) issue a decision within 28 days of receipt of the submissions under sub-paragraph (5)(a); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 56 (arbitration).

SCHEDULE 17

Article 55

Documents to be Certified

Documents for certification that they are true copies of the documents referred to in this Order—

(1) *Document*	*(2)* *Drawing Number*	*(3)* *Revision*
Ashton Vale Road and Winterstoke Road Highway Works Plan	674946.BD.29.01-SK31 Rev L	2
The Avon Gorge Vegetation Management Plan	-	2
The book of reference	-	4
Bridleway Extension Under Elevated M5 Plan	467470.BQ.04.20-520 Rev H	1
Cattle Creep Proposed General Arrangement drawing	W1097B-ARP-DRG-ECV-300003 and W1097B-ARP-DRG-ECV-300004	1
The COCP	-	2
The compounds, haul roads and access to works plan	674946.BQ.42.01-380 to 674946.BQ.42.01-403 Rev G	4
The crossings to be extinguished plans	674946.BQ.42.01-410 to 674946.BQ.42.01-426 Rev F	2
CTMP – Construction Traffic Management Plan	-	1
The design drawings	See requirement 4	See requirement 4
Earthworks	W1097B-ARP-DRG-EGE 300001 Rev A02 to W1097B ARP-DRG-EGE-300008 Rev	1

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	A02	
The environmental master plan	674946-001-024-A ES-C	3
The environmental statement	-	-
General arrangement plans	674946.BQ.42.01-570 to 674946.BQ.42.01-593 Rev J	4
Habitat impacted by construction works within the Avon Gorge Woodlands SAC plan	674946-004-004-A Rev ES A	1
The hedgerow location plan	674946.BQ.42.01-600 A	1
The important hedgerow plan	674946-006-020-A	2
The land plan	-	3
The Master CEMP	-	3
The permanent and temporary stopping up and diversion plan	674946.BQ.42.01-480 to 674946.BQ.42.01-481 674946.BQ.42.01-484 to 674946.BQ.42.01-486 674946.BQ.42.01-496	2
The permanent traffic regulation order plans	467470.BQ.04.20-160 467470.BQ.04.20-215 467470.BQ.04.20-225 467470.BQ.04.20.601	1
Portbury Hundred location of additional tree planting plans	467470.BQ.04.20-610 to 467470.BQ.04.20-613	1
Railway landscape plans (disused line)	674946.BJ.35.01-01 to 674946.BJ.35.01-08 Rev I	3
Section drawings (Longitudinal Profile of Railway Alignment and Cross Section Plans)	W1097B-ARP-DRG-ETR-001301 to W1097B-ARP-DRG-ETR-1309 467470.BQ.04.20-104 Rev B 467470.BQ.04.20-219 Rev B 467470.BQ.04.20-292 Rev B 467470.BQ.04.20-410 Rev B 467470.BQ.04.20-531 Rev B 467470.BQ.04.20-630 Rev B 467470.BQ.04.20-SK300-SK304 Rev I 674946.BD.29.01-SK33 Rev A	1
The works plans	674946.BQ.42.01-300 to 674946.BQ.42.01-324	6
The National Cycle Network (NCN) temporary and permanent work plans	467470.BQ.04.20-530 Rev H 467470.BQ.04.20-540 Rev I 467470.BQ.04.20-550 Rev E 467470.BQ.04.20-551 Rev E 467470.BQ.04.20-552 Rev F 467470.BQ.04.20-553 Rev E 467470.BQ.04.20-554 Rev B	2
The new highways plan	674946.BQ.42.01-510 to 674946.BQ.42.01-511 Rev G 674946.BQ.42.01-515 Rev G 674946.BQ.42.01-525 to	2

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises North Somerset District Council to construct a new railway on the formation of the disused Portishead Branch Line railway and to carry out works to upgrade the existing freight only Parson Street to Royal Portbury Dock railway to allow it to be used for passenger railway services.

The purpose of this Order is to allow passenger services to run between Portishead and Bristol and to connect into the wider national railway network. The railway will, once open to passenger services, be owned and maintained by Network Rail Infrastructure limited.

The works also necessitate the diversion of an existing public footpath that crosses the railway at Barons Close, Ashton, Bristol.

The Order permits North Somerset District Council to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the new section of railway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 55 (documents to be certified) of this Order may be inspected free of charge during working hours at the offices of North Somerset District Council at Town Hall, Walliscote Grove Road, Weston–super–Mare BS23 1UJ or (during periods in which restrictions on movement are in place under the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (S.I. 2020/1374) (or other relevant Government legislation)) on the website https://metrowestphase1.org/final-dco-examination-documents/.

ENCLOSURE 4



MetroWest

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.1 – Schedule of Changes to the draft Development Consent Order

Author: Womble Bond Dickinson (UK) LLP
Version: 8
Date: July 2021

MetroWest Phase 1: Draft Development Consent Order (dDCO)

Schedule of drafting changes for dDCO submitted to the Secretary of State for Transport

21 July 2021

1. The following table has been prepared by the Applicant to set out the changes made to the dDCO from that submitted at the close of Examination following Deadline 7 (19 April 2021).

2. It is submitted together with:

    a. Revised dDCO (DCO Document Reference: 3.1, version 9) (clean), and

    b. A comparison version of the dDCO showing all changes between new Version 9 and Version 8 (DCO Document Reference: 3.1, version 9).

3. The changes are made principally to reflect the submission of revised protective provisions between the Applicant and Bristol Port Company following further negotiations conducted after the close of examination.

Table 1: Summary of changes made to the dDCO (version 9) from the dDCO submitted in the examination for development consent:

Article/Schedule	Change	Reason for change	Precedent used	Consequential changes
Schedule 16 (Protective Provisions), Part 5, Paragraphs 43 to 71	The Applicant has submitted revised protections for the Bristol Port Company which comprises paragraphs 43 to 71 in the dDCO.	The new protective provisions have been submitted to reflect significant progress in the agreement between the Applicant and the Port. These are based on several meetings which have taken place since the close of examination in order to sufficiently protect the Port's position in the	N/A	N/A

Article/Schedule	Change	Reason for change	Precedent used	Consequential changes
		development of the MetroWest scheme.		
Schedule 17	Bridleway Extension under the Elevated M5 Plan added to schedule	Bridleway Extension under the Elevated M5 Plan omitted from schedule of documents to be certified	N/A	N/A

Womble Bond Dickinson

19 July 2021

ENCLOSURE 5

[redacted]

DATED 20TH JULY 2021

THE CITY COUNCIL OF BRISTOL

-and-

NORTH SOMERSET DISTRICT COUNCIL

AGREEMENT

under Section 278 of the
Highways Act 1980

relating to The Portishead Branch Line (MetroWest Phase 1)

TIM O'GARA
SERVICE DIRECTOR
LEGAL AND DEMOCRATIC SERVICES
CITY HALL
COLLEGE GREEN
BRISTOL
BS1 5TR

Ref TR04001 DCO

THIS AGREEMENT is made the 20TH day of JULY 202[~~X~~1]

B E T W E E N

(1) **THE CITY COUNCIL OF BRISTOL** of City Hall, College Green, Bristol BS1 5TR **("Council")**;

(2) **NORTH SOMERSET DISTRICT COUNCIL** of Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ **("NSC")**

BACKGROUND

(1) The Council is the local highway authority for the area in which the Highway Land is situated and has agreed to enter into this Agreement with NSC for the purpose of securing the carrying out of the Works to the highway by NSC at no cost to the Council and the Council is satisfied that such Works will be for the benefit to the public

(2) NSC has secured the Order and proposes to undertake the Works in accordance with the Order

(3) Network Rail is the owner of the Railway in fee simple in possession

(4) NSC proposes to undertake the Works subject to compliance by NSC of the covenants and obligations on its part hereinafter contained

(5) The Council is the freehold owner of the proposed route of the New Footpath and has agreed to dedicate the New Footpath as a right of way for the use of the public on foot only upon the Order coming in to force.

(6) The Council is the freehold owner of the Tow Path Land and has agreed that NSC and Network Rail may use the Tow Path Land for the purposes of constructing MW1 in accordance with the Tow Path Licence

1. **DEFINITIONS AND INTERPRETATIONS**

1.1. The following definitions and rules of interpretation shall apply unless the context indicates otherwise:

1.1.1. Any reference to the parties or any other legal or natural person shall unless the context indicates otherwise include its assigns and successors in title and any successor in function

1.1.2. Any covenants obligations or other commitments given by more than one party shall be joint and several

1.1.3. Clause Schedule and paragraph headings shall not affect the interpretation of this Agreement

1.1.4. Unless the context otherwise requires words in the singular shall include the plural and in the plural shall include the singular

1.1.5. Unless the context otherwise requires a reference to one gender shall include a reference to the other genders

1.1.6. Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended extended or re-enacted from time to time and shall include any subordinate legislation made under that statute or statutory provision

1.1.7. Any obligation on a party not to do something includes an obligation not to allow that thing to be done

1.1.8. References to clauses and Schedules are to clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule

1.1.9. Where NSC is not a body corporate then unless the context requires otherwise neuter words shall include the masculine or feminine gender (as the case may be) and singular words shall include their plural numbers

1.1.10. "**Act**" the Highways Act 1980

1.1.11. **"Advance Warning Signs"** public information signs that give advance notice to highway users of the commencement of the Works (or any part) or that communicates other relevant information

1.1.12. **"CDM Regulations"** the Construction (Design and Management) Regulations 2015 (SI 2015/51)

1.1.13. "**Certificate No.1**" and "**Certificate No.2**" the certificates of completion as referred to in paragraphs 11 and 13 respectively of the Second Schedule

1.1.14. **"Clanage Road Land"** the land to the east of Clanage Road, Ashton, shown on the attached Clanage Road Compound Landscaping and Access Plan.

1.1.15. **Clanage Road Works"** that part of the Works that will benefit the Clanage Road Land

1.1.16. **"Commuted Sum"** the financial sum towards the future cost of maintaining or

replacing the Works as stated in clause 11.1.3 (if any)

1.1.17. **"Default Event"** any event specified in Clause 7

1.1.18. **"Default Work"** the work required to be carried out by the Council following a Default Event to secure the performance of the covenants obligations and liabilities of NSC contained in this Agreement

1.1.19. **"Drawings"** the drawing/s numbered 467470.BQ.04.20-621 Rev U (the Clanage Road Compound Landscaping and Access Plan) 674946.BD.29.01-SK31 Rev L (Ashton Vale and Winterstoke Road Highway Works Plan) 674946.BQ.42.01-496 Rev H (Permanent and Temporary Stopping Up and Diversion Plan) and _R7809022021 (Land Plan) attached to this Agreement and any amended such drawing signed by or on behalf of the Proper Officer

1.1.20. "**Health and Safety Plan"** the plan that contains the pre-construction information and the construction phase plan both as defined in the CDM Regulations

1.1.21. **"Highway Land"** the parts of the local highway network maintainable at the public expense shown on the Drawings on which the Works are proposed to be carried out including all footpaths street furniture verges service strips service margins vehicular crossings and road surface water drainage systems

1.1.22. "**Index Linked**" the meaning set out in the Third Schedule

1.1.23. "**Inspection and Technical Fee** " the Index Linked sum of **£3,100.00** payable by NSC to the Council as stated in clause 3.1.6 in respect of the costs incurred for the technical approval and inspection of the Works at Clanage Road and

the Index Linked sum of **£16,400.00** payable by NSC to the Council as stated in clause 3.1.6 in respect of the costs incurred for the technical approval and inspection of the Works at Winterstoke Road and

the Index Linked sum of **£3,100.00** payable by NSC to the Council as stated in clause 3.1.6 in respect of the costs incurred for the technical approval and inspection of the lighting of the Works at Clanage Road and

the Index Linked sum of **£700.00** payable by NSC to the Council as stated in clause 3.1.6 in respect of the costs incurred for the technical approval and inspection of the lighting of the Works at Winterstoke Road

1.1.24. "**Maintenance Period**" a period of twelve (12) calendar months from the date of the issue of Certificate No.1 but if at the end of that period the Proper Officer forms the view that the Proper Officer cannot issue Certificate No.2 the Maintenance Period shall include such further period as shall elapse until the issue of Certificate No.2

1.1.25. **"Method Statement"** a written statement detailing the individual construction

processes to be employed to carry out the Works and a signing strategy that adequately demonstrates that the safety of all highway users will be ensured at all times

1.1.26. **"MOVA Payment"** the payment of £20,000 by NSC to the Council for upgrade to the MOVA system at the Winterstoke Road/Ashton Vale Road junction which will contribute to the Council's staff time for design work, controller reconfiguration, MOVA unit and license, ducting work, slot cutting, and additional detection infrastructure on Ashton Vale Road

1.1.27. **"MW1"** the development of the Railway the Clanage Road Land and Highway Land for the purposes of the proposed MetroWest Phase 1 project as permitted by the Order

1.1.28. **"New Footpath"** the diverted route of public footpath BCC/422/10 shown hatched on sheet 16 on the Permanent and Temporary Footpath Stopping Up and Diversion Plan

1.1.29. **"Occupation"** the physical use of the Clanage Road Land (or any buildings on it) for the purposes permitted by the Order but not including occupation for the purposes of construction fitting out or security and "Occupied" shall be construed accordingly

1.1.30. **"Order"** The Portishead Branch Line (MetroWest Phase 1) Order to be issued by the Secretary of State for Transport permitting MW1 under Planning Inspectorate reference TRO400011

1.1.31. **"the Plans"** the plans annexed hereto and with reference

1.1.32. **Clanage Road Compound Landscape and Access Plan** drawing reference 467470.BQ.04.20-621 revision U.

1.1.33. **Ashton Vale and Winterstoke Road Highway Works Plan** drawing reference 674946.BD.29.01-SK31 revision L

1.1.34. **Permanent and Temporary Stopping Up and Diversion Plan** Sheet 16 drawing number 674946.BQ.42.01-496 revision H

1.1.35. **Land Plan** drawing reference R7809022021

1.1.36. **"Programme"** the programme(s) prepared by NSC and agreed from time to time in writing by the Council for the carrying out of the Works showing the sequence in which the Works are to be carried out with an estimate of time that will be spent in carrying out each stage of the Works

1.1.37. **"Proper Officer"** any suitably qualified Council officer for the time being appointed for the purposes of this Agreement or of any provisions contained in this Agreement or any duly authorised officer by him to act on his behalf

1.1.38. **"Railway "** the Parson Street to Portishead railway in the City of Bristol shown for the purposes of identification edged red on the Land Plan in respect of which NSC has been granted the Order

1.1.39. "**Retail Prices Index**" the (All items) Index of Retail Prices contained in the Monthly Digest of Statistics published by the Office for National Statistics or any publication substituted therefor

1.1.40. "**Road Safety Audits**" safety audits of the Works to be carried out in accordance with the Design Manual for Roads and Bridges Standard GG 119 Road Safety Audit

1.1.41. "**Road Safety Audit Report**" the report to be prepared by the Safety Auditor following the carrying out of the Road Safety Audits

1.1.42. "**Safety Auditor**" an independent and suitably qualified highway or traffic engineer appointed by NSC at his expense to carry out the Road Safety Audits such appointment having been previously approved in writing by the Proper Officer

1.1.43. "**Sewer Adoption Agreement**" an agreement made under section 104 of the Water Industry Act 1991 (if any)

1.1.44. "**Specification**" the specification for the Works to be approved by the Proper Officer in accordance with the requirements set out in paragraph 1 of Schedule 2

1.1.45. **"Statutory Undertaker"** a statutory undertaker as defined in section 329(1) of the Act and including:

(a) persons authorised under any enactment to carry on an undertaking for the supply of electricity gas water or any sewerage undertaking;

(b) the Environment Agency;

(c) a holder of a licence to operate telecommunications systems;

(d) the Civil Aviation Authority;

(e) the holder of a licence to supply cable television; or any person company corporation board or authority whose apparatus at the date of this Agreement is already installed in under over or on the Highway Land pursuant to a statutory right or to a licence granted under section 50 of the New Roads and Street Works Act 1991

1.1.46. "**Technical Approval**" the approval issued by the Council for the Drawings and Programme

1.1.47. "**Tow Path Land**" the land shown with plot numbers 14/10, 20,25 and 35 on the Land Plan

1.1.48. "**Tow Path Licence**" the licence for NSC and Network Rail to access the Tow Path Land in substantially the form of the Fourth Schedule

1.1.49. "**Traffic Management Plan**" a plan which identifies temporary traffic management arrangements and controls to be implemented at the expense of NSC during the construction of the Works taking into account the relevant provisions of the Traffic Management Act 2004 including time restrictions routes for heavy goods vehicles

parking and temporary pedestrian routes details of any TRO to ensure that the best possible traffic flows are maintained on the Highway Land during the construction of the Works

1.1.50. "**TRO**" any temporary or permanent traffic regulation order made under the relevant provisions of the Road Traffic Regulation Act 1984 (including any necessary amendment to an existing order) which is required in order to commence and carry out the construction of the Works

1.1.51. **"Winterstoke Road Works"** that part of the works described in Schedule 1 in the vicinity of Winterstoke Road

1.1.52. "**Works**" the works described in the First Schedule which shall be treated as if they were "street works" for the purposes of the New Roads and Street Works Act 1991 and "associated works" shall mean all related works properly required by the Council to assimilate the Works into the existing highway

1.1.53. "**Working Day**" Monday to Friday inclusive which is not Christmas Day, Good Friday or a statutory bank holiday

2. STATUTORY PROVISIONS

2.1. THIS Agreement will be registered in the local land charges register and is entered into pursuant to Section 278 of the Act Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and all other statutory and other enabling powers and shall be enforceable accordingly but without prejudice to all and any other means of enforcing them at law or in equity or by statute

3. NSC'S COVENANTS

3.1. NSC covenants with the Council:-

3.1.1. to design construct and complete the Works in accordance with the terms of this Agreement at the expense of NSC

3.1.2. to observe and comply with the terms and conditions in the Second Schedule

3.1.3. to not interfere with the free flow of traffic on the existing highway or in any way obstruct the highway without the express written permission of the Proper Officer

3.1.4. To pay the MOVA Payment prior to commencement of the Works

3.1.5. to reimburse the Council the cost of repairing any damage caused to any highway maintainable at the public expense by any traffic arising from the carrying out of the Works or MW1 (without prejudice to Section 59 of the Act) or at the option of the Council effect such repair work as may be required by the Proper Officer.

Inspection and Technical Fee

3.1.6. upon signing this Agreement to pay to the Council the Inspection and Technical Fee towards the expenses to be incurred by the Council in approving any plans and drawings and in inspecting the Works

Programme

3.1.7. before commencing any part of the Works and without prejudice to the responsibilities of NSC as set out in this Agreement to submit to the Proper Officer for approval any plans drawings and Programme for the Works and details of any contractor NSC proposes to use for the Works PROVIDED THAT:

3.1.7.1. no works are to commence on the adopted highway until such time as technical approval for the scheme of Works has been given in writing by the Proper Officer; and

3.1.7.2. failure to comply with any of the above provisions may result in enforcement action being taken by the Council

Road Safety Audit

3.1.8. before commencing any part of the Works to arrange for the carrying out of a Road Safety Audit for the Works as approved in writing by the appropriate officer of the Council for Road Safety Audits and in accordance with the Design Manual for Roads and Bridges Chapter 5/2 GG119 Road Safety Audit published by Highways England subject to the proviso that the monitoring period therein referred to shall be consistent with and limited to the Maintenance Period and will provide the resulting Road Safety Audit Report to the Proper Officer prior to approval of the Drawing and Programme

Notification to Properties

3.1.9. at least three (3) weeks before NSC commences any part of the Works to send a written notification to the occupiers of properties in the immediate neighbourhood of the Works (as identified by the Proper Officer) advising them of the date upon which the Works are due to commence together with an estimate of the duration of the Works and the extent to which the Works will affect their properties and will at the same time send a copy of each such notification to the Proper Officer

Additional Works, Codes and Costs

3.1.10. prior to the issue of Certificate No. 1 as referred to in paragraph 11 of the Second Schedule to carry out and complete at its own expense any additional works or alterations or amendments to the Works as are required to be carried out before commencement of the Maintenance Period as a result of the Road Safety Audit (as referred to in paragraph 11) within such period as the Proper Officer shall allow and subject to the terms and conditions hereof in relation to the carrying out of the Works and

3.1.11. prior to the issue of Certificate No. 2 as referred to in paragraph 13 of the Second Schedule to carry out and complete at its own expense any additional works or alterations or amendments to the Works as are required by the Proper Officer as a result of the Road Safety Audit (as referred to in paragraph 12) within such period as the Proper Officer shall allow and subject to the terms and conditions hereof in relation to the carrying out of the Works

3.1.12. to comply with the provisions of Part III of the New Road and Street Works Act 1991 and associated codes of practice and to co-operate with the Proper Officer in the carrying out of the duty of the Proper Officer to coordinate street works

3.1.13. to pay the Council its proper costs in connection with the issue of a substantial street works notice under Section 58 of Part III of the New Roads and Street Works Act 1991

Indemnities

3.1.14. to indemnify the Council against any actions charges claims costs expenses losses damages demands liabilities and proceedings arising out of any breach or non-observance by NSC of its obligations in this Agreement or at any time in connection with or incidental to the carrying out or use of the Works (including without limitation any negligent or defective design or construction of the Works) including (but not limited to):

(a) third party claims for death personal injury or damage to property;

(b) statutory or other liability for the safety or security of the working methods employment practices protection of the environment and control of pollution; and

(c) third party claims for unlawful interference with any rights of light air support water drainage or any other easement or right

PROVIDED THAT this indemnity shall not apply in respect of any actions charges claims costs expenses losses damages demands liabilities and proceedings arising out of any proven act neglect default or liability of the Council

3.1.15. to indemnify the Council in respect of any claims under Section 10 of the Compulsory Purchase Act 1965 the Land Compensation Act 1973 and any claims for compensation under the Noise Insulation Regulations 1975 (SI 1975/1763) arising out of in connection with or incidental to the carrying out of the Works and their subsequent use other than those arising out of or in consequence of any proven negligent act default or omission of the Council

3.1.16. the indemnity referred to in Clauses 3.1.14 and 3.1.15 includes:

(a) all fees incurred by claimants which the Council is obliged to pay and those of the Council or its agent or contractor in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);

(b) statutory interest payments to claimants and their professional advisors; and

(c) the Council's reasonable and proper legal costs in making the compensation fees and interest payments under Clauses 3.1.14-15

3.1.17. without prejudice to the right of the Council to take action under Section 59 of the Act or otherwise to either reimburse to the Council the cost of repairing any damage caused to any highway maintainable at the public expense by any traffic arising from the carrying out of the Works or alternatively (at the option of the Council) to effect such remedial works as may be required by the Proper Officer

3.1.18. to indemnify the Council against all costs claims demands or other expenses relating to or arising from any failure to comply with sections 83 and 84 of the New Roads and Street Work Act 1991 and in the event that any Statutory Undertaker requires all or any part of their mains or services plant or equipment to be removed or diverted as a consequence of the Works such removal or diversion shall be carried out in accordance with the provisions of the New Roads and Street Works Act 1991 and the costs of such removal or diversion (as certified by the Statutory Undertaker affected) shall be paid by NSC

Insurances

3.1.19. From commencement of the Works to effect and maintain in the name of NSC public liability insurance (with reputable insurers approved beforehand by the

Council) for a sum of not less than Ten Million Pounds (£10,000,000) (or such other sum as approved in writing by the Council) in respect of any single claim (with the number of claims being unlimited) to cover claims for injury to or death of any person or loss or damage to any real or personal property arising out of the execution of and use of the Works together with such other insurances as the Council may require (with reputable insurers approved beforehand by the Council) in respect of the risks specified in Clauses 3.1.14 - 3.1.18 and before commencing the Works furnish the Council with written certification of such insurance cover in such manner as the Council shall require and if called upon at any time by the Council supply the Council within seven (7) days of such a request with a copy of the relevant insurance policy proof that it is in force and such other information relating to the policy as the Council shall require

3.1.20. NSC shall ensure that the Council's interests under this Agreement are endorsed on the insurance policies.

Notice of Transfers

3.1.21. Until the obligations enforceable by the Council have been complied with to furnish the Council with full details (including a plan if appropriate) of any conveyance transfer lease assignment mortgage or other disposition of all or any part of the Clanage Road Land including the name and address of the person to whom the disposition was made and the nature and extent of the interest disposed of to them within fourteen (14) days of such disposal.

Health and Safety

3.1.22. if the Works or any part of them fall within the scope of the CDM Regulations to comply at all times with those Regulations and with any request by the Proper Officer to inspect the Health and Safety Plan and prior to the issue of Certificate No.2 supply the Proper Officer with a copy of the sections of the Health and Safety Plan which relate to the Works

TRO

3.1.23. before commencing any part of the Works ~~or the Development~~ (unless approved in writing by the Council) to obtain at the expense of NSC any TRO deemed to be necessary by the Council for the closure or alteration of any roads bridleways or footpaths which cross the Land or which will be affected by the Works or

Development or which may be required to enable it to be implemented

3.1.24. to pay to the Council Five Thousand Seven Hundred and Twenty Four Pounds (£6,067) for each TRO (if any) deemed necessary by the Council including any consultation procedures required in relation to this Agreement and shall carry out after consultation with and upon written authorisation from the Proper Officer any consequent physical works including all related works properly required by the Proper Officer

3.1.25. the implementation of the physical TRO works shall be at a time to be determined by the Proper Officer after discussion with NSC

4. COUNCIL COVENANTS

4.1. The Council covenants with NSC that:

4.1.1. it will comply with its duties contained in this Agreement

4.1.2. it appoints NSC to act as its agent in relation to the Works and gives NSC and its workmen (and any sub-contractor and its workmen with prior written approval of the Council) plant and machinery permission to enter onto the Highway land in order to enable NSC to comply with its covenants and duties in this Agreement and the Council agrees that permission is given to break open the surface of the relevant highway to the extent reasonably necessary for the carrying out of the Works (subject to making good any damage)

4.1.3. that it shall upon written application by NSC issue Certificate No. 1 or Certificate No. 2 (as appropriate) unless the Proper Officer within twenty one (21) days of such application replies in writing stating the grounds upon which the appropriate certificate should not be issued

4.2. For the avoidance of doubt the Council shall have no duty or obligation to NSC by reason of this Agreement or otherwise to make any permanent TRO but, if made, shall use reasonable endeavours to resolve any objections to the same as soon as reasonably possible

4.3. From the date the Order is made to dedicate the New Footpath as a public footpath for the public to pass and repass on foot at any time

4.4. Upon the reasonable request of NSC to grant the Tow Path Licence substantially in the form of the Fourth Schedule

5. ASSIGNMENT AND DELEGATION OF DUTIES

5.1. NSC may not assign or novate this Agreement without the prior written consent of the Council

5.2. The performance of the obligations on the part of NSC to carry out the Works on behalf of the Council may be delegated to a contractor or sub-contractor appointed by NSC with the prior written approval of the Council PROVIDED THAT

5.2.1. NSC shall remain liable to the Council for the due performance and observance of the terms of this Agreement subject to clause 5.1

5.2.2. the construction contract by which the obligations contained in this Agreement are delegated shall incorporate the engineering contract or such other conditions disclosed to and approved by the Proper Officer prior to the date of this Agreement but shall in any event contain terms and conditions no less stringent than the terms and conditions contained in this Agreement and shall incorporate the Specification, the Drawings, the detailed design for the Highway Works, the Method Statement and the Programme;

5.2.3. NSC shall give the Council the opportunity and reasonable time to comment upon the documentation for the construction contract and shall have regard to any reasonable representations made before letting the construction contract; and

5.2.4. NSC shall ensure that for the purposes of the construction contract the amount of insurance cover against the losses and claims for injuries or damage to person or property arising out of or in consequence of the Highway Works shall be not less than £306,900 in respect of any one claim or such other sum as may be specified by the Council in writing.

6. INTEREST

6.1. If any sum payable under this Agreement is unpaid on the date on which it is due then (save in the case of manifest error in the calculation of the due sum) NSC shall pay interest on the sum outstanding from the due date until the actual date of payment at the rate of 3% above the base lending rate from time to time of National Westminster Bank PLC

7. DEFAULT EVENTS

7.1. Notwithstanding the provisions of clause 8.1 the Council may terminate this Agreement or

any part thereof immediately by written notice to NSC without prejudice to any other rights the Council may have if any of the following events occur:

7.1.1. NSC is in fundamental breach of any of its obligations and liabilities in this Agreement; or

7.1.2. NSC is in substantial breach of any of its obligations and liabilities in this Agreement and has failed to rectify the breach within a reasonable time after receiving written notice to rectify from the Council

8. DEFAULT WORKS - COMPLETION OF WORKS BY COUNCIL IN DEFAULT

8.1. It is hereby agreed between the Council and NSC as follows:-

8.1.1. if the Works or any part of them are not carried out or are not completed to the satisfaction of the Proper Officer in accordance with the terms of this Agreement and the Programme the Council may give to NSC ten (10) Working Days written notice (except in case of emergency) of its intention to execute or complete the Works by its own employees or by its appointed contractors or in such manner as it thinks fit.

8.1.2. The amount demanded by the Council in clause 8.1.1 whether as a single sum or as an aggregate sum shall not exceed £306,900 PROVIDED THAT the Works are carried out in accordance with this Agreement with no requirement for either additional works or further works to be carried out before the issue of the relevant certificate but that in the event that either additional works or further works are required to be carried out the additional sum payable shall be as the Proper Officer determines.

9. COUNCIL ENTRY ON CLANAGE ROAD LAND IN DEFAULT

If the Council requires to carry out all or any part of the Works NSC irrevocably authorises the Council and anyone appointed on its behalf (on giving prior written notice except in cases of emergency) to enter any part of the Clanage Road Land required for that purpose

10. SERVICE OF NOTICES

Any notices to be served or document to be submitted on or to any party to this Agreement shall be delivered or posted to that party at the address specified as theirs at the head of this

Agreement but in the case of the Council addressed to "The Director of Growth and Regeneration, Bristol City Council 100 Temple Street, Bristol BS3 9FS"

11. COUNCIL'S COSTS

11.1. NSC shall pay to the Council upon the date hereof its proper and legal costs incurred in connection with this Agreement.

11.2. RECEIPT by the Council of the payment of such sums shall not create any contractual relationship between the Council and NSC nor absolve NSC from any liability or obligation imposed upon him by the terms of this Agreement or by statute or at common law and the Council will not be liable for any loss damage or injury which NSC may sustain by reason of insufficient or faulty inspection of the Works by the Council.

12. ARBITRATION

12.1. In the event of any dispute arising out of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties or failing agreement to be appointed by the President for the time being of the Institution of Civil Engineers and in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator or if the arbitrator makes no direction then equally.

13. BRISTOL CITY COUNCIL PERMIT SCHEME

13.1. NSC covenants with the Council to comply as far as applicable with the requirements of the Bristol City Council Permit Scheme ("the Permit Scheme") pursuant to Part 3 (sections 32 to 39) of the Traffic Management Act 2004 and the Traffic Management Permit Scheme (England) Regulations 2007.

13.2. NSC shall indemnify the Council against any claims and liabilities resulting from its non-compliance with the Permit Scheme.

EXECUTED as a deed by the parties and delivered the day and year first above written

FIRST SCHEDULE

The Works

Part A: The Clanage Road Works

1. The Works shown in principle on Clanage Compound Landscaping and Access Plan annexed hereto to include without limitations:

    1.1. construction of a new access to Clanage Road in conjunction with the delivery of a temporary construction compound, and a permanent maintenance access.

    1.2. construction of a new access to Clanage Road in conjunction with the delivery of a permanent replacement for the access to land lost as a result of the works described in paragraph 1.1.

    1.3. Associated ancillary works including without limitations dropped kerbs bollards footway crossovers tactile paving signing lining street lighting street trees tree pits pavement reinstatement drainage reinstatement of redundant access ways lowering of any services and return to store of recyclable materials as specified in paragraph 7 of the Second Schedule

Part A: The Winterstoke Road Works

2. The Works shown in principle on the Ashton and Winterstoke Road Highway Plan annexed hereto to include without limitations:

    2.1. Extended left turn lane on the northbound carriageway of Winterstoke Road the junction with Ashton Vale Road and accompanying 3m footway / cycleway along the western side of Winterstoke Road between South Bristol Trade Park and Ashton Vale Road.

    2.2. Works associated with the installation of a MOVA controller at the junction of Winterstoke Road / Ashton Vale Road. This may require, but not be limited to: excavation works within the highway to install inductive loops; additional islands within the carriageway; installation of additional cabinets to store controllers; changes / replacements to signal heads;

    2.3. Associated ancillary works including without limitations dropped kerbs bollards footway crossovers tactile paving signing lining street lighting street trees tree pits pavement reinstatement drainage reinstatement of redundant access ways lowering of any services and return to store of recyclable materials as specified in paragraph 7 of the Second Schedule

THE SECOND SCHEDULE

Terms and conditions for the execution of the Works

1. SPECIFICATION

1.1. The Works shall be designed and executed in accordance with the following:-

1.1.1. the current Design Manual for Roads and Bridges and the Manual of Contract Documents both published by the Stationery Office; and

1.1.2. the Council's Adoption Standards for Roads in Avon 1992

1.1.3. the Council's Standard Detail Drawings for Roadworks

1.1.4. the Council's Health and Environmental Services General Specifications for lighting on Adoptable highways footways and footpaths 1998 and

1.1.5. the Council's Traffic Signals and UTC Team Design Guidelines

1.1.6. the Manual for Streets 2007 published by Thomas Telford Publishing for the Department of Transport

1.1.7. the Manual for Streets 2: Wider Applications of the Principles 2010 published by the Chartered Institution of Highways and Transportation

together with any modifications to any of such documents which in the opinion of the Proper Officer are appropriate and applicable to the Works on the day upon which execution of the Works begins PROVIDED THAT in the event of any conflict between the documents referred to in paragraph 1.1.1 of this Schedule and the documents referred to in paragraphs 1.1.2 – 1.1.7 of this Schedule (with such modifications as are required by the Proper Officer) then the documents referred to in the said paragraphs 1.1.2 – 1.1.7 shall prevail.

2. ACCESS TO AND OPENING OF THE WORKS

2.1. During construction of the Works NSC shall give the Proper Officer and any other person or persons authorised by the Proper Officer:

2.1.1. free access to every part of the Works and the site for the purpose of inspecting the Works and all materials used or intended to be used for the Works

2.1.2. on-site accommodation which shall include furniture for occasional use for site meetings refreshment and toilet facilities

2.2. NSC shall give effect to any requirements made or direction given by the Proper Officer so that the Works conform to the Drawings the detailed design for the Works and the Specification

2.3. While carrying out any inspection under this paragraph the Proper Officer and any other authorised person shall comply with any reasonable health and safety requirements notified to them by NSC

2.4. Unless otherwise directed by the Proper Officer NSC shall not cover up or put out of view any part of the Works without the approval of the Proper Officer and NSC shall give at least ten (10) Working Days written notice to the Proper Officer whenever the works or foundations are ready or about to be ready for examination and NSC shall give the Proper Officer full opportunity to examine any Works about to be covered up or put out of view and to examine foundations before any permanent work is placed on top

2.5. During construction of the Works the Proper Officer may require NSC to open up or expose any of the Works that have been covered up without previously being notified to the Proper Officer. If NSC fails to comply with any such instructions the Council may take up or expose the relevant part of the Works and NSC shall pay the costs the Council of such taking up exposure and reinstatement

3. MATERIALS SAMPLING AND TESTING

3.1. NSC shall if requested by the Proper Officer make all necessary arrangements for an independent accredited testing facility approved by the Council to test the materials proposed to be used in connection with the Works and NSC shall bear the full cost of such testing and give to the Proper Officer at no expense to the Council copies of all material testing certificates

3.2. Any material rejected by the Proper Officer as a result of the tests carried out shall not be used by NSC for any of the Works

4. RESTRICTIONS ON COMMENCEMENT OF THE WORKS

4.1. NSC shall not commence the Works before obtaining all necessary consents licences and Technical Approval.

4.2. In order to obtain the Technical Approval NSC shall:

4.2.1. obtain approval in writing from the Proper Officer for:

4.2.1.1. the detailed design for the Works and the Programme;

4.2.1.2. any construction management plan and written evidence of approval from the Planning Department of the Council;

4.2.1.3. the name of any intended contractor to be approved by the Council;

4.2.1.4. the Road Safety Audit Report;

4.2.1.5. details of any diversion or alteration works required to be carried out to the mains services plant or equipment of a Statutory Undertaker necessitated by the Works;

4.2.1.6. the certificate of insurance cover as required by Clause 3.1.19 of this Agreement;

4.2.1.7. any other information that the Proper Officer shall require including any variation (whether by way of alteration, addition or omission) to the Works;

4.2.2. install the Advance Warning Signs in such locations as the Proper Officer advises and to his satisfaction a minimum of two weeks before the commencement of the Works

4.2.3. provide to the Proper Officer the contact details of a representative for the duration of the construction of the Works and the Maintenance Period and a telephone number of such representative which number will be manned on a twenty four (24) hour basis in cases of emergency

4.2.4. secure any necessary TRO which may be required in order for the Works to commence.

4.3. At any time after receipt of the Technical Approval NSC shall give to the Council not less than twenty eight (28) Working Days written notice of the proposed date of commencement of the Works

4.4. NSC shall as far as is practicable lay under the Highway Land at no cost to the Council:

4.4.1. any new drains sewers gas mains water mains pipes electric cables and telecommunication cables together with all necessary connections from them to the boundary of the Highway Land (where appropriate in ducting) before the foundations of the Works are laid;

4.4.2. any connections from the electric cables to the street lamps before the paving of

any footways comprised in the Works is carried out.

4.5. During the carrying out of the Works NSC shall comply with the:

4.5.1. Traffic Management Plan (if any);

4.5.2. provisions of Chapter Eight of the Traffic Signs Manual (published by the Department for Transport) as amended;

4.5.3. directions of the police and the Proper Officer in respect of lighting and signing of the Works and any diversion routes.

5. KEEPING THE HIGHWAY CLEAN AND TIDY

5.1. All roads footpaths rights of way and other means of passage that lead to from or cross the site of the Works and are available for use by the public during the carrying out of the Works shall be kept free from mud or other substances deposited through the construction operations of the Works and any such substance deposited by NSC or the Contractor shall be promptly removed at no cost to the Council and NSC shall if required by the Proper Officer provide and make use of on-site wheel washing facilities

5.2. If such substances are not promptly and adequately removed the Council may close any associated crossings entrances and exits and in the event of there being a danger to highway users may arrange for the substances to be removed by its own employees or contractors and may recover its reasonable and proper costs from NSC and on removal of the substances the Council shall allow such crossings entrances and exits to be reopened. Any losses or expenses incurred as a result of these measures shall be borne by NSC or deducted by the Council from any mud deposits on the Highway Land or other highways

5.3. On completion of the Works NSC shall clear away and remove from the Highway Land all construction plant surplus material rubbish and temporary works and leave the site of the Works in a good and workmanlike condition.

6 EXTENSION OF TIME TO COMPLETE THE WORKS

6.1 Without prejudice to any remedy of the Council on the prior written request of NSC the Proper Officer may in his absolute discretion give written consent to NSC granting an extension of time to complete the Works and the Proper Officer may grant more than one such extension of time

6. EXISTING STREET FURNITURE AND KERBS

NSC shall remove all existing street furniture affected by the Works and any materials of a conservation nature and either relocate it/them or deliver it/them for storage as directed by the Proper Officer and shall reinstate all redundant footway crossings

7. DIVERSION OF STATUTORY UNDERTAKER APPARATUS

Should any of the Statutory Undertakers require all or any part of their underground or overhead plant or apparatus to be removed or diverted as a consequence of the Works such removal or diversion shall be carried out in accordance with the provisions of the New Roads and Street Works Act 1991 and the costs of any such removal or diversion (as certified by the Statutory Undertaker affected) shall be borne by NSC

8. TRAFFIC CONTROL

During the period when the Works are being executed NSC shall institute at its own expense measures required or approved by the Proper Officer to maintain the best possible traffic flows on the highways in the vicinity of the Land

9. ROAD SAFETY

10.1 Before commencing any of the Works on the Highway Land NSC will agree with the Proper Officer the number and location of access points to the Development from existing highways in order to reduce so far as possible road safety hazards and will use only the accesses approved by the Proper Officer.

10.2 During the period when the Works are being carried out NSC will comply with the provisions of Chapter Eight of the Road Signs Traffic Manual (published by the Department of Transport) for lighting and signing the Works and shall obtain the approval of the Proper Officer in advance of any works commencing

10.3 During the period when the Works are being carried out and also during the Maintenance Period NSC will comply with any directions that the Proper Officer gives it with regard to measures to control traffic parking storage of materials and any matter relating to the preservation of public safety

10.4 If NSC fails to comply with a direction given by the Proper Officer under paragraph 10.3 above or in the case of an emergency the Proper Officer may forthwith arrange for the taking of any necessary steps and recover the cost of doing so from NSC

10. CERTIFICATE OF SUBSTANTIAL COMPLETION (Certificate No.1)

10.1. Before applying for a Certificate No. 1 NSC shall commission the preparation and completion of a Road Safety Audit and carry out and complete at its own cost any additional works alterations or amendments to the Works required by the Proper Officer as a result of the consequent Road Safety Audit Report within such period as the Proper Officer shall allow.

10.2. When the Works have been substantially completed to the satisfaction of the Proper Officer and are available for use by the public he shall issue Certificate No.1 to that effect on behalf of the Council PROVIDED THAT the Proper Officer shall not be obligated to issue such a certificate until NSC has provided to the Council a plan properly showing the agreed highway boundaries

11. MAINTENANCE PERIOD

11.1. During the Maintenance Period NSC:

11.1.1. shall remain responsible at his own expense for remedying any defect or damage howsoever arising or caused to the Works or associated ancillary works; and

11.1.2. shall within one month (unless a longer period is agreed with the Proper Officer) from the date of being given notice in writing of such defect or damage to the Works or the said ancillary works make good the same to the satisfaction of the Proper Officer

11.2. During the Maintenance Period NSC shall at its own cost and to the satisfaction of the Proper Officer:

11.2.1. maintain the Works including all grassed and planted areas;

11.2.2. carry out routine maintenance of the Highway Land such as sweeping and cleaning as may be required to facilitate the use of the Highway Land by vehicles and pedestrians;

11.2.3. remedy and make good any damage or defect in the Works

11.2.4. undertake routine maintenance of all street furniture;

11.2.5. be responsible for the supply of energy and all associated costs for all the street furniture.

11.3. Before applying for a Certificate No. 2 NSC shall commission the preparation and completion of a Road Safety Audit and carry out and complete at its own cost any additional works alterations or amendments to the Works required by the Proper Officer as a result of the consequent Road Safety Audit Report within such period as the Proper Officer shall allow

11.4. During the Maintenance Period NSC shall provide to the satisfaction of the Proper Officer any pedestrian hardstandings and connections required to facilitate the use of public transport in the immediate vicinity of the Works

12. CERTIFICATE OF ADOPTION (Certificate No.2)

12.1. At the end of the Maintenance Period and after NSC has made good any defects or damages to the Works to the satisfaction of the Proper Officer (and subject to the satisfaction of paragraph 15 below) he shall issue Certificate No 2 and from the issue of that certificate the Works shall become part of the highways maintainable at the public expense and NSC shall henceforth be released from its obligations under this Agreement PROVIDED THAT the obligation of the Council to issue the Certificate No 2 shall in the case of road gullies and their connections extend only as far as their points of entry to the surface water sewers where these are not being adopted by the Council as highway drains.

12.2. No Certificate No 2 shall be issued under this paragraph 13 unless and until:

12.2.1. any defects or damages to the Works have been made good to the satisfaction of the Proper Officer;

12.2.2. the Works have been joined to an existing publicly maintained highway in accordance with the Drawing; and

12.2.3. NSC has at its own cost provided the Proper Officer with verification that any sewers constructed on or under the Highway Land in accordance with a Sewer Adoption Agreement have been adopted by a sewer authority

and the Maintenance Period (and the obligations on NSC during the Maintenance Period as set out in paragraph 13 above) shall continue until such time as the above requirements have been satisfied and the Proper Officer issues Certificate No. 2.

13. MINOR ALTERATIONS

13.1. If at any time during the progress of the Works the Proper Officer considers it necessary he may require NSC to incorporate minor alterations or additions to the design or construction of the Works

13.2. NSC may request the Proper Officer to agree minor alterations or additions to the Works and PROVIDED that the Proper Officer is satisfied that the benefit to the public will not substantially be decreased by the alteration the Proper Officer will comply with such a request

13.3. The terms and provisions of this Agreement shall apply to any altered or additional Works as they apply to the Works as originally planned

PROVIDED THAT no alterations or additions shall be implemented without the prior written approval of the Proper Officer

14. AS BUILT DRAWINGS

14.1. Upon completion of the Works (including remedial works) NSC will provide the Council with copies of the as built drawings of the Works the number of copies and format of which shall be determined by the Proper Officer

THE THIRD SCHEDULE

Provisions for Index Linked payments

1. "Index" means the indices based on the Retail Prices Index and all items compiled and published by the Office for National Statistics

CALCULATION OF INDEXATION

2. All payments shall be Index Linked subject to indexation based on increases in the Index
3. Indexation shall be calculated using the following formula:

C = £Y x (B / A)

Where:

A is the value of the Index for [insert month – this will usually be the month in which the agreement is completed]

B is the value of the Index for the month in which a payment contained in this Agreement and stated to be Index Linked is demanded by the Council

£Y is the payment

C is the level of the payment after the application of the Indexation formula

THE FOURTH SCHEDULE

Tow Path Licence

womblebonddickinson.com

WOMBLE BOND DICKINSON

20[ ]

Access Licence relating to River Avon Tow Path

The City Council Of Bristol (1) and
North Somerset District Council (2)

Womble Bond Dickinson (UK) LLP
Tel +44(0)345 415 0000
www.womblebonddickinson.com

DATE

PARTIES

(1) The City Council Of Bristol of City Hall, College Green, Bristol BS1 5TR ("the Licensor")

(2) North Somerset District Council of Town Hall, Walliscote Grove Road, Weston-Super-Mare, BS23 1UJ ("the Licensee")

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in Clause 1 apply:

Independent Expert	means an Associate or Fellow of the Royal Institution of Chartered Surveyors or the Incorporated Society of Valuers and Auctioneers or a Chartered Accountant or a Solicitor (as dictate by the details of the dispute) having at least 5 years' experience relevant to rail and/or infrastructure projects
Licence Fee	one peppercorn per annum if demanded by the Licensor
Licence Period	the Initial Licence Period together with any extension pursuant to clause 3 hereof
Initial Licence Period	the period of 3 years from and including [ ] to and including [ ]
NRIL	Network Rail Infrastructure Limited (Company No: 2904587) whose registered office is at 1 Eversholt Street, London NW1 2DN or any successor to all or part of the undertaking of Network Rail Infrastructure Limited
NRIL's Property	means the land comprising the Parson Street Junction to Portishead railway line of Network Rail (together with all land, embankments, overbridges, underbridges, paths, roadways, verges, structures and works from time to time comprising the railway undertaking of Network Rail) including but not limited to land in the ownership of the Licensee relating to the Project
Permitted Use	means: (a) to form and thereafter use a temporary access way suitable for the exercise of the Rights and the Permitted Use on the Property; (b) to access and egress with or without vehicles, plant, equipment and machinery NRIL's Property and all other land adjoining the Property used for or in connection with the Project; (c) for vegetation clearance; (d) for environmental mitigation; and (e) to use the Property for the exercise of the Rights,
Plan	the plan annexed to this Licence

Project	means the construction maintenance and operation of the Parson Street Junction to Portishead railway line together with associated activities including survey, investigation, clearance of vegetation, construction, cleansing, testing, repair, maintenance, renewal and addition of equipment and infrastructure, environmental mitigation works and all other works required in connection with the project and/or for the reinstatement, repair, maintenance and widening of Network Rail's railway situated on NRIL's Property
Property	means the land known as tow path adjacent to the River Avon shown: coloured green and marked as plot 14/10 coloured pink and marked as plot 14/20 coloured green and marked as plot 14/25 coloured green and marked as plot 14/35 on the Plan
Rights	means the rights listed in Schedule 1 in common with the Licensor
Schedule of Condition	means the photographic schedule showing the condition of the Property attached to this Licence
Working Day	means any day (other than a Saturday or Sunday) on which clearing banks in the City of London are open to the public for the transaction of business

2. LICENCE

2.1 Subject to clauses 4 and 5 and in consideration of the payment of the Licence Fee the Licensor gives the Licensee the right at all times and for all purposes connected to the Project to:

2.1.1 use the Property for the Licence Period for the Permitted Use; and

2.1.2 exercise the Rights.

3. EXTENSION OF LICENCE PERIOD

3.1 The Licence Period may be extended at the request of the Licensee by periods of one year at a time on the same terms as this Licence save as to the Licence Period and subject to the Licensee providing three months' prior written notice to the Licensor.

4. LICENSEE'S UNDERTAKING

The Licensee agrees and undertakes:

4.1 Payments

To pay to the Licensor the Licence Fee annually in advance on the date of this licence if demanded by the Licensor.

4.2 Planning

Prior to the use of the Property to obtain necessary consents, permissions or licences or approvals that may be necessary for the Permitted Use.

4.3 Reinstatement

At the end of the Licence Period:

4.3.1 to as soon as reasonably practicable make good any damage to the Property or any fixture on the Property caused by the Licensee and/or NRIL, its employees or its contractors or other lawful invitees

4.3.2 to leave the Property in a clean and tidy condition and free of the Licensee's or NRIL's equipment and property

Provided always that the Licensee shall not be required to put the Property into any better condition than is evidenced in the Schedule of Condition and where the parties shall agree (acting reasonably) the Licensee may compensate the Licensor in lieu of carrying out all or any of its obligations under this Clause 4.3 in which case the obligations in respect of which the Licensor has been compensated shall be extinguished immediately upon receipt of the compensation by the Licensor.

4.4 Statutory Requirements and Insurance

Not to do anything that will or might constitute a breach of any statutory requirement affecting the Property or that will or might wholly or partly vitiate any insurance effected in respect of the Property by the Licensor

4.5 Dealings with this Licence

Not at any time during the Licence Period to assign or underlet the whole or any part less than the whole of this Licence provided that nothing in this Licence shall prevent the Licensee sharing the use of the Property with NRIL or NRIL's contractors or agents or the exercise of the Rights by NRIL or any contractor, sub-contractor, agent or other person working on the Project provided that no relationship of landlord and tenant is created.

4.6 Use of the Property

Not to use the Property other than for the Permitted Use.

5. LICENSOR'S UNDERTAKING

5.1 Access

5.1.1 The Licensor agrees and undertakes that during such periods of access as the Licensee may notify under Schedule 1 paragraph 1.1:

(a) not to enter the Property; and

(b) not to park vehicles on, leave items on, or otherwise obstruct the Property.

5.1.2 Subject to Clause 5.1.1 when the Rights are not being exercised by the Licensee during the Licence Period, the Licensor may enter and use the Property for all purposes, subject to the right at paragraph 1 of Schedule 1.

6. TERMINATION

6.1 The Licensee may determine this Licence at any time by serving not less than three months' written notice on the Licensor to that effect and this Licence shall determine on expiry of the notice, such determination being without prejudice to any of the rights or remedies of either party against the other for any antecedent breach

7. CONFIDENTIALITY

7.1 The terms of this Licence shall be confidential to the parties and no party shall make or permit or suffer the making of any announcement or publication of such terms (either in whole or in part) nor any comment or statement relating thereto without the prior consent of the other or unless such disclosure is required due to any duty imposed by law on that party (including Freedom of Information legalisation) or disclosure is required by the Licensee in connection with the Project.

7.2 The Licensee is permitted to make reference to the existence of this Licence when:

7.2.1 applying for; and

7.2.2 during the process of examination of the application for the development consent order for the Project.

8. GENERAL

8.1 The benefit of this Licence is personal to the Licensee and not assignable other than for the purposes of amalgamation reconstruction or an assignment of the statutory undertaking and no tenancy lease or security of tenure is created implied or intended by the parties

8.2 The rights granted by clause 2 may be exercised by the Licensee and/or NRIL and by either of their respective agents, employees, workmen, contractors or other third parties expressly authorised by either the Licensee or NRIL.

8.3 The Licensor shall not be liable for the death of or injury to the Licensee's employees, agents, contractors, customers or invitees to the Property or for any damage to any property of the Licensee or for any losses claims demands actions proceedings damages costs or expenses or other liability incurred by the Licensee or the Licensee's employees, contractors or other invitees to the Property in the exercise or purported exercise of the rights granted by clause 2

8.4 Nothing in Clause 8.3 shall limit or exclude the Licensor's liability for:

8.4.1 death or personal injury or damage to property caused by negligence on the part of the Licensor or its invitees;

8.4.2 any matter in respect of which it would be unlawful for the Licensor to exclude or restrict liability.

8.5 All notices given by either party pursuant to the provisions of this Licence shall be given in accordance with section 196 Law of Property Act 1925

8.6 An obligation on the Licensee not to do or omit to do any act or thing includes an obligation not to permit or allow that act or thing to be done or omitted as the case may be

8.7 The obligations of the Licensee bind the Licensee's employees agents workmen and visitors and the Licensee is to be liable for any breach of the terms of this Licence by them

8.8 Where two or more persons form a party to this Licence the obligations they undertake may be enforced against them all jointly or against any one or more of them individually

8.9 The parties to this Licence do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

8.10 This Licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

8.11 Each party irrevocably agrees that the courts of England and Wales shall have jurisdiction to settle any dispute or claim arising out of or in connection with this Licence or its subject matter or formation (including non-contractual disputes or claims).

8.12 The Licensee acknowledges that nothing in this Licence is intended to create a letting of the Property or to confer any rights on the Licensee whether under common law or any enactment greater than a bare licence on the terms of this Licence

9. DISPUTES

9.1 If any dispute arises in connection with this Licence, the parties will consult in good faith in an attempt to come to an Licence in relation to the disputed matter. If the matter cannot be resolved within twenty (20) Working Days, either party may refer the matter to an Independent Expert

9.2 Where an Independent Expert is appointed pursuant to clause 9.1, such expert shall be an independent third party either:

9.2.1 agreed between the parties; or

9.2.2 where no agreement can be reached within ten (10) Working Days of the date that either party indicated that they intend to refer to the matter to an Independent Expert either party shall be entitled to apply to the President for the time being of the Royal Institution of Chartered Surveyors asking them to nominate a person as the Independent Expert. When selecting an Independent Expert the President of the Royal Institution of Chartered Surveyors shall be advised by the applicant of the issues at dispute and shall be required to nominate an Independent Expert with the necessary expertise in the subject matter that is in dispute

9.3 The Independent Expert shall be requested to make a decision on the dispute within thirty (30) Working Days of his appointment and shall act as expert and not as arbitrator

9.4 If the Independent Expert dies or becomes unwilling or incapable of acting or does not deliver the decision within the thirty (30) Working Day period referred to in clause 9.3, then either party may discharge the Independent Expert and apply to appoint a replacement for him and this clause shall apply in relation the new Independent Expert as if he were the first Independent Expert appointed

9.5 The parties shall be entitled to make submissions to the Independent Expert and shall provide (or procure that others provide) the Independent Expert with such assistance, information and documents as the Independent Expert requires for the purpose of reaching a decision. To the extent not provided for by this Licence, the Independent Expert may, in his discretion, determine such other procedures to assist with the conduct of his determination as he considers appropriate including (to the extent he considers necessary) instructing professional advisors to assist him

9.6 Each party shall bear their own costs in relation to the Independent Expert whose fees and costs shall be borne by them equally or in such other proportions as the Independent Expert may direct

9.7 Nothing in this Licence shall prevent either party from seeking an injunction in the courts of England and Wales where their commercial interests would be prejudiced by complying with the above process

AS WITNESS the hands of the parties the day and year first before written

SCHEDULE 1

Rights Granted

1. The right of way with or without vehicles plant equipment and machinery over the Property for the purposes of access to and egress from the adopted highway to NRIL's Property and other land neighbouring the Property provided that:

1.1 the Licensee shall give the Licensor not less than 10 days' notice (which need not be given in writing) of such periods when access may be required; and

1.2 the Licensee shall use reasonable endeavours to keep the Licensor appraised of proposed site usage and give the Licensor as much prior notice as reasonably practicable of instances of actual access to the Property.

2. The right to alter the ground level of the Property to enable access.

3. The right to lay clean MOT type 1 or other clean material on the Property to create a suitable surface for vehicles to pass.

4. The right to exclude for health and safety purposes the Licensor and any occupiers, visitors and/or third parties from the Property at any time during the Licence Period whilst the Rights are being exercised.

5. The right to put up temporary fences.

.

6. The right to remove any fences, walls, trees, plants, other vegetation or structures on or adjacent to the Property which may interfere with these Rights of the works connected to the Project.

7. The right to enter the Property and the Licensor's neighbouring land to inspect, repair, maintain, renew and/or replace the boundary features adjoining the Property and the Licensor's neighbouring land.

8. The right to undertake such other alterations to the Property as the Licensee may reasonably require to facilitate the use of the Property for the Permitted Use.

EXECUTED AS A DEED by affixing the Common)
Seal of **THE CITY COUNCIL OF BRISTOL** in the)
)

[redacted]

141645

21/22-
195

Executed as a deed by affixing the common seal of **North Somerset District Council** in the presence of

Head of Legal and Democ
Solicitor for the Council
(please print name)

[redacted]

Note:

1. Permanent Network Rail Compound Approx. 3648 m²
2. Temporary Construction Compound Approx. 7075 m²
3. All dimensions are in metres unless noted otherwise.
4. Elevations shown at +100 metres due to Network Rail requirements.

KEY:

Order Limits

Planting Schedule:

TREES
Castanea sativa 16-18cm EHS root-balled
Quercus robur 16-18cm EHS root-balled

NATIVE SHRUBS	SIZE	DENSITY m/2
Cornus alba	60-90cms	3
Cornus sanguinea	60-90cms	3
Prunus spinosa	60-90cms	2
Salix viminalis	60-90cms	1
Viburnum opulus	60-90cms	2

141646

[redacted]

Existing boundary wall retained

NOTE:
Boundary wall to be determined due to effect on junction visibility

NOTE:
Reduced corner radii, which does not cater for left turning low loaders

Proposed footpath

Lockable gate to compound

Proposed tarmac area 20m long by 8m wide

Existing footpath

Existing planting to be removed and replanted to screen the compound

Ground level lowered to +107.4m AOD to allow for flood compensation

Approximate location of existing inspection chamber

Existing trees

Dropped kerb to allow pedestrians to cross

NOTE:
Visibility splays as per DMRB standard TD41/95 with a relaxation for the 'x' distance (2.0m), as it is a lightly used access, and a 'y' distance of 90m

Overrun area for vehicles exiting the compound

For Section A refer to drawing 467470.BQ.04.20-630

Boundary wall to be repositioned by reusing existing stone

Approximate location of existing 600mmØ culverted water course. Depth of cover to be confirmed

Existing footpath

Post and wire fence

Proposed levels

Proposed planting of 35 trees

Species Mix: Oak (Quercus) & Sweet Chestnut (Castanea sativa)

Kerb

Proposed final compound fence line

Proposed retaining wall to designed to bridge the foul sewer below

Assumed bottom of ramp level of +107.4m AOD

Type 1 access approach ramp 45m in l
track level. (First 3m at a gradient of 1:4
the remaining 42m at gradient of 1:25 (4

Width of ramp to be 10m wide, with reta
reduce flood compensation mitigation

Proposed 10m wide Vehicular access to track via locked gate

Proposed repositioned Road Rail Access Point (RRAP)

Assumed track level of +109.46m AOD

Assumed top of ramp level of +109.35m AOD

Proposed planting area to screen the compound from the proposed sports facilities and views from within Bower Ashton Conservation Area

Proposed repositioned wall to be tied into existing outside of the junction visibility splay

Existing boundary wall retained

CLANAGE ROAD

Approximate location of existing 225mmØ surface water sewer. Depth of cover to be confirmed

Approximate location of existing 225mmØ foul sewer. Depth of cover to be confirmed

Proposed fence line to construction compound

Dropped kerb to allow vehicle access

Proposed repositioned wall to be tied into existing outside of the junction visibility splay

NOTE:
Visibility splays as per DMRB standard TD41/95 with a relaxation for the 'x' distance (2.0m), as it is a lightly used access, and a 'y' distance of 90m

Proposed boundary wall reusing existing stone

Proposed 6m field gate access

10m offset from boundary wall required as temporary land to construct new field access

Nursery building approx. 30m south of the construction compound boundary fence

[redacted]

DO NOT SCALE. This drawing is to be read in conjunction with all relevant Architects, Engineers and Specialist Manufacturer's drawings and specifications. If in doubt please consult the Engineer.

0 5 10 15 20
METRES

SCALE 1:250 (A1)
SCALE 1:500 (A3)

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Rev	By	Chkd	Apprvd	Date	Description
S	GHP	ADS	ADS	03/04/2018	[illegible]
R	ADS	ADS	ADS	23/02/2018	Design amendments, contour data & outline boundary added
Q	ADS	AL	AL	27/11/2017	Existing 225mm dia. foul sewer relocated due to proposed ramp with retaining created to the south to maximise area
P	ADS	AL	AL	15/11/2017	Compound layout revised to NR Infrastructure Plant Manual Module P301 - Road Rail Access Points
O	GHP/ADS	AL	AL	07/10/2017	Updates to the junction mouth and rail area Reduction in width of 2m to the permanent and temporary compound
N	GHP	ADS	ADS	29/09/2017	NR Minor Civils Update & Permanent access added to the field below construction compound
M	GHP	KS	ADS	04/09/2017	Title amendments
L	GHP	ADS	ADS	15/08/2017	Minor amendments
K	GHP	AL	AL	11/07/2017	Temporary construction & Permanent compounds re-designed
J	FG	AL	AL	09/03/2017	NR minor civils update and indicative planting options added
I	EDP	AL	AL	04/11/2016	Minor amendments
H	EDP	AL	AL	31/05/2016	Temporary construction compound 20 m longer
G	EDP	AL	AL	01/05/2016	Temporary construction compound 10 m wider
F	EDP	AL	AL	05/05/2016	Temporary construction compound re-designed
E	EDP	AL	AL	31/03/2016	Compound 5 m wider Minor amendments
D	EDP	AL	AL	11/03/2016	Compound 5 m wider Minor amendments
C	EDP	AL	AL	14/01/2016	Space for ramp provided Levels added
B	ADS	AL	AL	13/01/2016	Compound re-design
A	ADS	AL	AL	13/01/2016	Sports Development added

travelwest

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www.ch2m.com

Project

PORTISHEAD BRANCH LINE (METROWEST PHASE 1)

Drawing

CLANAGE ROAD COMPOUND LANDSCAPING AND ACCESS PLAN

Drawn by ADS	Date 05/01/2016
Checked by AL	Date 26/01/2016
Approved by AL	Date 26/01/2016

Drawing No. 467470.BQ.04.20-621

Revision U

Drawing Scale 1:250 @ A1 or 1:500 @ A3

Drawing file path & name: U:\Projects\467470 NSC Framework\2015\BQ\04.20 WIP\Phase 1 Railway Engineering\06 AutoCAD\01 AutoCAD Presh\01 02 Clanage Road 467470.BQ.04.20-621 Rev U.dwg

Notes:

1. All dimensions are in metres unless noted otherwise.
2. Ground levels have been estimated from the limited spot height information gained from the OS mapping and from Topographical Survey that was commissioned as part of the AVTM MetroBus project.
3. The heights of structures and extent of earthworks must therefore be seen within this context of available information.
4. It has not been possible to obtain utility information.

KEY:

- Proposed new kerb
- Proposed kerb edging
- Order Limits
- Existing road markings
- Existing road markings repositioned
- Proposed shared cycle/footway
- Existing shared cycle/footway

WINTERSTOKE UNDERPASS
Existing 3m signal controlled crossing
ASHTON ROAD
El Sub Sta
WINTERSTOKE ROAD
Existing underpass
Existing double bus stop
Cycle route towards City Centre via Greville Smyth Park
BOWER ASHTON TERRACE 7.3m
Drain
MP 121.25
Existing 3m wide shared footway/cycleway
Traffic signal detection
ASHTON GATE UNDERPASS
Cumberland House
MARSH ROAD
Existing level crossing
Charnwood House
Works
Traffic signal detection
ASHTON VALE ROAD
Existing pedestrian crossings
Traffic signals to be upgraded and optimised using MOVA
Proposed 'Keep Clear'
Tie into existing kerb line
Proposed double yellow lines
Traffic signal detection
Cala Trading Estate
MetroBus overbridge
For Section A refer to drawing 674946.BD.29.01-SK33
The Sidings
3m wide shared footway/cycleway
Weed Boy
El Sub Sta
Proposed retaining wall
Existing right turn lane to remain
Approximate distance of 0.55m from back of wall to corner of the building
Extended of left turning lane
MetroWest Phase 1 to designate path as Public Right of Way
Vegetation to be cleared, along with land to be acquired, and replacement retaining wall between the footway and Trading Estate car park
South Bristol Trade Park
Gas Gov
L Twr

DO NOT SCALE. This drawing is to be read in conjunction with all relevant Architects, Engineers and Specialist Manufacturer's drawings and specifications. If in doubt please consult the Engineer.

0 10 20 30 40 50 METRES

SCALE 1:500 (A1)
SCALE 1:1000 (A3)

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Rev	By	Chkd	Apprvd	Date	Description
L	CHP	ADL	ADL	12/02/2021	Updated Order Limits & Minor amendments
K	FG	ADL	ADL	15/12/2020	Minor amendments
J	CHP	ADL	ADL	31/07/2019	Minor amendments
I	CHP	ADL	ADL	31/07/2019	Ramp removed and minor amendments
H	CHP	ADL	ADL	31/07/2019	Order limits added and minor amendments
G	CHP	ADL	ADL	26/06/2018	Minor amendments
F	ADS	LT	ADL	11/05/2018	Traffic signal detector loops added (SAMMI to FEL) Equus crossing by Bellcote removed
E	CHP	MF	ADL	25/02/2018	Facilities panning updated
D	MF	ADL	ADL	01/12/2017	Minor amendments
C	CHP	KS	ADL	04/12/2017	Title amendments
B	CHP	KS	ADL	25/08/2017	Minor amendments
A	MF/CHP	MF	ADL	22.08.17	Design amended to tie into alternate topo survey.

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Project
PORTISHEAD BRANCH LINE
METROWEST PHASE 1

Drawing
ASHTON VALE ROAD AND
WINTERSTOKE ROAD
HIGHWAY WORKS PLAN

Drawn by ADS	Date 20/11/2015
Checked by MF	Date 01/08/2017
Approved by AL	Date 01/08/2017
Drawing No. 674946.BD.29.01-SK31	Revision L

Drawing Scale 1:500 @ A1 or 1:1000 @ A3

141647

Duly Authorised Officer

I:\Wp\011\Proj\Consulting\Projects\674946 WSC - 2016 Bristol Framework\677 4946.BD.29.01 Ashton Vale Alternate Access\990 Acad\CAD\674946.BD.29.01-SK31 Rev L.dwg

Drawing file path & name

Cut Line For Continuation See Sheet 15

ASHTON VALE INDUSTRIAL ESTATE

WINTERSTOKE ROAD

BARONS CLOSE

S31

S32

141648

[redacted]

[redacted]

Duly Authorised Officer

ALDERMAN MOORE'S ALLOTMENT

ASHTON VALE

Cut Line For Continuation See Sheet 17

Key:

- Order Limits
- Highway to be stopped up
- Diverted Footpath

Rev	By	Chkd	Approved	Date
G	PG	KW	KS	26/10/2018
Minor Updates				
F	PG	KW	KS	17/10/2018
Red Line Updated and Minor Updates				
E	CHP	KW	KS	09/08/2018
Minor Amendments				
D	PG	KS	ADL	31/07/2018
Red Line, Stopping Up and Outlines Updated				
C	PG	KS	ADL	10/04/2018
Red Line and Stopping Up Updated				
B	PG	KS	ADL	16/03/2018
Stopping Up Updated				
A	PG	KS	ADL	29/01/2018
First Issue				

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THE PORTISHEAD BRANCH LINE (METROWEST PHASE 1) ORDER

PERMANENT AND TEMPORARY STOPPING UP AND DIVERSION PLAN
SHEET 16
ASHTON VALE

Drawn By	PG	Date	29/05/2018
Checked By	KS	Date	29/05/2018
Approved By	ADL	Date	29/05/2018

674946.BQ.42.01-496 | H

Drawing Scale 1:2500 @ A3

0 10 20 30 40 50 60 70 80 90 100

METRES

SCALE 1:1250 (A1)
SCALE 1:2500 (A3)

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Cut Line For Continuation See Sheet 13

14/05

14/10

14/15

14/20

14/25

14/30

14/35

14/40

14/45

14/55

14/60

Ashton Court Estate

Cut Line For Continuation See Sheet 15

Key

- Limits of Land to be Acquired or used
- Land subject to compulsory acquisition of all estates and interests
- Land subject to temporary possession for construction, mitigation, access, etc
- Land subject to compulsory acquisition of permanent new rights
- Land subject to compulsory acquisition of permanent new rights – subsoil only
- Land subject to compulsory acquisition of permanent new rights in subsoil and temporary possession at surface level
- Structures in land subject to compulsory acquisition together with temporary possession at ground level
- Structures in land subject to compulsory acquisition of all estates and interests together with compulsory acquisition of permanent new rights
- Area of proposed permanent traffic regulation, but no compulsory acquisition

Colourings on the land plans are provided to assist interpretation. The provisions of the Order determine the nature of interests sought to be acquired.

141649

[redacted]

21/22-99

[redacted]

The Portishead Branch Line (MetroWest Phase 1) Order 2021
Plan title: Land Plan
Sheet No. 14 of 17
Date: 16 February 2021
Author: Ardent Management

ardent
infrastructure and regeneration

[redacted]

AUTHORITY FOR SEALING
full Council
.....Executive
Executive Decision number .....
Dated ...22.05.18

[redacted]

ENCLOSURE 6

The Portishead Branch line (Metrowest Phase 1) Order

Note on Schedule 16 – Part 5 Protection for First Corporate Shipping Limited
Summary of remaining drafting issues between the Applicant and First Corporate Shipping Limited

1. INTRODUCTION

This document has been prepared by the Applicant to summarise for the Secretary of State's benefit the position regarding the provisions of Schedule 16 Part 5 of the draft Development Consent Order.

It reflects additional discussions between Bristol Port Company, Network Rail Infrastructure Limited and the Applicant regarding the content of the Protective Provisions for the benefit of First Corporate Shipping Limited (BPC) subsequent to the close of the examination into the Order.

The Secretary of State will note that there are a small number of paragraphs below in red font. These paragraphs indicate the matters that are still in dispute between the parties.

The parties have each seen this document and the Applicant believes the document reflects the parties' position accurately.

Appendix 1 to this document provides a revised "clean" version of the Applicant's proposed Protective Provisions, reflecting the content of this table. These are also included in Schedule 16 Part 5 of the revised draft DCO provided to the Secretary of State by the Applicant. The Secretary of State should note this is a version the parties have discussed and is as closes to an agreed version as the parties are able to reach at this time. It should be noted the version is not agreed by Bristol Port Company, which seeks further amendments – see Appendix 3 below.

Appendix 2 provides a comparison version showing the changes between the previously submitted draft DCO Schedule 16 Part 5 and the position now proposed by the Applicant.

Appendix 3 shows in bold the further changes proposed by BPC to the draft provisions included in the Applicant's previously submitted draft DCO. This version is not agreed by the Applicant.

Where matters are not agreed the Applicant has given its reasons why it believes that its version of the Protective Provisions is preferred. The Applicant's position is set out in column 4 and its suggested drafting, where relevant, set out in column 5 of the table below. Bristol Port Company has seen this document but will submit separately its reasons for seeking the additional wording in the form of protective provisions provided at Appendix 3.

Where matters are set out in black font below in the table these are, it is believed, agreed between the parties. Matters in red font are matters that are not agreed between the parties.

2. TABLE OF PARAGRAPHS AGREED/NOT AGREED

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
43	Giving effect to PPS		Accepted	-	yes
44	**Definitions**				
	BPC's Apparatus	Moved from operative provisions	Agreed	As suggested by BPC	yes
	drainage works	"BPC" missing from definition	Agreed	As suggested by BPC	yes
	landscaping	No longer needed as landscaping issues now dealt with by revised landscaping plans.	Agreed	As suggested by BPC - deleted	yes
	Marsh Lane Track Land	Additional definition included by BPC	Agreed	As suggested by BPC	yes
	Public path land	Additional definition proposed by BPC	Not agreed	The reference to public path land is only within a provision proposed by BPC that is not agreed - see para 51(30 of Appendix 3	no

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
	Rail link land	Additional definition included by BPC	Agreed	As suggested by BPC	yes
	Specified work	All access works and drainage works added by BPC as new paragraph (c).	Agreed	As suggested by BPC	yes
45	Court House Farm	Extent to which Court House farm access is affected by the DCO	The DCO does not seek any powers over the use of this temporary crossing of part of the Order land the use of which is dealt with by an existing agreement between NRIL and BPC. Consequently s.127 does not apply nor is it appropriate for the PPs to deal with it except to include a saving for the agreement. Paragraphs (2) and (3) of the BPC proposed draft (see Appendix 3) are not	Paragraphs (2) and (3) of the BPC proposed draft (see Appendix 3) are not agreed.	Para 45(1) is agreed save for the proviso referring to the subsequent paragraphs in BPC's draft. Paragraphs (2) and (3) are not Agreed

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
			agreed and should not be included in the PPs as the Order powers will not be used to terminate the Court House Farm access arrangements which are instead regulated by condition 16 of planning permission 16/P/1987/F issued by the local planning authority.		
46	Application by the undertaker for the Secretary of State's consent under article 10	-	Agreed	As drawn	yes
47	Agreements	-	Agreed	As drawn	yes

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
	under article 11 (agreements with Network Rail)				
48	**Watercourses and drainage:**	-	Agreed	As drawn	yes
49	**Surveys**	-	Agreed	Agreed	yes
50	**Streets, access and public rights of way**	Seeks controls over use of streets etc BPC proposed new para (8) regarding surveys of Marsh Lane Track and new para (13) regarding BPC controls over the opening of new permissive cycle track and public bridleway	Paras (1) – (7) agreed New Para (8) as proposed by BPC is agreed. Remainder of paras (9) to (12) agreed. New Para (13) in Appendix 3 is not agreed. The Applicant remains willing to agree with BPC a licence (for Work 16) and a dedication (Work No. 18)	Agreed in part. New Para (13) in Appendix 3 is not agreed and should not be included in the PPs.	Agreed in Part. New Para (13) is not agreed.

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
			but in both situations until such agreement is in place and capable of having full effect the Applicant cannot agree to the control over the authorised development sought. Neither Work is on land that could not be taken without serious detriment to the BPC's undertaking. Work No. 16 is on scrub land that is overground and within a triangle of land bounded by the disused railway, the approached to the bridge carrying the highway of Marsh Lane over the Railway and the Marsh Lane track, a public bridleway. Work No 18 is on land beneath the M5		

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
			and or on land that forms part of an ecological area that is largely waterlogged. In neither case is the land use by BPC for activities intrinsic to its undertaking.		
51	**Acquisition and use of land/ Apparatus of Port – S271 TCPA 1990 etc**	BPC looks for an absolute prohibition on CA for land and new rights. BPC seeks additional controls over the exercise by the Applicant of powers ancillary to its powers of compulsory acquisition	Additional wording inserted at para 51(1) and 51(2) (see Appendix 2) by BPC to protect its rights and apparatus is agreed. Controls over land acquisition powers removed. If the Secretary of State has decided the limited acquisition powers sought over BPC's land are acceptable and do not give rise to serious detriment, then the protective provisions should not further control the	Include additional wording inserted at para 51(1) and 51(2) (see Appendix 2). Exclude additional provisions relating to controls over compulsory acquisition -see (Appendix 3 para 51(3)); and controls over powers ancillary to compulsory acquisition – see Appendix 3, para 51(4)).	No

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
			acquisition power. The only freehold power the Applicant now seeks is to create a new bridleway over land currently used as scrub to the east of the M5 Motorway. New rights are sought over BPC's railway but only to ensure that the connection to the Port by rail is maintained and can operate safely. On that basis it is clear that serious detriment does not arise. The provisions in para 51 (4) of Appendix 3 are not required as sufficient protection is afforded by Para 51 (1) and (2).		
52	**Use of land and execution,**	52 (1)(a) and (1)(b) – restrictions on exercise of temporary powers have been	Para 52 (1)(c) of Appendix 3 - The restriction on powers of temporary	Controls over temporary possession not accepted. Para 52 (1)(c) of Appendix 3	Restrictions on temporary powers not

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
	maintenance and use of the authorised development	accepted. Appendix 3, para 52 (1)(c) - The restriction on powers of temporary possession over Marsh Lane track land or the rail link land or parcels 5/103 and 5/170 is not agreed BP's suggested para (2) seeks clarification that the powers sought by the Applicant must be in common with BPC and others benefiting from the use of the relevant land is accepted	possession over Marsh Lane track land or the rail link land or parcels 5/103 and 5/170 is not agreed as the Applicant and its contractors may require the powers sought during the construction of the authorised development. The Applicant believes that sufficient protection for BPC exists if this power referenced in this paragraph is exercised. The new Para 52(2) (see Appendix 2) is agreed.	is accordingly not included The new Para 52(2) (see Appendix 2) is agreed and has been included.	agreed (see para 52 (1)(c) of Appendix 3) Remainder of drafting agreed
53	Surveys and repairs	-	Agreed	Agreed	yes
54	programme	-	Agreed	Agreed	yes

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
55	Works	Compliance with drawings and limitation on ancillary works	This paragraph is now agreed	Agreed	yes
56		-	Agreed	Agreed	yes
57	Implementation of works	-	Agreed	Agreed	yes
58	Affording facilities/providing information by Undertaker	-	Agreed	Agreed	yes
59	Affording facilities/providing information by BPC	-	Agreed	Agreed	yes
60	**Alterations to**	-	Agreed	Agreed	yes

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
	BPC Property				
61	**Payments etc**	BPC requires capitalised sums for additional environmental protection works it requires under para 56(6)	Agreed	Agreed	yes
62	Post construction maintenance of works	-	Agreed	Agreed	yes
63	Additional expenses of BPC		Agreed	Agreed	yes
64	Payment of costs etc		Agreed	Agreed	yes
65	Provision of estimates by BPC		Agreed	Agreed	yes

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
66	Reasonableness of charges		Agreed	Agreed	yes
67	**BPC's Apparatus**	Definition of apparatus moved to definitions section	agreed	Agreed	yes
68	**Port's Railway**	-	Agreed	Agreed	yes
69	**Trees and other vegetation**	-	Agreed	Agreed	yes
70	**General**	Extension of the protective provisions to control compliance with a separate private agreement proposed to be agreed by the parties known as the construction protocol	The applicant believes this additional constraint is not needed and is not appropriate for Protective Provisions . It is not appropriate for the PPs to be extended to govern compliance with the terms of a separate private	Delete	no

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	**Topic**	**Changes proposed by BPC from version at close of examination and remaining issues**	**Applicant's Position**	**Applicant's Suggested drafting**	**Draft agreed with BPC**
			agreement that the parties may conclude and which would operate outside the terms of these PPs. Compliance with the terms of such agreement must be properly governed by the terms of such agreement itself.		
80	Disapplication of Article 49		Agreed	Agreed	yes

APPENDIX 1

Revised "clean" version of the Applicant's proposed Protective Provisions

PART 1

Protection for First Corporate Shipping Limited

43. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and BPC.

44. In this Part—

"access works" means works—

(a) on, over or under or otherwise affecting a private street or any public right of way on BPC's property, including the kerbs, splitter islands, footways, verges and carriageway of such street and any road markings, signing, signals, and other street furniture;

(b) to alter, modify, improve, create or provide any means of access (whether temporary or otherwise) on or across BPC's property or to or from any private street or any other part of BPC's property or to or from any dock public road;

(c) to alter the layout of any private street or any public right of way on BPC's property; and

(d) to position or install plant or equipment on or over any private street or any public right of way on BPC's property,

and includes, without limitation on the scope of the foregoing, any works under article 13 (street works and power to alter layout etc., of streets) or article 17 (access to works) in respect of or affecting any private street or any public right of way on BPC's property;

"ancillary works" means embankments, earthworks, retaining structures or works, planting, landscaping or other mitigation, fencing and all other works falling within the descriptions of the further associated development set out in paragraphs (a) to (x) (inclusive) of Schedule 1;

"BPC" means First Corporate Shipping Limited (registered company number 2542406), trading as The Bristol Port Company, being the statutory harbour authority and competent harbour authority for the Port;

"BPC's apparatus" means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil, water, electricity, telephone, television, data and information transmission or any other service) on BPC's property;

"BPC's property" means the whole and each of every part of all the leasehold and freehold land and rights and the benefit of all covenants, owned by or vested in BPC at Avonmouth, Chittening and Portbury—

(a) upon, across, under, over or in respect of or affecting which any powers conferred by this Order may be exercised; or

(b) upon, across, under or over which there is situated anything over or in respect of which any such powers may be exercised,

and includes, without limitation on the scope of the foregoing, the Port's railway and any private street but does not include the Court House Farm terminable access;

"BPC's representative" means the person appointed by BPC from time to time to be its representative for the purposes of this Order;

"certified documents" means any and all of the plans and documents certified by the Secretary of State for the purpose of this Order;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"construction access rights" means any and all powers conferred on the undertaker by this Order to exercise temporary powers of access over any land with or without vehicles, plant and equipment including, without

limitation on the scope of the foregoing, any ancillary powers to remove buildings and vegetation from that land and to construct works for the purpose of providing a means of access;

"Court House Farm easement" means a Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company;

"Court House Farm terminable access" means the existing crossing at grade over the disused Portishead Branch Line which is described in the Court House Farm easement;

"dock public road" means each of the streets known as Marsh Lane, Royal Portbury Dock Road (including the roundabout at its junction with Portbury Way and Gordano Way), Redland Avenue, Gordano Way, Garonor Way and Portbury Way to the extent that it is maintainable highway;

"drainage works" means works—

(a) to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on, over or under BPC's property or which drains water to or from BPC's property; and

(b) to make any opening or connection into any watercourse belonging to BPC or to lay down, take up or alter any pipes for that purpose;

"environmental protection works" means measures reasonably required to be carried out on or in respect of Work No. 18 to protect the scrub environment and water bodies established and managed by BPC;

"highway access land" means any and all of parcels 5/30, 5/61, 5/62, 5/65 and 5/70;

"maintainable highway" has the same meaning as in section 86(1) of the 1991 Act;

"Marsh Lane track" means the private street referred to in Schedule 3 and there described as Access Road to the M5 Avonmouth Bridge east of Marsh Lane, Easton-in-Gordano;

"Marsh Lane track land" means any and all of parcels 5/25, 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 and that part of parcel 5/28 which lies to the east of an imaginary line projected in a northerly direction across the disused railway at 126 miles 78 chains and includes the Marsh Lane track;

"plans" includes sections, elevations, designs and design data, drawings, calculations, specifications, programmes, method statements, assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work;

"Port" means the port and harbour of Bristol;

"Port's railway" means the railway owned by BPC leading from Portbury Junction, Pill to the Royal Portbury Dock;

"powers of temporary possession" means the powers conferred by article 33 (temporary use of land for carrying out the authorised development);

"preparatory activities" means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works but excluding any such activities carried out under article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property;

"private street" means any street on BPC's property which is not a maintainable highway;

"rail link land" means any and all of parcels 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55;

"railway rights land" means any and all of parcels 5/95, 5/100, 5/105, 5/122, 5/137, 5/140, 5/141, 6/10, 6/15, 6/20, 6/55, 6/60 and 6/80;

"relevant works" means that part of Work 1C that is on the Port's railway and Works Nos. 14, 14A, 14B, 15, 16, 16A, 16C, 18, 19 and 20;

"specified work" means—

(a) that part of Work 1C that is on the Port's railway;

(b) the whole of Work Nos. 14, 14A, 15, 16, 16A, 16C, 18, 19 and 20;

(c) all access works and drainage works; and

(d) so much of all other parts of the authorised development and of any works to be carried out under the powers conferred by article 33 as is situated upon, across, under, over or within 5 metres of BPC's property, including all environmental mitigation and restoration measures;

(2) In this Part—

(a) references to the undertaker include references to any person to or in which any or all of the benefit of the provisions of this Order and any related statutory powers are transferred or are vested pursuant to any provision of this Order and any person which may by virtue of any agreement made pursuant to article 11 (agreements with Network Rail) whether alone or jointly with another exercise any or all of the powers contained in this Order;

(b) references to numbered parcels are to the parcels of land so numbered in the book of reference;

(c) references to a requirement to consult include that consultation must take place in good faith and in a timely manner with the provision of all reasonably necessary information and so that the party concerned must act reasonably in taking into account the reasonable comments made by the other party in response; and

(d) references to BPC's consent, agreement or approval are to BPC's prior consent, agreement or approval given in writing.

45. Nothing in this Order affects—

(a) any right of BPC to use the Court House Farm terminable access; or

(b) the provisions of the Court House Farm easement or any other agreement relating to the Court House Farm terminable access

and accordingly the following provisions of this Part of this Schedule do not apply as regards the Court House Farm terminable access.

46. The undertaker must give written notice to BPC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 10 (consent to transfer of benefit of order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

47.—(1) No agreement made under article 11 (agreements with Network Rail) may authorise or permit the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of any powers and rights of Network Rail and the undertaker (as the case may be) under any BPC contract or affecting any of BPC's property.

(2) In sub-paragraph (1), "BPC contract" means all and any contracts, licences, easements and other agreements, permissions and consents to which BPC is a party or of which it has the benefit.

Watercourses and drainage

48.—(1) No part of any impounded dock at the Port is included within the definition of "watercourse" for any purpose of this Order.

(2) The undertaker must not without BPC's consent (such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions) create any new discharges for water into any watercourse belonging to or used by BPC.

(3) Without limitation on the scope of sub-paragraph (2), any consent given by BPC under this paragraph—

(a) may be given subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse by the undertaker; and

(b) does not obviate the need for the undertaker to obtain any further consents required in relation to the activity concerned.

(4) In the exercise of any power under article 22 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse in, on, over or under BPC's property.

Surveys

49.—(1) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property—

(a) outside the Order limits except to the extent that BPC agrees for the purpose of carrying out non-intrusive surveys, investigations and monitoring only;

(b) other than to the extent that the exercise of such powers is necessary in connection with carrying out the authorised development; and

(c) other than by prior agreement with BPC on each and every occasion, such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions, and on at least 14 days' notice.

(2) When requesting BPC's agreement to access under sub-paragraph (1) the undertaker must provide to BPC full details of the property to which access is requested, the activities proposed (including risk assessments and method statements and intended duration of the activities), the identity of the persons who would undertake them and any apparatus that might be left on the affected property.

(3) BPC is, without limitation on the scope of sub-paragraph (1)(c)—

(a) entitled to refuse access as requested by the undertaker on any occasion for operational reasons, in which case BPC must act reasonably and without delay in seeking to offer alternative arrangements; and

(b) entitled as a condition of its agreement on any occasion to require the production of evidence of the existence of adequate insurance with insurers of repute, the proceeds of which will be available to cover all liability, costs, claims, expenses and demands which may arise as a result of that access.

(4) The undertaker must remove any equipment left on, over or under BPC's property as soon as reasonably possible after completion of the relevant surveys and investigations.

(5) The undertaker must, at its own expense, deliver to BPC as soon as reasonably practicable after their production on a non-reliance basis copies in an electronic format of all survey and ground investigation reports carried out in respect of BPC's property under the powers conferred by article 23 or the powers conferred by section 11(3) of the 1965 Act as applied by this Order, which reports BPC may use and provide to others (on a non-reliance basis) free of cost in connection with works and operations at the Port.

Streets, access and public rights of way

50.—(1) The undertaker must not in carrying out any works or exercising the powers conferred by this Order cause pedestrian or vehicular access to or across any of BPC's property (including access for cargo operations but excluding access over the Court House Farm terminable access) to be interfered with or obstructed, other than with the consent of BPC, not to be unreasonably withheld or delayed, or, if the carrying out of works or exercising the powers relate to a dock public road, unless the undertaker has first consulted with BPC.

(2) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under—

(a) article 13(1) (street works and power to alter layout etc., of streets) in respect of or so as to affect the Marsh Lane track other than by prior agreement with BPC such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions;

(b) article 13(1) in respect of or so as to affect any dock public road unless it has first consulted with BPC; or

(c) article 13(2) in respect of or so as to affect any private street on any part of BPC's property.

(3) With the exception of the locations specified in columns (1) and (2) of Schedule 7 and shown on sheet 5 of the compounds, haul roads and access to works plan as AW5.1 (access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch railway line) and AW5.3 (access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch railway line) the

undertaker must not pursuant to any powers in this Order carry out any works to create or improve any means of access affecting any private street or any public right of way on BPC's property or any other part of BPC's property or any dock public road.

(4) In carrying out any access works, the undertaker must not so far as reasonably practicable interfere with or obstruct the free, uninterrupted and safe use by other traffic of any street or interfere with street furniture, signage and lighting masts.

(5) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under article 15(1) (temporary stopping up of streets and public rights of way) in respect of:

(a) the Marsh Lane track (except to the extent permitted by article 15(5)) or any other private street; or

(b) Royal Portbury Dock Road without BPC's consent, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

(6) Despite any provision in this Order, the undertaker must not, except with the agreement of BPC, exercise any power under article 15 or article 46 to use or to authorise the use of any private street or any dock public road or any public right of way on BPC's property as a temporary working site or as a parking place.

(7) The undertaker must exercise the power granted to it under paragraph (5) of article 15 to stop up public rights of way LA8/67/10 and LA/8/68/10 to the extent specified in column (3) of Part 2 of Schedule 5 (Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension), throughout the period of operation or use of the Lodway Farm construction compound to be constructed as Work No. 17 and the temporary construction compound located under the M5 Avonmouth Bridge.

(8) The undertaker must, before submitting any survey, proposed measures or strategy relating to the Marsh Lane track to the relevant planning authority for approval in accordance with requirement 35 of Schedule 2 (Requirements), consult with BPC in relation to the content of all such surveys, measures and strategies.

(9) Despite paragraphs (1) and (2) of article 19—

(a) any street constructed under this Order on BPC's property; and

(b) the altered or diverted part of any street altered or diverted under this Order on BPC's property

must be maintained by and at the expense of the relevant highway authority at all times from its completion.

(10) If the undertaker acquires, whether compulsorily or by agreement, any of BPC's property within the Order limits, or any right or interest in or over such property, which property is subject to a public right of way, from the date of the acquisition of the relevant land, right or interest or from 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, any liability or responsibility of BPC to the relevant highway authority for or in respect of the maintenance of that public right of way is extinguished and that public right of way shall after that date instead be maintained by and at the expense of the relevant highway authority.

(11) Without limitation on the scope of any other provision in this Part if any damage to any public right of way on BPC's property is caused in the exercise of any powers under this Order or by carrying out of, or in consequence of the construction of, any works under this Order, the undertaker must make good such damage and pay to BPC all reasonable expenses to which BPC may be put by reason of any such damage.

(12) The undertaker must not exercise any powers under article 13, article 15 or article 46 (traffic regulation) over or in respect of any part of BPC's property or any dock public road after completion of construction of the authorised development.

Acquisition and use of land

51.—(1) The undertaker must not exercise the powers conferred by section 271 (extinguishment of rights of statutory undertakers: preliminary notices) of the 1990 Act in relation to any rights of BPC over or in respect of the railway rights land or the highway access land; or any of BPC's apparatus.

(2) Despite any other provision of this Order, if the undertaker acquires any interest in the railway rights land or in the highway access land, whether compulsorily or by agreement, no rights of BPC over or in respect of the railway rights land or the highway access land so acquired must be extinguished.

Use of land and execution, maintenance and use of the authorised development

52.—(1) Despite any provision in this Order or anything shown on the land plan, the undertaker must not except with the agreement of BPC—

(a) exercise any powers of temporary possession over or in respect of parcel 5/75 or (if and to the extent they form part of BPC's property) parcel 5/85 or parcel 5/86 unless BPC fails, within 14 days of a request by the undertaker, to make available for exercise by the undertaker in substitution for the exercise of the relevant powers temporary rights of access over other land which are sufficient (whether alone or in conjunction with the exercise by the undertaker of other powers under this Order) to enable the undertaker to gain access in connection with the construction of the authorised development, with such vehicles, plant and equipment as may be necessary, from access point AW5.3 shown on the compounds, haul roads and access to works plan to the accommodation bridge (and associated walls, embankments and structures) on land adjacent to parcel 05/86 and to the culvert, watercourse and head wall situated on land adjacent to parcel 05/85; or

(b) other than any construction access rights which may be authorised by or pursuant to the terms of this Order over the Marsh Lane track, the rail link land or parcel 05/75, or over bridleways and footpaths that are open to the public, exercise any construction access rights over BPC's property or otherwise use any part of BPC's property for the purpose of gaining access to any part of the authorised development or to any other land or in connection with the construction or maintenance of the authorised development.

(2) Any exercise of powers of temporary possession by the undertaker in respect of the rail link land or the Marsh Lane track land which may be permitted pursuant to the terms of this Order is subject to, and in common with, the use of the rail link land and the Marsh Lane track land by BPC and by any other person acting with BPC's authority or which may have rights to use the rail link land and the Marsh Lane track land.

53.—(1) If required to do so by BPC (acting reasonably), the undertaker must at its cost and expense procure that surveys are carried out to a specification approved by BPC (acting reasonably) to show the condition of any land of which temporary possession is taken under article 33 (together with all associated structures) before the undertaker's use of it begins and after that use ends.

(2) The undertaker must promptly after receipt of reasonable demand by BPC and at the undertaker's cost and expense make good any and all damage and wear and tear caused to any part of BPC's property which is used by the undertaker in connection with the construction or maintenance of the authorised development where in BPC's reasonable opinion the rectification of such damage, wear or tear is necessary in the interests of safety or security.

(3) If required to do so by BPC (acting reasonably), the undertaker must permit BPC to inspect the execution of all works of rectification being carried out under this paragraph in order to ensure compliance by the undertaker with the requirements of this paragraph.

54.—(1) The undertaker must present to BPC not less than three months before the intended date of commencing construction the draft programme for the execution of each part of the authorised development on BPC's property.

(2) The undertaker must consult with BPC in relation to the draft programme and must present its final programme for the execution of the authorised development on BPC's property to BPC not less than four weeks before the intended date of commencing construction.

(3) The undertaker must not enter on or take temporary possession of any part of BPC's property unless it has served at least 14 days' written notice on BPC of its intended entry onto that part.

(4) In this paragraph "intended date of commencing construction" means the first date on which the undertaker wishes to commence construction of any part of the authorised development on, under or over any part of BPC's property, including carrying out any preparatory activities.

(5) In the exercise of any powers of temporary possession in respect of any part of BPC's property and in the commencement and execution of the authorised development on BPC's property the undertaker must—

(a) proceed diligently with the works affecting each part of BPC's property; and

(b) notify BPC in writing of the completion of the relevant part of the authorised development affecting each part of BPC's property within fourteen days of its completion.

(6) In the exercise of any powers of temporary possession in respect of any part of BPC's property the undertaker must not—

(a) except with the agreement of BPC, provide or authorise the provision of car parking or storage (for materials or other items) facilities on any part of BPC's property other than within Work No. 16A;

(b) demolish or remove any buildings; or

(c) except as BPC agrees, construct or carry out on BPC's property any works comprising fencing, any mitigation works, ground or rock stability, geotechnical or strengthening works other than works which are of a temporary nature.

(7) In addition to and without limitation on the scope of the undertaker's other obligations under this Order (including those in article 33(4) and Schedule 2), before giving up possession of any part of BPC's property in respect of which any powers of temporary possession have been exercised the undertaker must remove any works constructed in contravention of sub-paragraph (6) or paragraph 55.

Works

55. Despite any provision of this Order or anything shown on the certified documents except as BPC may agree—

(a) no part of Work No. 14 or any ancillary works associated with Work No. 14 must be constructed or maintained on parcel 04/55; and

(b) other than works of a temporary nature, no ancillary works associated with any relevant works or with Work No. 1A or Work No. 1B must be constructed or maintained upon, across, under or over any of BPC's property of which only temporary possession is taken under this Order or over which the undertaker does not, under this Order, acquire rights authorising the retention of those ancillary works.

56.—(1) The undertaker must before commencing construction of any specified work supply to BPC proper and sufficient plans of that work for BPC's approval and the specified work must not be commenced or executed except in accordance with such plans as have been approved in writing by BPC.

(2) Subject to sub-paragraph (3), BPC's approval under sub-paragraph (1) must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions.

(3) BPC's approval to plans must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions,—

(a) in respect of all or any of Work No. 1C on BPC's property and Work No. 19, if and in so far as the proposed works comprise and, following design development, are broadly consistent with the works shown on drawings W1097B-ARP-DRG-ECV-000305, W1097B-ARP-DRG-ECV-000330 and W1097B-ARP-DRG-ECV-000331;

(b) in respect of Work No. 18 if and in so far as the proposed works comprise and, following design development, are broadly consistent with the Bridleway Extension Under the Elevated M5 Plan, and

(c) in respect of Work No. 16C, if and in so far as the proposed works comprise only work necessary to renew the level crossing in modern equivalent form.

(4) Where under sub-paragraph (2) or (3) BPC's approval to plans submitted by the undertaker under sub-paragraph (1) cannot be unreasonably withheld or delayed if by the end of the period of 28 days beginning with the date on which such plans have been supplied to BPC, BPC has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon BPC written notice requiring BPC to intimate approval or disapproval within a further period of 28 days beginning with the date upon which BPC receives written notice from the undertaker. If by expiry of the further period of 28 days BPC has not intimated approval or disapproval, BPC is deemed to have approved the plans as submitted.

(5) When signifying approval of plans submitted under sub-paragraph (1), BPC may specify any protective works (whether temporary or permanent) which in BPC's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of BPC's property or the continuation of safe and efficient operation of the Port (including the Port's railway) and such protective works as may be reasonably necessary for those purposes are to be constructed by BPC but at the expense of the undertaker, or if BPC so desires such protective works must be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that the protective works have been completed to BPC's reasonable satisfaction.

(6) When signifying approval of plans submitted under sub-paragraph (1) in relation to Work No. 18, BPC may specify any environmental protection works which in BPC's reasonable opinion should be implemented before the commencement of, or during, the construction of Work No. 18 and such environmental protection works as may be reasonably necessary for those purposes are to be implemented by BPC but at the expense of the undertaker, or if BPC so desires such environmental protection works must be implemented by the undertaker at its own expense with all reasonable dispatch, and except to the extent BPC may agree the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that any and all relevant environmental protection works have been implemented to BPC's reasonable satisfaction.

57.—(1) Any specified work and any protective works (and any environmental protection works connected with Work No. 18) to be constructed or implemented by virtue of paragraph 56(5) or 56(6) must, when commenced, be constructed and implemented with all reasonable dispatch in accordance with the plans approved or deemed to have been approved under paragraph 56—

(a) under BPC's supervision (where appropriate and if given) and to BPC's reasonable satisfaction;

(b) in such manner as to cause as little damage as is possible to BPC's property; and

(c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe and efficient operation of the Port (including use of the Port's railway or the traffic on it).

(2) If any damage to BPC's property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph 56(1), make good such damage and pay to BPC all reasonable expenses to which BPC may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

(a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of BPC or its servants, contractors or agents; or

(b) any liability on BPC with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

58. The undertaker must—

(a) at all times afford reasonable facilities to BPC's representative (or to a person nominated by BPC's representative) for access to a specified work during its construction; and

(b) supply BPC with all such information as BPC's representative may reasonably require with regard to a specified work or the method of constructing it.

59. BPC must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by BPC under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

60.—(1) If any permanent or temporary alterations or additions to BPC's property, or any protective works under paragraph 56(5), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by BPC and if BPC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to BPC all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by BPC in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing BPC's property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against-any sum payable by the undertaker to BPC under this paragraph.

61. The undertaker must repay to BPC all fees, costs, charges and expenses reasonably and properly incurred by BPC—

(a) in constructing any protective works under the provisions of paragraph 56(5) and in implementing any environmental protection works under the provisions of paragraph 56(6) including, in respect of any

permanent protective works or permanent environmental protection works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of BPC's representative's approval of plans submitted by the undertaker and the supervision by BPC of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;

(c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting, watching and lighting BPC's property (including the Port's railway) and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work; and

(d) in respect of any additional temporary lighting of BPC's property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

62. If at any time after the completion of a specified work BPC gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation or use of any of BPC's property (including the Port's railway) in connection with carrying on BPC's statutory undertaking, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to adversely affect the operation or use of such property in that connection.

63. Any additional expenses which BPC may reasonably incur in altering, reconstructing, working, or maintaining under any powers existing at the making of this Order any of BPC's property in connection with carrying on BPC's statutory undertaking by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, working or maintenance has been given to the undertaker, are to be repaid by the undertaker to BPC.

64.—(1) The undertaker must pay to BPC all costs, charges, damages and expenses not otherwise provided for in this Part (but subject to article 41 (no double recovery)) which may be occasioned to or reasonably and properly incurred by BPC—

(a) by reason of the construction, working, maintenance of a specified work or the failure of such a work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work

and the undertaker must indemnify BPC from and against all costs, claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done BPC on behalf of the undertaker or in accordance with plans approved by BPC or in accordance with any requirement of BPC's representative or under BPC's representative's supervision will not (if it was done without negligence on the part of BPC or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) BPC must give the undertaker reasonable notice of any such claim or demand made by a third party as soon as reasonably practicable after BPC becomes aware of it and must make no settlement or compromise of such a claim or demand in excess of £10,000 without the prior consent of the undertaker (such consent not to be unreasonably withheld or delayed).

65. BPC must, on receipt of a request from the undertaker, from time to time provide free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

66. In the assessment of any sums payable to BPC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by BPC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

BPC's apparatus

67.— Despite any provision of this Order or anything shown on the land plan—

(a) the undertaker must not acquire any of BPC's apparatus other than by agreement;

(b) any right of BPC to maintain and use any of BPC's apparatus in land must not be extinguished, suspended or interfered with other than with BPC's agreement; and

(c) the undertaker must not alter, divert, remove, replace, reposition, relocate or repair any of BPC's apparatus other than with BPC's consent (not to be unreasonably withheld or delayed in respect of any specified work).

The Port's railway

68. For the purpose of this Order—

(a) no part of the Port's railway is, or will become by virtue of this Order or the execution of the authorised development, existing operational railway or operational railway; and

(b) no part of BPC's property or of any other land over which the Port's railway is located (whether or not that land is owned by BPC) is, or will become by virtue of this Order or the execution of the authorised development, operational railway land or currently operational railway land or form part of the railway authorised by this Order to which article 39 (operation and use of railways) applies.

Trees and other vegetation

69.—(1) Despite any provision in this Order and anything shown on the certified documents, in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development the undertaker must not—

(a) plant new or replacement trees, hedges, hedgerows, shrubs or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed; or

(b) remove, cut back, fell or lop, prune or reduce in any way any other hedge, tree, shrub or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed.

General

70. The undertaker must in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development secure compliance with and implementation of all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part.

71. Article 49 (procedure in relation to further approvals, etc) will not apply in relation to any consent, agreement or approval from BPC required under this Order.

APPENDIX 2

Comparison between previously submitted draft DCO Schedule 16 paragraph 5 and position now proposed by the Applicant

~~**THE PORTISHEAD BRANCH LINE (METROWEST PHASE 1) ORDER 202X**~~

~~**PROTECTIVE PROVISIONS**~~

PART 2

Protection for First Corporate Shipping Limited

43. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and BPC.

44. In this Part—

"access works" means works—

(a) on, over or under or otherwise affecting a private street or any public right of way on BPC's property, including the kerbs, splitter islands, footways, verges and carriageway of such street and any road markings, signing, signals, and other street furniture;

(b) to alter, modify, improve, create or provide any means of access (whether temporary or otherwise) on or across BPC's property or to or from any private street or any other part of BPC's property or to or from any dock public road;

(c) to alter the layout of any private street or any public right of way on BPC's property; and

(d) to position or install plant or equipment on or over any private street or any public right of way on BPC's property,

and includes, without limitation on the scope of the foregoing, any works under article 13 (street works and power to alter layout etc., of streets) or article 17 (access to works) in respect of or affecting any private street or any public right of way on BPC's property;

"ancillary works" means embankments, earthworks, retaining structures or works, planting, landscaping or other mitigation, fencing and all other works falling within the descriptions of the further associated development set out in paragraphs (a) to (x) (inclusive) of Schedule 1;

"BPC" means First Corporate Shipping Limited (registered company number 2542406), trading as The Bristol Port Company, being the statutory harbour authority and competent harbour authority for the Port;

"BPC's apparatus" means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil, water, electricity, telephone, television, data and information transmission or any other service) on BPC's property;

"BPC's property" means the whole and each of every part of all the leasehold and freehold land and rights and the benefit of all covenants, owned by or vested in BPC at Avonmouth, Chittening and Portbury—

(e) upon, across, under, over or in respect of or affecting which any powers conferred by this Order may be exercised; or

(f) upon, across, under or over which there is situated anything over or in respect of which any such powers may be exercised,

and includes, without limitation on the scope of the foregoing, the Port's railway and any private street but does not include the Court House Farm terminable access;

"BPC's representative" means the person appointed by BPC from time to time to be its representative for the purposes of this Order;

"certified documents" means any and all of the plans and documents certified by the Secretary of State for the purpose of this Order;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"construction access rights" means any and all powers conferred on the undertaker by this Order to exercise temporary powers of access over any land with or without vehicles, plant and equipment including, without limitation on the scope of the foregoing, any ancillary powers to remove buildings and vegetation from that land and to construct works for the purpose of providing a means of access;

"Court House Farm easement" means a Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company;

"Court House Farm terminable access" means the existing crossing at grade over the disused Portishead Branch Line which is described in the Court House Farm easement;

"dock public road" means each of the streets known as Marsh Lane, Royal Portbury Dock Road (including the roundabout at its junction with Portbury Way and Gordano Way), Redland Avenue, Gordano Way, Garonor Way and Portbury Way to the extent that it is maintainable highway;

"drainage works" means works—

~~(a)~~(a) to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on, over or under BPC's property or which drains water to or from BPC's property; and

~~(b)~~(b) to make any opening or connection into any watercourse belonging to BPC or to lay down, take up or alter any pipes for that purpose;

"environmental protection works" means measures reasonably required to be carried out on or in respect of Work No. 18 to protect the scrub environment and water bodies established and managed by BPC;

"highway access land" means any and all of parcels 5/30, 5/61, 5/62, 5/65 and 5/70;

~~"landscaping works" means—~~

~~(a) removing, cutting back, felling, lopping, pruning or reducing in any way any hedge, hedgerow, tree, shrub or other vegetation on BPC's property; and~~

~~(b) planting new or replacement hedges, hedgerows, trees, shrubs or other vegetation on BPC's property and includes, without limitation on the scope of the foregoing, any works on BPC's property under article 43 (felling or lopping of trees) or article 44 (hedgerows);~~

"maintainable highway" has the same meaning as in section 86(1) of the 1991 Act;

"Marsh Lane track" means the private street referred to in Schedule 3 and there described as Access Road to the M5 Avonmouth Bridge east of Marsh Lane, Easton-in-Gordano;

"Marsh Lane track land" means any and all of parcels 5/25, 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 and that part of parcel 5/28 which lies to the east of an imaginary line projected in a northerly direction across the disused railway at 126 miles 78 chains and includes the Marsh Lane track;

"plans" includes sections, elevations, designs and design data, drawings, calculations, specifications, programmes, method statements, assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work;

"Port" means the port and harbour of Bristol;

"Port's railway" means the railway owned by BPC leading from Portbury Junction, Pill to the Royal Portbury Dock;

"powers of temporary possession" means the powers conferred by article 33 (temporary use of land for carrying out the authorised development);

"preparatory activities" means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works but excluding any such activities carried out under article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property;

"private street" means any street on BPC's property which is not a maintainable highway;

"rail link land" means any and all of parcels 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55;

"railway rights land" means any and all of parcels 5/95, 5/100, 5/105, 5/122, 5/137, 5/140, 5/141, 6/10, 6/15, 6/20~~-~~, 6/55, 6/60 and 6/80;

"relevant works" means that part of Work 1C that is on the Port's railway and Works Nos. 14, 14A, 14B, 15, 16, 16A, 16C, 18, 19 and 20;

"specified work" means—

(g) that part of Work 1C that is on the Port's railway;

(h) the whole of Work Nos. 14, 14A, 15, 16, 16A, 16C, 18, 19 and 20;~~and~~

(i) all access works and drainage works; and

(j) ~~(c)~~so much of all other parts of the authorised development and of any works to be carried out under the powers conferred by article 33 as is situated upon, across, under, over or within 5 metres of BPC's property, including all environmental mitigation and restoration measures;

(2) In this Part—

(a) references to the undertaker include references to any person to or in which any or all of the benefit of the provisions of this Order and any related statutory powers are transferred or are vested pursuant to any provision of this Order and any person which may by virtue of any agreement made pursuant to article 11 (agreements with Network Rail) whether alone or jointly with another exercise any or all of the powers contained in this Order;

(b) references to numbered parcels are to the parcels of land so numbered in the book of reference;

(c) references to a requirement to consult include that consultation must take place in good faith and in a timely manner with the provision of all reasonably necessary information and so that the party concerned must act reasonably in taking into account the reasonable comments made by the other party in response; and

(d) references to BPC's consent, agreement or approval are to BPC's prior consent, agreement or approval given in writing.

45. Nothing in this Order affects—

(a) any right of BPC to use the Court House Farm terminable access; or

(b) the provisions of the Court House Farm easement or any other agreement relating to the Court House Farm terminable access

and accordingly the following provisions of this Part of this Schedule do not apply as regards the Court House Farm terminable access.

46. The undertaker must give written notice to BPC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 10 (consent to transfer of benefit of order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

47.—(1) No agreement made under article 11 (agreements with Network Rail) may authorise or permit the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of any powers and rights of Network Rail and the undertaker (as the case may be) under any BPC contract or affecting any of BPC's property.

(2) In sub-paragraph (1), "BPC contract" means all and any contracts, licences, easements and other agreements, permissions and consents to which BPC is a party or of which it has the benefit.

Watercourses and drainage

48.—(1) No part of any impounded dock at the Port is included within the definition of "watercourse" for any purpose of this Order.

(2) The undertaker must not without BPC's consent (such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions) create any new discharges for water into any watercourse belonging to or used by BPC.

(3) Without limitation on the scope of sub-paragraph (2), any consent given by BPC under this paragraph—

(a) may be given subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse by the undertaker; and

(b) does not obviate the need for the undertaker to obtain any further consents required in relation to the activity concerned.

(4) In the exercise of any power under article 22 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse in, on, over or under BPC's property.

Surveys

49.—(1) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property—

(a) outside the Order limits except to the extent that BPC agrees for the purpose of carrying out non-intrusive surveys, investigations and monitoring only;

(b) other than to the extent that the exercise of such powers is necessary in connection with carrying out the authorised development; and

(c) other than by prior agreement with BPC on each and every occasion, such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions, and on at least 14 days' notice.

(2) When requesting BPC's agreement to access under sub-paragraph (1) the undertaker must provide to BPC full details of the property to which access is requested, the activities proposed (including risk assessments and method statements and intended duration of the activities), the identity of the persons who would undertake them and any apparatus that might be left on the affected property.

(3) BPC is, without limitation on the scope of sub-paragraph (1)(c)—

(a) entitled to refuse access as requested by the undertaker on any occasion for operational reasons, in which case BPC must act reasonably and without delay in seeking to offer alternative arrangements; and

(b) entitled as a condition of its agreement on any occasion to require the production of evidence of the existence of adequate insurance with insurers of repute, the proceeds of which will be available to cover all liability, costs, claims, expenses and demands which may arise as a result of that access.

(4) The undertaker must remove any equipment left on, over or under BPC's property as soon as reasonably possible after completion of the relevant surveys and investigations.

(5) The undertaker must, at its own expense, deliver to BPC as soon as reasonably practicable after their production on a non-reliance basis copies in an electronic format of all survey and ground investigation reports carried out in respect of BPC's property under the powers conferred by article 23 or the powers conferred by section 11(3) of the 1965 Act as applied by this Order, which reports BPC may use and provide to others (on a non-reliance basis) free of cost in connection with works and operations at the Port.

Streets, access and public rights of way

50.—(1) The undertaker must not in carrying out any works or exercising the powers conferred by this Order cause pedestrian or vehicular access to or across any of BPC's property (including access for cargo operations but excluding access over the Court House Farm terminable access) to be interfered with or obstructed, other than with the consent of BPC, not to be unreasonably withheld or delayed, or, if the carrying out of works or exercising the powers relate to a dock public road, unless the undertaker has first consulted with BPC.

(2) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under—

(a) article 13(1) (street works and power to alter layout etc., of streets) in respect of or so as to affect the Marsh Lane track other than by prior agreement with BPC such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions;

(b) article 13(1) in respect of or so as to affect any dock public road unless it has first consulted with BPC; or

(c) article 13(2) in respect of or so as to affect any private street on any part of BPC's property.

(3) With the exception of the locations specified in columns (1) and (2) of Schedule 7 and shown on sheet 5 of the compounds, haul roads and access to works plan as AW5.1 (access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch railway line) and AW5.3 (access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch railway line) the undertaker must not pursuant to any powers in this Order carry out any works to create or improve any means of access affecting any private street or any public right of way on BPC's property or any other part of BPC's property or any dock public road.

(4) In carrying out any access works, the undertaker must not so far as reasonably practicable interfere with or obstruct the free, uninterrupted and safe use by other traffic of any street or interfere with street furniture, signage and lighting masts.

(5) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under article 15(1) (temporary stopping up of streets and public rights of way) in respect of:

(a) the Marsh Lane track (except to the extent permitted by article 15(5)) or any other private street; or

(b) Royal Portbury Dock Road without BPC's consent, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

(6) Despite any provision in this Order, the undertaker must not, except with the agreement of BPC, exercise any power under article 15 or article 46 to use or to authorise the use of any private street or any dock public road or any public right of way on BPC's property as a temporary working site or as a parking place.

(7) The undertaker must exercise the power granted to it under paragraph (5) of article 15 to stop up public rights of way LA8/67/10 and LA/8/68/10 to the extent specified in column (3) of Part 2 of Schedule 5 (Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension), throughout the period of operation or use of the Lodway Farm construction compound to be constructed as Work No. 17 and the temporary construction compound located under the M5 Avonmouth Bridge.

(8) The undertaker must, before submitting any survey, proposed measures or strategy relating to the Marsh Lane track to the relevant planning authority for approval in accordance with requirement 35 of Schedule 2 (Requirements), consult with BPC in relation to the content of all such surveys, measures and strategies.

(9) ~~(7)~~Despite paragraphs (1) and (2) of article 19—

(a) any street constructed under this Order on BPC's property; and

(b) the altered or diverted part of any street altered or diverted under this Order on BPC's property

must be maintained by and at the expense of the relevant highway authority at all times from its completion.

(10) ~~(8)~~If the undertaker acquires, whether compulsorily or by agreement, any of BPC's property within the Order limits, or any right or interest in or over such property, which property is subject to a public right of way, from the date of the acquisition of the relevant land, right or interest or from 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, any liability or responsibility of BPC to the relevant highway authority for or in respect of the maintenance of that public right of way is extinguished and that public right of way shall after that date instead be maintained by and at the expense of the relevant highway authority.

(11) ~~(9)~~Without limitation on the scope of any other provision in this Part if any damage to any public right of way on BPC's property is caused in the exercise of any powers under this Order or by carrying out of, or in consequence of the construction of, any works under this Order, the undertaker must make good such damage and pay to BPC all reasonable expenses to which BPC may be put by reason of any such damage.

(12) ~~(10)~~The undertaker must not exercise any powers under article 13, article 15 or article 46 (traffic regulation) over or in respect of any part of BPC's property or any dock public road after completion of construction of the authorised development.

Acquisition and use of land

51.—(1) The undertaker must not exercise the powers conferred by section 271 (extinguishment of rights of statutory undertakers: preliminary notices) of the 1990 Act in relation to any rights of BPC over or in respect of the railway rights land or the highway access land; or any of BPC's apparatus.

(2) ~~If~~ Despite any other provision of this Order, if the undertaker acquires any interest in the railway rights land or in the highway access land, whether compulsorily or by agreement, no rights of BPC over or in respect of the railway rights land or the highway access land so acquired must be extinguished.

Use of land and execution, maintenance and use of the authorised development

52.—(1) Despite any provision in this Order or anything shown on the land plan, the undertaker must not except with the agreement of BPC—

(a) exercise any powers of temporary possession over or in respect of parcel 5/75 or (if and to the extent they form part of BPC's property) parcel 5/85 or parcel 5/86 unless BPC fails, within 14 days of a request by the undertaker, to make available for exercise by the undertaker in substitution for the exercise of the relevant powers temporary rights of access over other land which are sufficient (whether alone or in conjunction with the exercise by the undertaker of other powers under this Order) to enable the undertaker to gain access in connection with the construction of the authorised development, with such vehicles, plant and equipment as may be necessary, from access point AW5.3 shown on the compounds, haul roads and access to works plan to the accommodation bridge (and associated walls, embankments and structures) on land adjacent to parcel 05/86 and to the culvert, watercourse and head wall situated on land adjacent to parcel 05/85; or

(b) other than any construction access rights which may be authorised by or pursuant to the terms of this Order over the Marsh Lane track ~~or parcels 05/75~~, ~~05/103, 05/104, 05/107, 05/108, 05/165, 05/171, 06/25, any part of 05/112 that is not part of the Marsh Lane Track~~the rail link land or parcel 05/75, or over bridleways and footpaths that are open to the public~~)~~, exercise any construction access rights over BPC's property or otherwise use any part of BPC's property for the purpose of gaining access to any part of the authorised development or to any other land or in connection with the construction or maintenance of the authorised development.

(2) Any exercise of powers of temporary possession by the undertaker in respect of the rail link land or the Marsh Lane track land which may be permitted pursuant to the terms of this Order is subject to, and in common with, the use of the rail link land and the Marsh Lane track land by BPC and by any other person acting with BPC's authority or which may have rights to use the rail link land and the Marsh Lane track land.

53.—(1) If required to do so by BPC (acting reasonably), the undertaker must at its cost and expense procure that surveys are carried out to a specification approved by BPC (acting reasonably) to show the condition of any land of which temporary possession is taken under article 33 (together with all associated structures) before the undertaker's use of it begins and after that use ends.

(2) The undertaker must promptly after receipt of reasonable demand by BPC and at the undertaker's cost and expense make good any and all damage and wear and tear caused to any part of BPC's property which is used by the undertaker in connection with the construction or maintenance of the authorised development where in BPC's reasonable opinion the rectification of such damage, wear or tear is necessary in the interests of safety or security.

(3) If required to do so by BPC (acting reasonably), the undertaker must permit BPC to inspect the execution of all works of rectification being carried out under this paragraph in order to ensure compliance by the undertaker with the requirements of this paragraph.

54.—(1) The undertaker must present to BPC not less than three months before the intended date of commencing construction the draft programme for the execution of each part of the authorised development on BPC's property.

(2) The undertaker must consult with BPC in relation to the draft programme and must present its final programme for the execution of the authorised development on BPC's property to BPC not less than four weeks before the intended date of commencing construction.

(3) The undertaker must not enter on or take temporary possession of any part of BPC's property unless it has served at least 14 days' written notice on BPC of its intended entry onto that part.

(4) In this paragraph "intended date of commencing construction" means the first date on which the undertaker wishes to commence construction of any part of the authorised development on, under or over any part of BPC's property, including carrying out any preparatory activities.

(5) In the exercise of any powers of temporary possession in respect of any part of BPC's property and in the commencement and execution of the authorised development on BPC's property the undertaker must—

(a) proceed diligently with the works affecting each part of BPC's property; and

(b) notify BPC in writing of the completion of the relevant part of the authorised development affecting each part of BPC's property within fourteen days of its completion.

(6) In the exercise of any powers of temporary possession in respect of any part of BPC's property the undertaker must not—

(a) except with the agreement of BPC, provide or authorise the provision of car parking or storage (for materials or other items) facilities on any part of BPC's property other than within Work No. 16A;

(b) demolish or remove any buildings; or

(c) except as BPC agrees, construct or carry out on BPC's property any works comprising fencing, any mitigation works, ground or rock stability, geotechnical or strengthening works other than works which are of a temporary nature.

(7) In addition to and without limitation on the scope of the undertaker's other obligations under this Order (including those in article 33(4) and Schedule 2), before giving up possession of any part of BPC's property in respect of which any powers of temporary possession have been exercised the undertaker must remove any works constructed in contravention of sub-paragraph (6) or paragraph 55.

Works

55. Despite any provision of this Order or anything shown on the certified documents except as BPC may agree—

(a) no part of Work No. 14 or any ancillary works associated with Work No. 14 must be constructed or maintained on parcel 04/55; and

(b) other than works of a temporary nature, no ancillary works associated with any relevant works or with Work No. 1A or Work No. 1B must be constructed or maintained upon, across, under or over any of BPC's property of which only temporary possession is taken under this Order or over which the undertaker does not, under this Order, acquire rights authorising the retention of those ancillary works.

56.—(1) The undertaker must before commencing construction of any specified work supply to BPC proper and sufficient plans of that work for BPC's approval and the specified work must not be commenced or executed except in accordance with such plans as have been approved in writing by BPC.

(2) Subject to sub-paragraph (3), BPC's approval under sub-paragraph (1) must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions.

(3) BPC's approval to plans must not be unreasonably withheld or delayed, but may be given subject to reasonable ~~conditions~~ conditions,—

(a) in respect of all or any of Work No. 1C on BPC ~~Property~~'s property and Work No. 19, if and in so far as the proposed works comprise and, following design development, are broadly consistent with the works shown on drawings W1097B-ARP-DRG-ECV-000305, W1097B-ARP-DRG-ECV-000330 and W1097B-ARP-DRG-ECV-000331;

(b) in respect of Work No. ~~19~~ 18 if and in so far as the proposed works comprise and, following design development, are broadly consistent with the Bridleway Extension Under the Elevated M5 Plan, and

(c) in respect of Work No. 16C, if and in so far as the proposed works comprise only work necessary to renew the level crossing in modern equivalent form.

(4) Where under sub-paragraph (2) or (3) BPC's approval to plans submitted by the undertaker under sub-paragraph (1) cannot be unreasonably withheld or delayed if by the end of the period of 28 days beginning with the date on which such plans have been supplied to BPC, BPC has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon BPC written notice requiring BPC to intimate approval or disapproval within a further period of 28 days beginning with the date upon which BPC receives

written notice from the undertaker. If by expiry of the further period of 28 days BPC has not intimated approval or disapproval, BPC is deemed to have approved the plans as submitted.

(5) When signifying approval of plans submitted under sub-paragraph (1), BPC may specify any protective works (whether temporary or permanent) which in BPC's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of BPC's property or the continuation of safe and efficient operation of the Port (including the Port's railway) and such protective works as may be reasonably necessary for those purposes are to be constructed by BPC but at the expense of the undertaker, or if BPC so desires such protective works must be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that the protective works have been completed to BPC's reasonable satisfaction.

(6) When signifying approval of plans submitted under sub-paragraph (1) in relation to Work No. 18, BPC may specify any environmental protection works which in BPC's reasonable opinion should be implemented before the commencement of, or during, the construction of Work No. 18 and such environmental protection works as may be reasonably necessary for those purposes are to be implemented by BPC but at the expense of the undertaker, or if BPC so desires such environmental protection works must be implemented by the undertaker at its own expense with all reasonable dispatch, and except to the extent BPC may agree the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that any and all relevant environmental protection works have been implemented to BPC's reasonable satisfaction.

57.—(1) Any specified work and any protective works (and any environmental protection works connected with Work No. 18) to be constructed or implemented by virtue of paragraph 56(5) or 56(6) must, when commenced, be constructed and implemented with all reasonable dispatch in accordance with the plans approved or deemed to have been approved under paragraph 56—

(a) under BPC's supervision (where appropriate and if given) and to BPC's reasonable satisfaction;

(b) in such manner as to cause as little damage as is possible to BPC's property; and

(c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe and efficient operation of the Port (including use of the Port's railway or the traffic on it).

(2) If any damage to BPC's property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph 56(1), make good such damage and pay to BPC all reasonable expenses to which BPC may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

(a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of BPC or its servants, contractors or agents; or

(b) any liability on BPC with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

58. The undertaker must—

(a) at all times afford reasonable facilities to BPC's representative (or to a person nominated by BPC's representative) for access to a specified work during its construction; and

(b) supply BPC with all such information as BPC's representative may reasonably require with regard to a specified work or the method of constructing it.

59. BPC must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by BPC under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

60.—(1) If any permanent or temporary alterations or additions to BPC's property, or any protective works under paragraph 56(5), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by BPC and if BPC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to BPC all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a

capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by BPC in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing BPC's property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against-any sum payable by the undertaker to BPC under this paragraph.

61. The undertaker must repay to BPC all fees, costs, charges and expenses reasonably and properly incurred by BPC—

(a) in constructing any protective works under the provisions of paragraph 56(5) and in implementing any environmental protection works under the provisions of paragraph 56(6) including, in respect of any permanent protective works or permanent environmental protection works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of BPC's representative's approval of plans submitted by the undertaker and the supervision by BPC of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;

(c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting, watching and lighting BPC's property (including the Port's railway) and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work; and

(d) in respect of any additional temporary lighting of BPC's property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

62. If at any time after the completion of a specified work BPC gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation or use of any of BPC's property (including the Port's railway) in connection with carrying on BPC's statutory undertaking, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to adversely affect the operation or use of such property in that connection.

63. Any additional expenses which BPC may reasonably incur in altering, reconstructing, working, or maintaining under any powers existing at the making of this Order any of BPC's property in connection with carrying on BPC's statutory undertaking by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, working or maintenance has been given to the undertaker, are to be repaid by the undertaker to BPC.

64.—(1) The undertaker must pay to BPC all costs, charges, damages and expenses not otherwise provided for in this Part (but subject to article 41 (no double recovery)) which may be occasioned to or reasonably and properly incurred by BPC—

(a) by reason of the construction, working, maintenance of a specified work or the failure of such a work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work

and the undertaker must indemnify BPC from and against all costs, claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done BPC on behalf of the undertaker or in accordance with plans approved by BPC or in accordance with any requirement of BPC's representative or under BPC's representative's supervision will not (if it was done without negligence on the part of BPC or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) BPC must give the undertaker reasonable notice of any such claim or demand made by a third party as soon as reasonably practicable after BPC becomes aware of it and must make no settlement or compromise of such a claim or demand in excess of £10,000 without the prior consent of the undertaker (such consent not to be unreasonably withheld or delayed).

65. BPC must, on receipt of a request from the undertaker, from time to time provide free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become

liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

66. In the assessment of any sums payable to BPC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by BPC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

BPC's apparatus

67. ~~67.~~ Despite any provision of this Order or anything shown on the land plan—

(a) the undertaker must not acquire any of BPC's apparatus other than by agreement;

(b) any right of BPC to maintain and use any of BPC's apparatus in land must not be extinguished~~,~~ suspended or interfered with other than with BPC's agreement; and

(c) the undertaker must not alter, divert, remove, replace, reposition, relocate or repair any of BPC's apparatus other than with BPC's consent (not to be unreasonably withheld or delayed in respect of any specified work).

~~(2)In this paragraph "BPC's apparatus" means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil, water, electricity, telephone, television, data and information transmission or any other service) on BPC's property.~~

The Port's railway

68. For the purpose of this Order—

(a) no part of the Port's railway is, or will become by virtue of this Order or the execution of the authorised development, existing operational railway or operational railway; and

(b) no part of BPC's property or of any other land over which the Port's railway is located (whether or not that land is owned by BPC) is, or will become by virtue of this Order or the execution of the authorised development, operational railway land or currently operational railway land or form part of the railway authorised by this Order to which article 39 (operation and use of railways) applies.

Trees and other vegetation

69.—(1) Despite any provision in this Order and anything shown on the certified documents, in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development the undertaker must not—

(a) plant new or replacement trees, hedges, hedgerows, shrubs or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed; or

(b) remove, cut back, fell or lop, prune or reduce in any way any other hedge, tree, shrub or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed.

General

70. The undertaker must in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development secure compliance with and implementation of all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part.

71. Article 49 (procedure in relation to further approvals, etc) will not apply in relation to any consent, agreement or approval from BPC required under this Order.

APPENDIX 3

Comparison showing changes proposed by BPC to draft provisions included in Applicant's previously submitted draft DCO

PART 3

Protection for First Corporate Shipping Limited

43. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and BPC.

44. In this Part—

"access works" means works—

(a) on, over or under or otherwise affecting a private street or any public right of way on BPC's property, including the kerbs, splitter islands, footways, verges and carriageway of such street and any road markings, signing, signals, and other street furniture;

(b) to alter, modify, improve, create or provide any means of access (whether temporary or otherwise) on or across BPC's property or to or from any private street or any other part of BPC's property or to or from any dock public road;

(c) to alter the layout of any private street or any public right of way on BPC's property; and

(d) to position or install plant or equipment on or over any private street or any public right of way on BPC's property,

and includes, without limitation on the scope of the foregoing, any works under article 13 (street works and power to alter layout etc., of streets) or article 17 (access to works) in respect of or affecting any private street or any public right of way on BPC's property;

"ancillary works" means embankments, earthworks, retaining structures or works, planting, landscaping or other mitigation, fencing and all other works falling within the descriptions of the further associated development set out in paragraphs (a) to (x) (inclusive) of Schedule 1;

"BPC" means First Corporate Shipping Limited (registered company number 2542406), trading as The Bristol Port Company, being the statutory harbour authority and competent harbour authority for the Port;

"BPC's apparatus" means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil, water, electricity, telephone, television, data and information transmission or any other service) on BPC's property;

"BPC's property" means the whole and each of every part of all the leasehold and freehold land and rights and the benefit of all covenants, owned by or vested in BPC at Avonmouth, Chittening and Portbury—

(e) upon, across, under, over or in respect of or affecting which any powers conferred by this Order may be exercised; or

(f) upon, across, under or over which there is situated anything over or in respect of which any such powers may be exercised,

and includes, without limitation on the scope of the foregoing, the Port's railway and any private street but does not include the Court House Farm terminable access;

"BPC's representative" means the person appointed by BPC from time to time to be its representative for the purposes of this Order;

"certified documents" means any and all of the plans and documents certified by the Secretary of State for the purpose of this Order;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"construction access rights" means any and all powers conferred on the undertaker by this Order to exercise temporary powers of access over any land with or without vehicles, plant and equipment including, without limitation on the scope of the foregoing, any ancillary powers to remove buildings and vegetation from that land and to construct works for the purpose of providing a means of access;

"Court House Farm easement" means a Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company;

"Court House Farm terminable access" means the existing crossing at grade over the disused Portishead Branch Line which is described in the Court House Farm easement;

"dock public road" means each of the streets known as Marsh Lane, Royal Portbury Dock Road (including the roundabout at its junction with Portbury Way and Gordano Way), Redland Avenue, Gordano Way, Garonor Way and Portbury Way to the extent that it is maintainable highway;

"drainage works" means works—

(a) to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on, over or under BPC's property or which drains water to or from BPC's property; and

(b) to make any opening or connection into any watercourse belonging to BPC or to lay down, take up or alter any pipes for that purpose;

"environmental protection works" means measures reasonably required to be carried out on or in respect of Work No. 18 to protect the scrub environment and water bodies established and managed by BPC;

"highway access land" means any and all of parcels 5/30, 5/61, 5/62, 5/65 and 5/70;

"maintainable highway" has the same meaning as in section 86(1) of the 1991 Act;

"Marsh Lane track" means the private street referred to in Schedule 3 and there described as Access Road to the M5 Avonmouth Bridge east of Marsh Lane, Easton-in-Gordano;

"Marsh Lane track land" means any and all of parcels 5/25, 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 and that part of parcel 5/28 which lies to the east of an imaginary line projected in a northerly direction across the disused railway at 126 miles 78 chains and includes the Marsh Lane track;

"plans" includes sections, elevations, designs and design data, drawings, calculations, specifications, programmes, method statements, assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work;

"Port" means the port and harbour of Bristol;

"Port's railway" means the railway owned by BPC leading from Portbury Junction, Pill to the Royal Portbury Dock;

"powers of temporary possession" means the powers conferred by article 33 (temporary use of land for carrying out the authorised development);

"preparatory activities" means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works but excluding any such activities carried out under article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property;

"private street" means any street on BPC's property which is not a maintainable highway;

"public path land" means any and all of parcels 5/27, 5/101, 5/102, 5/130, 5/131, 5/135 and 5/136;

"rail link land" means any and all of parcels 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55;

"railway rights land" means any and all of parcels 5/95, 5/100, 5/105, 5/122, 5/137, 5/140, 5/141, 6/10, 6/15, 6/20, 6/55, 6/60 and 6/80;

"relevant works" means that part of Work 1C that is on the Port's railway and Works Nos. 14, 14A, 14B, 15, 16, 16A, 16C, 18, 19 and 20;

"specified work" means—

(g) that part of Work 1C that is on the Port's railway;

(h) the whole of Work Nos. 14, 14A, 15, 16, 16A, 16C, 18, 19 and 20;

(i) all access works and drainage works; and

(j) so much of all other parts of the authorised development and of any works to be carried out under the powers conferred by article 33 as is situated upon, across, under, over or within 5 metres of BPC's property, including all environmental mitigation and restoration measures;

(2) In this Part—

(a) references to the undertaker include references to any person to or in which any or all of the benefit of the provisions of this Order and any related statutory powers are transferred or are vested pursuant to any provision of this Order and any person which may by virtue of any agreement made pursuant to article 11 (agreements with Network Rail) whether alone or jointly with another exercise any or all of the powers contained in this Order;

(b) references to numbered parcels are to the parcels of land so numbered in the book of reference;

(c) references to a requirement to consult include that consultation must take place in good faith and in a timely manner with the provision of all reasonably necessary information and so that the party concerned must act reasonably in taking into account the reasonable comments made by the other party in response; and

(d) references to BPC's consent, agreement or approval are to BPC's prior consent, agreement or approval given in writing.

45.—(1) **Subject as set out in sub-paragraph (2),** nothing in this Order affects—

(a) any right of BPC to use the Court House Farm terminable access; or

(b) the provisions of the Court House Farm easement or any other agreement relating to the Court House Farm terminable access

and accordingly the following provisions of this Part of this Schedule do not apply as regards the Court House Farm terminable access.

(2) **Despite anything contained in the Court House Farm easement or any other agreement relating to the Court House Farm terminable access, BPC's rights to use the Court House Farm terminable access under and in accordance with the Court House Farm easement or such other agreement must not terminate or cease to be exercisable before the date which is fifteen months after the approval date, and the Court House Farm easement and any such other agreement are modified accordingly.**

(3) **In sub-paragraph (2), the "approval date" is the first date on which each of the Full Council of North Somerset Council, the West of England Joint Committee, the West of England Combined Authority Committee and The Secretary of State for Transport has confirmed in writing its approval under the Department for Transport WebTAG technical process for the appraisal of major transport schemes of the Full Business Case and the Final Approval Business Case in relation to the MetroWest Phase 1 proposals, including the authorised development.**

46. The undertaker must give written notice to BPC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 10 (consent to transfer of benefit of order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

47.—(1) No agreement made under article 11 (agreements with Network Rail) may authorise or permit the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of any powers and rights of Network Rail and the undertaker (as the case may be) under any BPC contract or affecting any of BPC's property.

(2) In sub-paragraph (1), "BPC contract" means all and any contracts, licences, easements and other agreements, permissions and consents to which BPC is a party or of which it has the benefit.

Watercourses and drainage

48.—(1) No part of any impounded dock at the Port is included within the definition of "watercourse" for any purpose of this Order.

(2) The undertaker must not without BPC's consent (such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions) create any new discharges for water into any watercourse belonging to or used by BPC.

(3) Without limitation on the scope of sub-paragraph (2), any consent given by BPC under this paragraph—

(a) may be given subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse by the undertaker; and

(b) does not obviate the need for the undertaker to obtain any further consents required in relation to the activity concerned.

(4) In the exercise of any power under article 22 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse in, on, over or under BPC's property.

Surveys

49.—(1) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property—

(a) outside the Order limits except to the extent that BPC agrees for the purpose of carrying out non-intrusive surveys, investigations and monitoring only;

(b) other than to the extent that the exercise of such powers is necessary in connection with carrying out the authorised development; and

(c) other than by prior agreement with BPC on each and every occasion, such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions, and on at least 14 days' notice.

(2) When requesting BPC's agreement to access under sub-paragraph (1) the undertaker must provide to BPC full details of the property to which access is requested, the activities proposed (including risk assessments and method statements and intended duration of the activities), the identity of the persons who would undertake them and any apparatus that might be left on the affected property.

(3) BPC is, without limitation on the scope of sub-paragraph (1)(c)—

(a) entitled to refuse access as requested by the undertaker on any occasion for operational reasons, in which case BPC must act reasonably and without delay in seeking to offer alternative arrangements; and

(b) entitled as a condition of its agreement on any occasion to require the production of evidence of the existence of adequate insurance with insurers of repute, the proceeds of which will be available to cover all liability, costs, claims, expenses and demands which may arise as a result of that access.

(4) The undertaker must remove any equipment left on, over or under BPC's property as soon as reasonably possible after completion of the relevant surveys and investigations.

(5) The undertaker must, at its own expense, deliver to BPC as soon as reasonably practicable after their production on a non-reliance basis copies in an electronic format of all survey and ground investigation reports carried out in respect of BPC's property under the powers conferred by article 23 or the powers conferred by section 11(3) of the 1965 Act as applied by this Order, which reports BPC may use and provide to others (on a non-reliance basis) free of cost in connection with works and operations at the Port.

Streets, access and public rights of way

50.—(1) The undertaker must not in carrying out any works or exercising the powers conferred by this Order cause pedestrian or vehicular access to or across any of BPC's property (including access for cargo operations but excluding access over the Court House Farm terminable access) to be interfered with or obstructed, other than with the consent of BPC, not to be unreasonably withheld or delayed, or, if the carrying out of works or exercising the powers relate to a dock public road, unless the undertaker has first consulted with BPC.

(2) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under—

(a) article 13(1) (street works and power to alter layout etc., of streets) in respect of or so as to affect the Marsh Lane track other than by prior agreement with BPC such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions;

(b) article 13(1) in respect of or so as to affect any dock public road unless it has first consulted with BPC; or

(c) article 13(2) in respect of or so as to affect any private street on any part of BPC's property.

(3) With the exception of the locations specified in columns (1) and (2) of Schedule 7 and shown on sheet 5 of the compounds, haul roads and access to works plan as AW5.1 (access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch railway line) and AW5.3 (access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch railway line) the undertaker must not pursuant to any powers in this Order carry out any works to create or improve any means of access affecting any private street or any public right of way on BPC's property or any other part of BPC's property or any dock public road.

(4) In carrying out any access works, the undertaker must not so far as reasonably practicable interfere with or obstruct the free, uninterrupted and safe use by other traffic of any street or interfere with street furniture, signage and lighting masts.

(5) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under article 15(1) (temporary stopping up of streets and public rights of way) in respect of:

(a) the Marsh Lane track (except to the extent permitted by article 15(5)) or any other private street; or

(b) Royal Portbury Dock Road without BPC's consent, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

(6) Despite any provision in this Order, the undertaker must not, except with the agreement of BPC, exercise any power under article 15 or article 46 to use or to authorise the use of any private street or any dock public road or any public right of way on BPC's property as a temporary working site or as a parking place.

(7) The undertaker must exercise the power granted to it under paragraph (5) of article 15 to stop up public rights of way LA8/67/10 and LA/8/68/10 to the extent specified in column (3) of Part 2 of Schedule 5 (Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension), throughout the period of operation or use of the Lodway Farm construction compound to be constructed as Work No. 17 and the temporary construction compound located under the M5 Avonmouth Bridge.

(8) The undertaker must, before submitting any survey, proposed measures or strategy relating to the Marsh Lane track to the relevant planning authority for approval in accordance with requirement 35 of Schedule 2 (Requirements), consult with BPC in relation to the content of all such surveys, measures and strategies.

(9) Despite paragraphs (1) and (2) of article 19—

(a) any street constructed under this Order on BPC's property; and

(b) the altered or diverted part of any street altered or diverted under this Order on BPC's property

must be maintained by and at the expense of the relevant highway authority at all times from its completion.

(10) If the undertaker acquires, whether compulsorily or by agreement, any of BPC's property within the Order limits, or any right or interest in or over such property, which property is subject to a public right of way, from the date of the acquisition of the relevant land, right or interest or from 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, any liability or responsibility of BPC to the relevant highway authority for or in respect of the maintenance of that public right of way is extinguished and that public right of way shall after that date instead be maintained by and at the expense of the relevant highway authority.

(11) Without limitation on the scope of any other provision in this Part if any damage to any public right of way on BPC's property is caused in the exercise of any powers under this Order or by carrying out of, or in consequence of the construction of, any works under this Order, the undertaker must make good such damage and pay to BPC all reasonable expenses to which BPC may be put by reason of any such damage.

(12) The undertaker must not exercise any powers under article 13, article 15 or article 46 (traffic regulation) over or in respect of any part of BPC's property or any dock public road after completion of construction of the authorised development.

(13) **Despite any other provision of this Order, no part of Work No. 16 or Work No. 18 (including the right of way to be to be constructed by the undertaker pursuant to article 16(3) and described in Part 2 of Schedule 6 (Bridleways, cycle tracks and footpaths) as a bridleway between points B1 and B2 shown on Sheet 5 of the new highways plan) is or will become open for use by any person or a public right of way or other highway except with the agreement of BPC.**

Acquisition and use of land

51.—(1) The undertaker must not exercise the powers conferred by section 271 (extinguishment of rights of statutory undertakers: preliminary notices) of the 1990 Act in relation to any rights of BPC over or in respect of the railway rights land or the highway access land; or any of BPC's apparatus.

(2) Despite any other provision of this Order, if the undertaker acquires any interest in the railway rights land or in the highway access land, whether compulsorily or by agreement, no rights of BPC over or in respect of the railway rights land or the highway access land so acquired must be extinguished.

(3) **The undertaker must not exercise the powers conferred by—**

(a) article 24 (compulsory acquisition of land) or article 31 (acquisition of subsoil or air-space only) over or in respect of the public path land or any part of parcel 5/50 which is not part of the embankment supporting Marsh Lane;

(b) article 27(1) (compulsory acquisition of rights or imposition of covenants) over or in respect of the rail link land or any of parcels 5/75, 5/103 and 5/112;

(c) article 27(2) over or in respect of any of BPC's property;

(d) article 32 (rights under or over streets) over or in respect of any private street; or

(e) article 34 (temporary use of land for the purpose of maintaining the authorised development) over or in respect of any of BPC's property,

unless the exercise of such powers is with the consent of BPC.

(4) **Except to the extent BPC may agree, article 28(3) (Private rights over land subject to compulsory acquisition or temporary possession), article 29 (power to override easements and other rights) and article 37 (statutory undertakers and electronic communications code operators) shall not apply in relation to any interest, right or restriction the benefit of which is vested in BPC or any other person affecting the rail link land or the Marsh Lane track land or in relation to any interest, right or restriction the benefit of which is vested in BPC affecting the railway rights land or the highway access land.**

Use of land and execution, maintenance and use of the authorised development

52.—(1) Despite any provision in this Order or anything shown on the land plan, the undertaker must not except with the agreement of BPC—

(a) exercise any powers of temporary possession over or in respect of parcel 5/75 or (if and to the extent they form part of BPC's property) parcel 5/85 or parcel 5/86 unless BPC fails, within 14 days of a request by the undertaker, to make available for exercise by the undertaker in substitution for the exercise of the relevant powers temporary rights of access over other land which are sufficient (whether alone or in conjunction with the exercise by the undertaker of other powers under this Order) to enable the undertaker to gain access in connection with the construction of the authorised development, with such vehicles, plant and equipment as may be necessary, from access point AW5.3 shown on the compounds, haul roads and access to works plan to the accommodation bridge (and associated walls, embankments and structures) on land adjacent to parcel 05/86 and to the culvert, watercourse and head wall situated on land adjacent to parcel 05/85;

(b) other than any construction access rights which may be authorised by or pursuant to the terms of this Order over the Marsh Lane track, the rail link land or parcel 05/75, or over bridleways and footpaths that are open to the public, exercise any construction access rights over BPC's property or otherwise use any part of BPC's property for the purpose of gaining access to any part of the authorised development or to any other land or in connection with the construction or maintenance of the authorised development; **or**

(c) exercise any powers of temporary possession over or in respect of the Marsh Lane track land or the rail link land or parcels 5/103 and 5/170.

(2) Any exercise of powers of temporary possession by the undertaker in respect of the rail link land or the Marsh Lane track land which may be permitted pursuant to the terms of this Order is subject to, and in common with, the use of the rail link land and the Marsh Lane track land by BPC and by any other person acting with BPC's authority or which may have rights to use the rail link land and the Marsh Lane track land.

53.—(1) If required to do so by BPC (acting reasonably), the undertaker must at its cost and expense procure that surveys are carried out to a specification approved by BPC (acting reasonably) to show the condition of any land of which temporary possession is taken under article 33 (together with all associated structures) before the undertaker's use of it begins and after that use ends.

(2) The undertaker must promptly after receipt of reasonable demand by BPC and at the undertaker's cost and expense make good any and all damage and wear and tear caused to any part of BPC's property which is used by the undertaker in connection with the construction or maintenance of the authorised development where in BPC's reasonable opinion the rectification of such damage, wear or tear is necessary in the interests of safety or security.

(3) If required to do so by BPC (acting reasonably), the undertaker must permit BPC to inspect the execution of all works of rectification being carried out under this paragraph in order to ensure compliance by the undertaker with the requirements of this paragraph.

54.—(1) The undertaker must present to BPC not less than three months before the intended date of commencing construction the draft programme for the execution of each part of the authorised development on BPC's property.

(2) The undertaker must consult with BPC in relation to the draft programme and must present its final programme for the execution of the authorised development on BPC's property to BPC not less than four weeks before the intended date of commencing construction.

(3) The undertaker must not enter on or take temporary possession of any part of BPC's property unless it has served at least 14 days' written notice on BPC of its intended entry onto that part.

(4) In this paragraph "intended date of commencing construction" means the first date on which the undertaker wishes to commence construction of any part of the authorised development on, under or over any part of BPC's property, including carrying out any preparatory activities.

(5) In the exercise of any powers of temporary possession in respect of any part of BPC's property and in the commencement and execution of the authorised development on BPC's property the undertaker must—

(a) proceed diligently with the works affecting each part of BPC's property; and

(b) notify BPC in writing of the completion of the relevant part of the authorised development affecting each part of BPC's property within fourteen days of its completion.

(6) In the exercise of any powers of temporary possession in respect of any part of BPC's property the undertaker must not—

(a) except with the agreement of BPC, provide or authorise the provision of car parking or storage (for materials or other items) facilities on any part of BPC's property other than within Work No. 16A;

(b) demolish or remove any buildings; or

(c) except as BPC agrees, construct or carry out on BPC's property any works comprising fencing, any mitigation works, ground or rock stability, geotechnical or strengthening works other than works which are of a temporary nature.

(7) In addition to and without limitation on the scope of the undertaker's other obligations under this Order (including those in article 33(4) and Schedule 2), before giving up possession of any part of BPC's property in respect of which any powers of temporary possession have been exercised the undertaker must remove any works constructed in contravention of sub-paragraph (6) or paragraph 55.

Works

55. Despite any provision of this Order or anything shown on the certified documents except as BPC may agree—

(a) no part of Work No. 14 or any ancillary works associated with Work No. 14 must be constructed or maintained on parcel 04/55; and

(b) other than works of a temporary nature, no ancillary works associated with any relevant works or with Work No. 1A or Work No. 1B must be constructed or maintained upon, across, under or over any of BPC's property of which only temporary possession is taken under this Order or over which the undertaker does not, under this Order, acquire rights authorising the retention of those ancillary works.

56.—(1) The undertaker must before commencing construction of any specified work supply to BPC proper and sufficient plans of that work for BPC's approval and the specified work must not be commenced or executed except in accordance with such plans as have been approved in writing by BPC.

(2) Subject to sub-paragraph (3), BPC's approval under sub-paragraph (1) must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions.

(3) BPC's approval to plans must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions,—

(a) in respect of all or any of Work No. 1C on BPC's property and Work No. 19, if and in so far as the proposed works comprise and, following design development, are broadly consistent with the works shown on drawings W1097B-ARP-DRG-ECV-000305, W1097B-ARP-DRG-ECV-000330 and W1097B-ARP-DRG-ECV-000331;

(b) in respect of Work No. 18 if and in so far as the proposed works comprise and, following design development, are broadly consistent with the Bridleway Extension Under the Elevated M5 Plan, and

(c) in respect of Work No. 16C, if and in so far as the proposed works comprise only work necessary to renew the level crossing in modern equivalent form.

(4) Where under sub-paragraph (2) or (3) BPC's approval to plans submitted by the undertaker under sub-paragraph (1) cannot be unreasonably withheld or delayed if by the end of the period of 28 days beginning with the date on which such plans have been supplied to BPC, BPC has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon BPC written notice requiring BPC to intimate approval or disapproval within a further period of 28 days beginning with the date upon which BPC receives written notice from the undertaker. If by expiry of the further period of 28 days BPC has not intimated approval or disapproval, BPC is deemed to have approved the plans as submitted.

(5) When signifying approval of plans submitted under sub-paragraph (1), BPC may specify any protective works (whether temporary or permanent) which in BPC's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of BPC's property or the continuation of safe and efficient operation of the Port (including the Port's railway) and such protective works as may be reasonably necessary for those purposes are to be constructed by BPC but at the expense of the undertaker, or if BPC so desires such protective works must be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that the protective works have been completed to BPC's reasonable satisfaction.

(6) When signifying approval of plans submitted under sub-paragraph (1) in relation to Work No. 18, BPC may specify any environmental protection works which in BPC's reasonable opinion should be implemented before the commencement of, or during, the construction of Work No. 18 and such environmental protection works as may be reasonably necessary for those purposes are to be implemented by BPC but at the expense of the undertaker, or if BPC so desires such environmental protection works must be implemented by the undertaker at its own expense with all reasonable dispatch, and except to the extent BPC may agree the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that any and all relevant environmental protection works have been implemented to BPC's reasonable satisfaction.

57.—(1) Any specified work and any protective works (and any environmental protection works connected with Work No. 18) to be constructed or implemented by virtue of paragraph 56(5) or 56(6) must, when commenced, be constructed and implemented with all reasonable dispatch in accordance with the plans approved or deemed to have been approved under paragraph 56—

(a) under BPC's supervision (where appropriate and if given) and to BPC's reasonable satisfaction;

(b) in such manner as to cause as little damage as is possible to BPC's property; and

(c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe and efficient operation of the Port (including use of the Port's railway or the traffic on it).

(2) If any damage to BPC's property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph 56(1), make good such damage and pay to BPC all reasonable expenses to which BPC may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

(a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of BPC or its servants, contractors or agents; or

(b) any liability on BPC with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

58. The undertaker must—

(a) at all times afford reasonable facilities to BPC's representative (or to a person nominated by BPC's representative) for access to a specified work during its construction; and

(b) supply BPC with all such information as BPC's representative may reasonably require with regard to a specified work or the method of constructing it.

59. BPC must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by BPC under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

60.—(1) If any permanent or temporary alterations or additions to BPC's property, or any protective works under paragraph 56(5), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by BPC and if BPC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to BPC all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by BPC in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing BPC's property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against-any sum payable by the undertaker to BPC under this paragraph.

61. The undertaker must repay to BPC all fees, costs, charges and expenses reasonably and properly incurred by BPC—

(a) in constructing any protective works under the provisions of paragraph 56(5) and in implementing any environmental protection works under the provisions of paragraph 56(6) including, in respect of any permanent protective works or permanent environmental protection works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of BPC's representative's approval of plans submitted by the undertaker and the supervision by BPC of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;

(c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting, watching and lighting BPC's property (including the Port's railway) and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work; and

(d) in respect of any additional temporary lighting of BPC's property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

62. If at any time after the completion of a specified work BPC gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation or use of any of BPC's property (including the Port's railway) in connection with carrying on BPC's statutory undertaking, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to adversely affect the operation or use of such property in that connection.

63. Any additional expenses which BPC may reasonably incur in altering, reconstructing, working, or maintaining under any powers existing at the making of this Order any of BPC's property in connection with carrying on BPC's statutory undertaking by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, working or maintenance has been given to the undertaker, are to be repaid by the undertaker to BPC.

64.—(1) The undertaker must pay to BPC all costs, charges, damages and expenses not otherwise provided for in this Part (but subject to article 41 (no double recovery)) which may be occasioned to or reasonably and properly incurred by BPC—

(a) by reason of the construction, working, maintenance of a specified work or the failure of such a work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work

and the undertaker must indemnify BPC from and against all costs, claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done BPC on behalf of the undertaker or in accordance with plans approved by BPC or in accordance with any requirement of BPC's representative or under BPC's representative's supervision will not (if it was done without negligence on the part of BPC or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) BPC must give the undertaker reasonable notice of any such claim or demand made by a third party as soon as reasonably practicable after BPC becomes aware of it and must make no settlement or compromise of such a claim or demand in excess of £10,000 without the prior consent of the undertaker (such consent not to be unreasonably withheld or delayed).

65. BPC must, on receipt of a request from the undertaker, from time to time provide free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

66. In the assessment of any sums payable to BPC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by BPC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

BPC's apparatus

67.— Despite any provision of this Order or anything shown on the land plan—

(a) the undertaker must not acquire any of BPC's apparatus other than by agreement;

(b) any right of BPC to maintain and use any of BPC's apparatus in land must not be extinguished, suspended or interfered with other than with BPC's agreement; and

(c) the undertaker must not alter, divert, remove, replace, reposition, relocate or repair any of BPC's apparatus other than with BPC's consent (not to be unreasonably withheld or delayed in respect of any specified work).

The Port's railway

68. For the purpose of this Order—

(a) no part of the Port's railway is, or will become by virtue of this Order or the execution of the authorised development, existing operational railway or operational railway; and

(b) no part of BPC's property or of any other land over which the Port's railway is located (whether or not that land is owned by BPC) is, or will become by virtue of this Order or the execution of the authorised development, operational railway land or currently operational railway land or form part of the railway authorised by this Order to which article 39 (operation and use of railways) applies.

Trees and other vegetation

69.—(1) Despite any provision in this Order and anything shown on the certified documents, in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development the undertaker must not—

(a) plant new or replacement trees, hedges, hedgerows, shrubs or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed; or

(b) remove, cut back, fell or lop, prune or reduce in any way any other hedge, tree, shrub or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed.

General

70. The undertaker must in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development secure compliance with and implementation of—

(a) all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part; and

(b) th**e form of protocol (if any) agreed between BPC and the undertaker relating to the regulation on property owned by BPC of construction operations and activities in connection with the authorised development.**

71. Article 49 (procedure in relation to further approvals, etc) will not apply in relation to any consent, agreement or approval from BPC required under this Order.

ENCLOSURE 7

Tom Ewings

From: Richard Guyatt [redacted]@wbd-uk.com>
Sent: 05 May 2021 10:31
To: Stuart Tarr
Subject: RE: MetroWest Phase 1 Project TR040011 - Pill Tunnel Deadline 7 Submissions [WBDUK-AC.FID26403138]

Not advice Stuart! I can't advise you so please don't take it as such.

Richard

Richard Guyatt
Partner
Womble Bond Dickinson (UK) LLP
[redacted]

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From: Stuart Tarr [redacted]
Sent: 05 May 2021 10:24
To: Richard Guyatt [redacted]
Subject: Re: MetroWest Phase 1 Project TR040011 - Pill Tunnel Deadline 7 Submissions [WBDUK-AC.FID26403138]

Thanks Richard

That's really helpful advice which provides a sensible basis for going forward if I can enlist the support of Liam Fox MP to make the case to the S of S for us (a strong supporter of MetroWest he is totally opposed to the planned housing development).

Best wishes

Stuart
[redacted]

On 5 May 2021, at 10:00, Richard Guyatt [redacted] wrote:

Stuart

As the examination has close the ExA cannot recommend a new requirement.

The only party that could now impose now it would be the Secretary of State. The Applicant would resist this as unnecessary, not least because access is a planning issue to be determined by the local planning authority, if and when the CLT makes its application for planning permission.

Richard

Richard Guyatt
Partner
Womble Bond Dickinson (UK) LLP
[redacted]

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From: Stuart Tarr [redacted]
Sent: 04 May 2021 11:23
To: Richard Guyatt [redacted]
Subject: Re: MetroWest Phase 1 Project TR040011 - Pill Tunnel Deadline 7 Submissions [WBDUK-AC.FID26403138]

Richard

Many thanks for this long and detailed reply.

If a Requirement was substituted for a Restrictive Covenant, who would require it, the Secretary of State as advised by the ExA, or, noting that the examination has closed, by someone else, e.g. the constituency MP, making a submission to the Secretary of State?

Sorry to ask I'm having a spot of difficulty getting my head around it.

K regards,

Stuart

Sent from my iPhone

On 4 May 2021, at 10:28, Richard Guyatt [redacted] wrote:

Stuart

Thanks for your email. I now have instructions.

I can see that it perhaps is not clear from the answer given but the response to the restrictive covenant point is in the Applicant's response.

In the response to TR040011-001509- 001 it is stated:

The Applicant has not made the suggested changes and submits they are not needed.

The Applicant will not accept any restriction on access is appropriate and there is no reason for it created by the the application before the SoS.

If Work No 24 proceeds it can only be constructed following agreement for a freehold transfer with the landowner or following exercise of compulsory acquisition powers.

I do not believe the DCO can be used to impose a restrictive covenant on a future land transaction. Control would be better secured by way of requirement.

It may be the current owner will transact only with an access right reserved for his or his successors' benefit. In any event the Applicant does need to grant access rights following acquisition by agreement or compulsion – to both Network Rail and the owner of the lake.

The issue of access to any future housing development will be dealt with by the local planning authority. The CLT will have to secure rights of access or freehold ownership of an access route from the relevant land owners to the highway network. This may or may not include the Council as owner of land in the process, depending on the pace at which the MetroWest (MW1) scheme proceeds compared to the CLT proposal. It will also depend on the CLT's preferred access route. At this time it is anticipated that MW1 will be in advance of any proposal by CLT - but the MW1 team has no control over the CLT's timetable.

Throughout the examination the Applicant submitted that the CLT proposal is irrelevant to the Secretary of State's consideration. That remains the case. The Secretary of State must decide on the matters before him and there is nothing choate in planning terms for the Secretary of State to consider regarding the CLT. The CLT has not come to the examination to argue its scheme needs to be catered for. The MW1 scheme does nothing to facilitate the CLT scheme in terms of providing bell

mouths, pavements, utility corridors, paths or other enabling works.

The CLT scheme will have to be considered by the local planning authority on its own merits and that will include whether it will impact adversely on MW1's proposals.

If the Applicant has secured its required land when the CLT scheme comes forward then the CLT will have to approach the Applicant for a grant of access rights over the access route, as the access to Work 24 will not form part of the highway. Some form or access to the landowner's land will need to be provided for, to avoid a severance claim for the land held by the current owner that is not included in the MW1 scheme.

There is no need for, nor purpose in, the Secretary of State seeking to control whether or not the Applicant grants such access and I cannot see that such a control could be included in the Order, other than by requirement, in any event. Conversely, if the CLT has acquired the land before MW1 vests the land it requires, then the Applicant may have to choose between providing some form of access to the CLT or having to a pay a very substantial compensation claim.

To impose a covenant on MW1, even if it were possible, could therefore have very significant compensation implications.

As stated in my response to your submission, the Applicant has not, in any event, made the change to the Order you suggested. It would resist any such change, if the Secretary of State felt it was possible to impose one, as being unnecessary and inappropriate. The issue of access is best left to the local planning authority if and when an application for planning permission is made by the CLT.

Richard

Richard Guyatt
Partner
Womble Bond Dickinson (UK) LLP

[redacted]

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From: Stuart Tarr [redacted]
Sent: 21 April 2021 11:41
To: Bart Bartkowiak <Bart.Bartkowiak@planninginspectorate.gov.uk>
Cc: Richard Guyatt [redacted]
Stuart Tarr [redacted]
Subject: MetroWest Phase 1 Project TR040011 - Pill Tunnel Deadline 7 Submissions

Morning Bart

I am sorry to come back after the examination has closed (I have read Jo Dowling's closure note) but I have one remaining concern which is that WBD have failed to address my request that a restrictive covenant should be placed on those to be granted access to the Chapel Pill Lane site, the effect of which would preclude the housing development from going ahead.

This may be an oversight, noting that WBD has repeated the same, in this instance a completely inappropriate answer *(The Applicant does not agree that the surfacing proposed by the Interested Party is an appropriate one for Work No. 24)* to this question, or it may simply be that the question is one for the Lead Planning Inspector to address in her recommendation report to the Secretary of State (Transport).

Anyway, if clarification could be provided to explain how the question is to dealt with, by a further submission from WBD or by the Lead PI when drafting the report to the Secretary of State, I would be very grateful. I should add it is likely that a further submission will be made on behalf of the residents I represent direct to the Secretary of State towards the end of July.

I have included a courtesy copy of this email for Richard at WBD. Pages 38-40 inc of WBD's Deadline 7 responses to written submissions refers.

Kind regards,

Stuart

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