

Hampshire Water Transfer and Water Recycling Project

Draft Development Consent Order

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The Southern Water logo consists of three stylized, wavy blue lines of varying lengths, positioned to the right of the text 'Southern Water.'

202* No. ****

INFRASTRUCTURE PLANNING

**The Hampshire Water Transfer and Water Recycling Project
Development Consent Order 202***

Made - - - - - ***

Coming into force - - - - - ***

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

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

The Panel, having examined the application and the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2) of the 2008 Act, submitted a report and recommendation to the Secretary of State.

The Secretary of State is satisfied that open space within the Order land, when burdened with any new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(2)(d) of the 2008 Act applies.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the Panel, has decided to make an Order granting development consent for the development described in the application with modifications,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

(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20) and section 37 was amended by paragraph 7 of Schedule 15 to the Environment Act 2021 (c. 30).

(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. 2017/572, S.I. 2018/378, S.I. 2019/734, S.I. 2020/764, S.I. 2020/1534, S.I. 2021/978, S.I. 2022/634, S.I. 2023/1071 and S.I. 2024/332.

(c) S.I. 2010/103, amended by S.I. 2012/635 and S.I. 2024/317.

(d) Section 132(2) was amended by section 24(3)(a) of the Growth and Infrastructure Act 2013 (c. 27).

The Secretary of State, in exercise of the powers conferred by sections 114(a), 115(b), 117(c), 120(d), 122(e), 123(f), 138(g) and 149A(h) of, and paragraphs 1 to 4, 10 to 15, 17, 20, 26, 33, 36 and 37 of Part 1 of Schedule 5(i) to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Hampshire Water Transfer and Water Recycling Project Development Consent Order 202* and comes into force on [*].

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(j);
- “the 1965 Act” means the Compulsory Purchase Act 1965(k);
- “the 1980 Act” means the Highways Act 1980(l);
- “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(m);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(n);
- “the 1990 Act” means the Town and Country Planning Act 1990(o);
- “the 1991 Act” means the New Roads and Street Works Act 1991(p);
- “the 2004 Act” means the Traffic Management Act 2004(q);
- “the 2008 Act” means the Planning Act 2008(r);
- “the 2017 Regulations” means the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017(s);
- “access and rights of way plans” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;
- “address” includes any number or address for the purpose of electronic transmission;

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- (a) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
 - (b) Section 115 was amended by paragraph 56 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
 - (c) Section 117 was amended by paragraph 58 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.
 - (d) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011 and paragraph 8 of Schedule 15 to the Environment Act 2021.
 - (e) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
 - (f) Section 123 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
 - (g) Section 138 was amended by section 23(4) of the Growth and Infrastructure Act 2013 (c.27).
 - (h) Section 149A was inserted by paragraph 4 of Part 1 of Schedule 8 to the Marine and Coastal Access Act 2009 (c. 23).
 - (i) Part 1 of Schedule 5 was amended by paragraph 4 of Part 1 of Schedule 8 and Part 2 of Schedule 22 to the Marine and Coastal Access Act 2009 (c. 23), paragraph 71 of Part 1 of Schedule 13 to the Localism Act 2011 and paragraph 76 of Part 3 of Schedule 6 to the Wales Act 2017.
 - (j) 1961 c. 33.
 - (k) 1965 c. 56.
 - (l) 1980 c. 66.
 - (m) 1981 c. 66.
 - (n) 1984 c. 27.
 - (o) 1990 c. 8.
 - (p) 1991 c. 22.
 - (q) 2004 c. 18.
 - (r) 2008 c. 29.
 - (s) S.I. 2017/3.

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

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

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

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

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

“construct” includes execute, place, alter, replace, relay and remove and “construction” is to be construed accordingly;

“Crown land plans” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the Crown land plans for the purposes of this Order;

“cycle track” means a way constituting a highway, being a way over which the public have the following, but no other rights of way, that is to say a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988^(a)) with a right of way on foot;

“electronic transmission” means a communication transmitted—

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

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

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

“environmental statement” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the environmental statement for the purposes of this Order;

“environmental statement figure 8.9 – UK Habitat Classifications for linear features and important hedgerows within the field survey area” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the environmental statement figure 8.9 – UK Habitat Classifications for linear features and important hedgerows within the field survey area for the purposes of this Order;

“flood risk activity” has the same meaning as in regulation 2 (interpretation: general) of the Environmental Permitting (England and Wales) Regulations 2016^(c);

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

“the Havant Thicket Reservoir infrastructure” means the reservoir and water transfer infrastructure and all associated controls, infrastructure, means of access, plant, services, systems and other equipment, constructed or to be constructed otherwise than pursuant to this Order by Portsmouth Water for the purposes of the storage of water and its transfer in both directions between the reservoir and the Bedhampton Waterworks, Meyrick Road, Havant, PO9 1NN (known as Bedhampton Springs), and includes any such things already existing at Bedhampton Springs used or to be used in relation to operations for the transfer of that water;

“highway”, “highway authority” and “local highway authority” respectively have the same meaning as in section 328 (meaning of “highway”), section 1 (highways authorities: general provision) and section 329(1) of the 1980 Act;

(a) 1988 c. 52.

(b) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210.

(c) S.I. 2016/1154.

“land plans” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the land plans for the purposes of this Order;

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

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

“MMO” means the Marine Management Organisation, Tyneside House, Skinnerburn Road, Newcastle upon Tyne, NE4 7AR;

“Order land” means the land shown coloured pink and the land shown coloured blue on the land plans, and which is described in the book of reference;

“Order limits” means the limits of the land outlined in red and labelled ‘Order limits’ on the works plans and on the land plans;

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

“Portsmouth Water” means Portsmouth Water Limited, company number 02536455, whose registered office is at Brockhampton Springs, West Street, Havant, England, PO9 1LG;

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

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

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

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

“street authority”, subject to article 15(6) (construction and maintenance of new, altered and diverted streets) in relation to a street, has the same meaning as in section 49 (the street authority and other relevant authorities)(c) of the 1991 Act;

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

“traffic management strategy” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the traffic management strategy for the purposes of this Order;

“traffic officer” means an individual designated under section 2 (designation of traffic officers) of the 2004 Act;

“tree constraints plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the tree constraints plan for the purposes of this Order;

“tree preservation orders plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the tree preservation orders plan for the purposes of this Order;

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

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- (a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.
- (b) Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c. 26) and section 49 of the Planning and Infrastructure Act 2025 (c. 34).
- (c) Section 49 was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).
- (d) Section 121A was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the New Roads and Street Works Act 1991 and amended by section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to, the Infrastructure Act 2015 and S.I. 2001/1400.

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

“undertaker” means Southern Water Services Limited (company number 02366620) whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX; and

“works plans” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the works plans for the purposes of this Order.

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

(3) All distances, directions, areas and lengths referred to in this Order are approximate.

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

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

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

(7) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement are not to be construed so as to include the avoidance, removal or reduction of an assessed adverse environmental effect or a positive environmental effect, or the increase of an assessed positive environmental effect.

PART 2 PRINCIPAL POWERS

Development consent, etc. granted by the Order

3.—(1) Subject to the provisions of this Order, including the requirements in Part 1 of Schedule 2 (requirements), the undertaker is granted development consent—

- (a) to construct and operate the authorised development; and
- (b) for any development comprised in the exercise by the undertaker of the functions conferred by article 5 (use, enjoyment and operation of Havant Thicket Reservoir infrastructure).

(2) Any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of this Order.

Maintenance of the authorised development

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

Use, enjoyment and operation of the Havant Thicket Reservoir infrastructure

5.—(1) The undertaker may use and enjoy the Havant Thicket Reservoir infrastructure for the purposes of constructing, operating, using and maintaining the authorised development.

(2) The undertaker’s use and enjoyment of the Havant Thicket Reservoir infrastructure authorised by this article includes, without limitation—

- (a) the conveyance of water from—
 - (i) the authorised development to the reservoir; and

- (ii) the reservoir to the authorised development;
- (b) the storage of water in the reservoir; and
- (c) the drawing down and taking of water from the reservoir,

being water that is recycled water produced by the authorised development and water that is a combination of recycled water and other water.

(3) The undertaker may from time to time give directions in writing to Portsmouth Water to operate and maintain the Havant Thicket Reservoir infrastructure in accordance with a scheme of operation agreed between the undertaker and Portsmouth Water or, in default of agreement, as specified by the undertaker in accordance with paragraph (4) or determined by the Secretary of State under paragraph (5).

(4) A scheme of operation specified by the undertaker under paragraph (3) may make provision to the extent the undertaker considers necessary and appropriate, including for any of the following matters in particular—

- (a) compensation flows to watercourses;
- (b) open and transparent sharing of current and historical data;
- (c) integration of IT and operating technology of Portsmouth Water and the undertaker;
- (d) operation control of the Havant Thicket Reservoir infrastructure and the circumstances when the undertaker may assume operational control of any part of it;
- (e) unsafe operating modes;
- (f) scheduling and carrying out of regular maintenance activity;
- (g) the taking and testing of samples;
- (h) procedures to be followed by the undertaker and Portsmouth Water in an emergency;
- (i) routine and emergency discharges; and
- (j) protocols for abnormal operating conditions, including changing the directional flow of water within pipelines.

(5) Any dispute between the undertaker and Portsmouth Water in relation to a scheme of operation specified by the undertaker under paragraph (3) may be referred by either the undertaker or Portsmouth Water to the Secretary of State for determination.

(6) If the Havant Thicket Reservoir infrastructure is not operated and maintained in accordance with paragraph (3) the undertaker may take such action as it considers appropriate in relation to the Havant Thicket Reservoir infrastructure to secure that it is operated and maintained in accordance with paragraph (3).

(7) The undertaker's functions under Part 6 of the Water Industry Act 1991 may be exercised by the undertaker in relation to the Havant Thicket Reservoir infrastructure if the undertaker considers it expedient to do so to secure or maintain the undertaker's use and enjoyment of the Havant Thicket Reservoir infrastructure under this article, or to enable the undertaker to take any action under paragraph (6); and for those purposes the Havant Thicket Reservoir infrastructure is to be considered a relevant pipe as defined by Part 6 of that Act.

(8) The exercise by the undertaker of the functions conferred by this article—

- (a) is deemed not to constitute a breach of—
 - (i) planning control for the purposes of Part 8 (enforcement) of the 1990 Act; or
 - (ii) any planning obligation for the purposes of the 1990 Act;
- (b) is to be disregarded for the purposes of establishing whether any development which is the subject matter of a planning permission granted under section 57 (requirement of planning permission)(a) of the 1990 Act is capable of physical implementation or whether any conditions of that permission can be complied with; and

(a) Section 57 was amended by paragraph 35 of Schedule 2 to the Planning Act 2008 (c.29). There are other amendments to section 57 which are not relevant to this Order.

- (c) is subject to the terms and conditions of, and does not disapply any requirement for—
 - (i) an abstraction licence under section 24 of the Water Resources Act 1991(a); and
 - (ii) a water discharge activity permit within the meaning of the Environmental Permitting (England and Wales) Regulations 2016(b).

(9) The undertaker may enter into agreements with Portsmouth Water relating to the exercise by the undertaker of the functions conferred by this article, and the exercise of those functions is subject to the terms and conditions of any such agreements.

(10) Article 46 (disapplication and modification of legislative provisions) and Schedule 8 (modifications to legislative provisions applying to the authorised development and to the Havant Thicket Reservoir infrastructure) modifies the application of certain legislative provisions for the purposes of the authorised development and the Havant Thicket Reservoir infrastructure.

(11) Article 55 (arbitration) does not apply to any dispute arising under this article.

Maintenance of drainage works

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

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

Limits of deviation

7.—(1) Subject to paragraph (3), each numbered work must be situated within the limits of the corresponding numbered area shown on the works plans.

(2) Work No. 4(a) must be situated—

- (a) where limits of deviation for that numbered work are shown on the works plans, within those limits of deviation; and
- (b) in all other cases, within the limits of Work No. 4 shown on the works plans.

(3) The limits set out in paragraphs (1) and (2) do not apply where it is demonstrated by the undertaker to the relevant planning authority’s satisfaction and the relevant planning authority certifies accordingly that works in excess of those limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(4) Part 2 of Schedule 2 (requirements) applies to an application to the relevant planning authority for certification under paragraph (3) as though it were an approval required by a requirement under that Schedule.

Benefit of the Order

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

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

(a) 1991 c. 57. Section 24(1) was amended by the Environment Act 1995 (c. 25).

(b) S.I. 2016/1154. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

(c) 1991 c. 59. The definition of “drainage” was substituted by section 100(2) of the Environment Act 1995.

Consent to transfer benefit of Order

9.—(1) The undertaker may, regardless of any provision in any enactment, with the consent of the Secretary of State enter into agreements—

- (a) to transfer, charge or otherwise dispose of to another person (“the transferee”) any interest of the undertaker in the authorised development or the undertaker’s right to construct, maintain, use or operate the authorised development; or
- (b) to grant to another person (“the grantee”) for a period agreed between the undertaker and the grantee any interest of the undertaker in the authorised development or the undertaker’s right to construct maintain, use or operate the authorised development; and
- (c) that are connected with or consequential on any agreement entered into under subparagraph (a) or (b).

(2) Any agreement referred to in paragraph (1) may provide (to the extent the undertaker considers necessary in connection with the design, construction, financing, funding, maintenance, use or operation of the authorised development) for—

- (a) any matters that are connected with the matters referred to in that paragraph or are consequential on them;
- (b) the financing or defraying of, or the making of contributions by the undertaker or by any other person towards, the cost of designing, constructing, maintaining, using or operating the authorised development;
- (c) the undertaker to provide services and facilities to the transferee, grantee or any other person on such terms (including as to payment) as the parties think fit; and
- (d) the undertaker or the transferee, grantee or any other person to provide guarantees, indemnities or any other form of security.

(3) Where an agreement has been made under paragraph (1), references in this Order, or in any document certified under it that apply to the undertaker are to be read as including references to the transferee or the grantee, or any other person who may exercise, enjoy or be responsible for any functions of the undertaker pursuant to that agreement.

(4) Subject to paragraphs (5) and (6) the undertaker may with the written consent of the Secretary of State—

- (a) transfer to the transferee the whole of the deemed marine licence and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) transfer to the grantee for the duration of the period mentioned in paragraph (1)(b), the whole of the deemed marine licence and such related statutory rights as may be agreed between the undertaker and the transferee.

(5) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the benefit of the provisions of the deemed marine licence.

(6) The exercise by any person further to any agreement made under paragraph (1), of the functions conferred by or under this Order or any other enactment, is subject to the same restrictions, liabilities and obligations as would apply by or under this Order if those powers were exercised by the undertaker.

(7) Sections 72(7) and (8) (variation, suspension, revocation and transfer) of the Marine and Coastal Access Act 2009(a) do not apply to a transfer or grant of the whole of the benefit of the provisions of the deemed marine licence to another person by the undertaker pursuant to an agreement under paragraph (4) save that the MMO may amend the deemed marine licence contained in Schedule 9 (deemed marine licence) to correct the name of the undertaker to the name of a transferee or grantee.

(a) 2009 c. 23.

Defence to proceedings in respect of statutory nuisance

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

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

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

PART 3 STREETS

Streets Works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus under the street;
- (d) maintain apparatus under the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

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

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

(a) 1990 c. 43. There are amendments to section 82(1) which are not relevant to this Order.
(b) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There are other amendments to section 82(2) which are not relevant to this Order.
(c) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15(3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 which are not relevant to this Order.

Application of the 1991 Act

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

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

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

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

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

(4) Nothing in article 15 (construction and maintenance of new, altered and diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act; or
- (b) has effect in relation to street works to which the provisions of Part 3 of the 1991 Act apply.

Application and modification of a permit scheme

13.—(1) Where a permit scheme applies to street works carried out under the power conferred by article 11 (streets works) of this Order, that permit scheme applies with the modifications set out in this article.

(2) For the purposes of this Order—

- (a) a permit may not be refused or granted subject to conditions which relate to the imposition of moratoria;

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- (a) Section 184 was amended by paragraph 45 of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 9 of Part 1 to Schedule 9 to the New Roads and Street Works Act 1991 (c. 22). There are other amendments to section 184 of the 1980 Act which are not relevant to the Order.
 - (b) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (c) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
 - (d) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004.
 - (e) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
 - (f) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
 - (g) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
 - (h) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
 - (i) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
 - (j) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.

- (b) a permit may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions through the exercise of the powers conferred by this Order;
- (c) a permit may not be refused where the proposed reason for refusal is the inability to impose a condition which will not comply with sub-paragraph (a) or (b); and
- (d) where a provisional advance authorisation has been granted to the undertaker in advance of the grant of a permit in relation to street works to be carried out under the power conferred by article 11, the highway authority may not grant a permit for any other works in the location during the time period to which that provisional advance authorisation relates, other than a permit for immediate works.

(3) Irrespective of any contrary statements within a relevant permit scheme, where the undertaker submits an application for a permit in relation to street works carried out under article 11 of this Order subject to proposed conditions and the highway authority wishes to impose different conditions on the permit, the permit authority must seek to reach agreement with the undertaker on the conditions and, as appropriate, provide alternative permit conditions to the undertaker within ten working days following the date on which the application for the permit is made by the undertaker and must not refuse an application for a permit before the end of the period which is five working days following the date on which the alternative permit conditions are provided to the undertaker.

(4) Where the undertaker confirms its agreement to the alternative permit conditions provided by the permit authority pursuant to paragraph (3) before the expiry of five working days following the date on which any such alternative permit conditions are provided to the undertaker, the permit authority must grant the permit subject to those conditions.

(5) Any alternative permit conditions provided by the permit authority in accordance with paragraph (3) must comply with paragraph (2).

(6) Without restricting the undertaker's recourse to any appeal mechanism or dispute resolution process which may be available under the permit scheme or otherwise, the undertaker may at its discretion refer any dispute arising from an application for a permit to arbitration in accordance with article 55 (arbitration).

(7) In this article—

“immediate works” means emergency works as that term is defined in section 52 of the 1991 Act and urgent works as that term is defined in regulation 3(1) of the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007(a);

“moratoria” means restrictions imposed under section 58 (restrictions on works following substantial road works)(b) or section 58A (restrictions on works following substantial street works)(c) of the 1991 Act;

“permit authority” means, in relation to a permit scheme, means the relevant local highway authority or strategic highways company which has prepared a permit scheme; and

“permit scheme” means a permit scheme made under Part 3 of the Traffic Management Act 2004(d).

Power to alter layout, etc., of streets

14.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street—

(a) S.I. 2007/1951.

(b) Section 58 was amended by section 51 of, and paragraph 1 of Schedule 1 to, the Traffic Management Act 2004 (c.18).

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

(d) 2004 (c.18).

- (a) in the case of the streets specified in column (2) of the table in Part 1 (permanent alteration of layout of streets) of Schedule 3 (streets) permanently in the manner specified in relation to that street in column (3); and
- (b) in the case of the streets specified in column (2) of the table in Part 2 (temporary alteration of layout of streets) of Schedule 3 temporarily in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) layout passing places;
- (c) carry out works to maintain street user visibility; and
- (d) alter, remove, replace or relocate any street furniture, including but without limitation any bollards, lighting columns or street signs.

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

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

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

Construction and maintenance of new, altered and diverted streets

15.—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout of streets) of Schedule 3 (streets) to this Order and the restoration works referred to in article 14(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed by the street authority, the alteration or restoration works must be maintained—

- (a) for a period of 12 months from the date of their completion, by and at the expense of the undertaker; and
- (b) from the expiry of that period by, and at the expense of the street authority.

(2) Subject to paragraph (3) the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout of streets) of Schedule 3 must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed with the street authority, the temporary alterations must be maintained by and at the expense of the undertaker for the duration of those temporary alterations.

(3) Those restoration works carried out pursuant to article 14(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed with the street authority, must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

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

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

- (a) the character of the street including the traffic which was reasonably to be expected to use it;

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

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

(6) The obligations to maintain streets imposed on the undertaker by paragraphs (1) to (3) of this article is to be disregarded when determining the identity of the street authority for the purposes of section 49 of the 1991 Act.

Temporary closure etc., of public rights of way

16.—(1) The undertaker, for the purposes of the authorised development, may temporarily close, alter, divert or restrict the use of any public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from a public right of way;
- (b) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and
- (c) subject to paragraph (2), prevent all persons from passing along the public right of way.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any public right of way temporarily closed, altered, diverted or restricted under the powers conferred by this article as a temporary working site.

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

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, alter, divert or restrict the use of—

- (a) the public rights of way specified in column (2) of the table in Part 3 (public right of way to be temporarily closed and for which no substitute is to be provided) of Schedule 3 (streets) to the extent specified in column (3) of that table by means of the measures specified in column (4) of that table; and
- (b) the public rights of way specified in column (2) of the table in Part 4 (public right of way to be temporarily closed for which a substitute is to be provided) of Schedule 3 to the extent specified in column (3) of that table.

(5) The undertaker must not temporarily close, alter, divert or restrict the use of—

- (a) any public right of way specified in paragraph (4)(a) without first consulting the street authority;
- (b) under the power conferred by paragraph (4)(b), the extent of a public right of way specified in column (2) of the table in Part 4 until the substitute specified in relation to that public right of way in column (4), or such other substitute as may be approved by the relevant planning authority in consultation with the relevant local highway authority, is completed and available for public use; and
- (c) any other public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

(6) Without prejudice to the generality of paragraph (1), the undertaker may, for the purposes of the construction, operation and maintenance of the authorised development cause motor vehicles under the undertaker's direction to—

- (a) travel along the public rights of way identified in column (2) of the table in Part 5 (authorisation of use of motor vehicles on public rights of way) of Schedule 3 for the extents specified in column (3) of that table; and
- (b) cross the public rights of way identified in column (2) of the tables in Parts 3 and 4 of Schedule 3 for the extent identified in the corresponding entry in column (3) of those tables whether or not those rights of way are closed to public use at the time at which they are crossed.

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

Permanent diversion of public rights of way

17.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development stop up each of the public rights of way specified in column (2) of Part 6 (public rights of way to be permanently stopped up and replaced) of Schedule 3 (streets) to the extent specified in column (3) of that table, whether or not that public right of way was in existence or recognised on the definitive map on the date this Order is made.

(2) The power conferred by paragraph (1) must not be exercised by the undertaker in relation to a public right of way specified in column (2) of the table in Part 6 of Schedule 3 unless—

- (a) the undertaker has acquired any part of the land comprised in the extent of that street as specified in column (2) of Part 6 of Schedule 3; and
- (b) either of the following is completed and available for public use—
 - (i) the corresponding replacement street specified in column (4) of that table in Part 6 of Schedule 3; or
 - (ii) such other replacement public right of way, as may be approved by the relevant planning authority in consultation with the relevant local highway authority.

(3) Where a public right of way has been stopped up under this article—

- (a) all public and private rights of way over or along the public right of way 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 public right of way 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 under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Following the opening for public use of a public right of way that has been constructed in substitution for a public right of way under the powers conferred by this article the undertaker must supply the surveying authority with—

- (a) a plan showing—
 - (i) the extent of that public right of way as constructed;
 - (ii) the extent of the public right of way that has been stopped up; and
- (b) a statement of the modifications required to the definitive statement consequent on the exercise by the undertaker of the power conferred by paragraph (1).

(6) The plans and statement of modifications to the definitive statement referred to in paragraph (5) are deemed to be an order modifying the definitive map and statement made under section

53(3)(a) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981(a).

(7) This article is subject to article 40 (apparatus and rights of statutory undertakers in stopped-up streets).

(8) In this article “surveying authority” has the meaning given to it by section 66(1) (interpretation of Part III)(b) of the Wildlife and Countryside Act 1981.

Access to works

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

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 7 (permanent means of access) of Schedule 3 (streets);
- (b) form and lay out the temporary means of access, or improve existing means of access, in the locations specified in Part 8 (temporary means of access to works) of Schedule 3; and
- (c) with the approval of the relevant planning authority after consultation with the street 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.

Traffic regulation measures

19.—(1) Subject to the provisions of this article, the undertaker may make provision for the purposes of the authorised development—

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;
- (c) as to prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;
- (d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and
- (e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(2) Without prejudice to the generality of paragraph (1) the undertaker may vary the Portsmouth (Gillman Road) (Prohibition of Driving and Left and Right Hand Turns) (No 47) Order 1996 for the purposes of permitting vehicles under the direction of the undertaker to perform a manoeuvre that would otherwise be prohibited by that Order.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(c) when used in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraphs (1) and (2) the undertaker must—

- (a) consult the chief officer of police in whose area the road is situated; and
- (b) obtain the written consent of the traffic authority.

(5) The undertaker must not exercise the powers conferred by paragraphs (1) and (2) unless the undertaker has—

- (a) given not less than 4 weeks’ notice in writing to the chief officer of police in whose area the road is situated and to the traffic authority; and

(a) 1981 c. 69. Section 53 was amended by sections 51, 103 of, and Schedule 5 to, the Countryside and Rights of Way Act 2000 and sections 70 of the Natural Environment and Rural Communities Act 2006.

(b) The definition of “surveying authority” was substituted by section 7 of, and paragraph 7 of Schedule 3 to, the Local Government Act 1985 (c. 51). There are other amendments to section 66(1) that are not relevant to this Order.

(c) S.I. 2011/935.

- (b) not less than 7 days before the provision is to take effect, published the undertaker's intention to make the provision in one or more newspapers circulating in the area in which any road to which the provision relates is situated.

(6) Any provision made under the powers conferred by paragraph (1) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1).

(7) Any provision made by the undertaker under paragraphs (1) and (2)—

- (a) must have regard to the traffic management strategy;
- (b) must be made by written instrument in such form as the undertaker considers appropriate;
- (c) has effect as if duly made by the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify savings and exemptions to which the provision is subject; and
- (d) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.

Agreements with street authorities

20.—(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 any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street, including any structure carrying the street over any part of the authorised development;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street over or under any part of the authorised development;
- (d) any temporary closure, stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (e) the carrying out in the street of any of the works referred to in article 11 (streets works) article 14 (power to alter layout, etc., of streets) and article 15(1) (construction and maintenance of new, altered and diverted streets); and
- (f) such other works as the parties may agree.

(2) Such an agreement may, without limitation to 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) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

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

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

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

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

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under 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.

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

(7) The Environment Agency is deemed to have granted consent under paragraph (3) where the watercourse, public sewer or drain belongs to the Environment Agency and an environmental permit under regulation 12(1)(b) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 has been granted in respect of the discharge.

(8) A sewerage undertaker is deemed to have granted consent to the discharge of trade effluent into a public sewer under paragraph (3) where the public sewer belongs to the sewerage undertaker and consent under section 118 (consent required for discharge of trade effluent into public sewer) of the Water Industry Act 1991 has been granted in respect of the discharge.

(9) In this article—

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

Protective works to buildings

22.—(1) Subject to the following provisions of this article, the undertaker may at the undertaker’s own expense carry out such protective works to any building which may be affected by the authorised development.

(2) Protective works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage, and place on, leave on and remove from the building and any land within its curtilage any apparatus and equipment for use in connection with the survey.

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

(a) 1991 c. 56. Section 106 was amended by section 35(1) and (8), 43(2) and 56(7) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and section 32 of, and paragraph 16(1) of Schedule 3 to, the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154. There are amendments to regulation 12 that are not relevant to this Order.

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

and if it reasonably requires, the undertaker may take possession, or exclusive possession, of the building and any land or part thereof for the purpose of carrying out the protective works.

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 55 (arbitration).

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

(8) Where—

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

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

(9) Subject to article 45 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance)(a) of the 2008 Act.

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

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

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or use of the authorised development; and

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

(b) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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

- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

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

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

(3) The notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.

(4) 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, boreholes and excavations.

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

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

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

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

Removal of human remains

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

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

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

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

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

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

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

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

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

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

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

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

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

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

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (15) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) In this article—

- (a) references to a relative of the deceased are to a person who—
 - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
 - (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased; and
- (b) references to a personal representative of the deceased are to a person or persons who—
 - (i) is the lawful executor of the estate of the deceased; or
 - (ii) is the lawful administrator of the estate of the deceased.

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

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

(17) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(a) is not applied to a removal carried out in accordance with this article.

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

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 37 (temporary use of land for constructing the authorised development) or 38 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use of land by the undertaker in accordance with the provisions of this Order,

and in section 240(1) (provisions supplemental to ss.238 and 239) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (16) of this article and section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

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

Felling or lopping of trees and hedgerows

25.—(1) The undertaker may fell, remove, lop, prune, coppice, pollard, or reduce in height or width any tree, shrub, shrubbery, hedgerow or important hedgerow, within or overhanging land

(a) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1) and amended by section 96(1) of, and paragraph 1 of Schedule 3 to, the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (No. 3).

(b) S.I. 1950/792.

within the Order limits, or cut back its roots, if the undertaker reasonably believes it to be necessary to do so to prevent the tree, shrub, shrubbery, hedgerow or important hedgerow—

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

(2) Without prejudice to the generality of paragraph (1) the undertaker may, for the purposes of the construction of the authorised development—

- (a) in relation to the trees identified in columns (1), (2) and (3) of Part 1 of Schedule 4 (trees subject to a tree preservation order or within a conservation area) carry out the corresponding works described in column (4); and
- (b) remove the hedgerows specified in columns (1) and (2) of Part 2 of Schedule 4 (removal of hedgerows).

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

(4) Where works to trees are authorised by paragraph (2) and a tree preservation order is in force in relation to that tree—

- (a) written consent for the works is deemed to have been granted by a local planning authority having functions under the tree preservation order; and
- (b) the duty imposed by section 206(1) (replacement of trees)(a) of the 1990 Act does not apply.

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

(6) In this article "hedgerow" includes a hedgerow to which the Hedgerow Regulations 1997(b) apply and includes important hedgerows.

PART 5

POWERS OF ACQUISITION AND POSSESSION OF LAND

Compulsory acquisition of land

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

(2) This article is subject to the following provisions of this Order—

- (a) article 28 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily);
- (b) article 29(2) (compulsory acquisition of rights and restrictive covenants);
- (c) article 37 (temporary use of land for constructing the authorised development); and
- (d) article 42 (Crown rights).

(a) Section 206(1) was amended by section 192 of, and paragraph 11 of Schedule 8 to, the Planning Act 2008 (c. 29).

(b) S.I. 1997/1160.

Compulsory acquisition of land – incorporation of the minerals code

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

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

Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily

28.—(1) In relation to any part of the Order land, after the end of the period of five years beginning on the start date—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act as modified by article 35 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 37 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1) except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(3) In this article “start date” means the later of the day after—

- (a) the period for legal challenge in section 118(a) of the 2008 Act expires; or
- (b) the final determination of any legal challenge under that section.

Compulsory acquisition of rights and restrictive covenants

29.—(1) Subject to the following paragraphs of this article, the undertaker may acquire such rights over the Order land or impose such restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 26 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in columns (1) and (2) of Schedule 5 (land in which only new rights etc., may be acquired) the undertaker’s powers of compulsory acquisition under paragraph (1) are limited to the acquisition of such wayleaves, easements, new rights over the land or the imposition of such restrictive covenants as the undertaker may require for or in connection with the authorised development for the purposes specified in column (3) of Schedule 5 in relation to that land.

(3) The power under paragraph (1) to acquire the rights and to impose restrictive covenants described in Schedule 5 for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 5 as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same

(a) Section 118 was amended by paragraphs 1 and 59 of Part 1 of Schedule 13, and Part 20 of Schedule 25 to, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

land in accordance with Schedule 5 as are required for the benefit of any other statutory undertaker or any other person.

(4) Subject to section 8 (other provisions as to divided land)(a) of, and Schedule 2A (counter-notice requiring purchase of land not in notice to treat)(b) to, the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants)), 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 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Private rights over land

30.—(1) Subject to the provisions of this article, all private rights and restrictions 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)(c) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or 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, 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 or by the imposition of any restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance)(d) of the 2008 Act to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(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.)(e) of the 2008 Act or article 39 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—

(a) Section 8 was amended by paragraphs 1 and 2 of Schedule 17 to the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(b) Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016.

(c) Section 11(1) was amended by section 34(1) of, and 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 (No. 1), section 186(1) and (2) of the Housing and Planning Act 2016 and S.I. 2009/1307.

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

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

- (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.

Application of the 1981 Act

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

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

(3) In section 1 (application of Act)—

- (a) in subsection (1), omit the words “in themselves”; and
- (b) for subsection (2), substitute—

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

(4) For section 4(1) (execution of declaration), substitute—

“(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are authorised to acquire for the benefit of a statutory undertaker, public communications provider or local authority, in the statutory undertaker, public communications provider or local authority in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 is completed).”.

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

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

(7) In section 5B(1) (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

(a) Section 5 was amended by section 183 of, and paragraphs 4 and 6 of Schedule 15 to, the Housing and Planning Act 2016 and paragraph 2 of Schedule 18 to the Levelling-up and Regeneration Act 2023 (c. 55).

(b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 and section 185(3)(a) of the Levelling-up and Regeneration Act 2023 (c. 55) and section 185(3)(a) of the Levelling-up and Regeneration Act 2023 (c. 55).

(c) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 and section 185(3)(b) of the Levelling-up and Regeneration Act 2023 (c. 55) and section 185(3)(b) of the Levelling-up and Regeneration Act 2023 (c. 55).

relating to applications for orders granting development consent)(a) of the Planning Act 2008, the 5 year period mentioned in article 28 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*”.

(8) In section 6 (notices after execution of declaration)(b), 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)(c) of the Planning Act 2008”.

(9) In section 7(1)(a) (constructive notice to treat)(d), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(10) In section 8 (vesting, and right to enter and take possession)(e), after subsection (3), insert—

“(4) In this section references to the acquiring authority include any statutory undertaker, public communications provider or local authority referred to in section 4(1).”.

(11) In section 8A (postponement of vesting by agreement)(f), after subsection (3) insert—

“(4) In this section references to the acquiring authority include any statutory undertaker, public communications provider or local authority referred to in section 4(1).”.

(12) In section 8B (advancement of vesting by agreement)(g), after subsection (4) insert—

“(5) In this section references to the acquiring authority include any statutory undertaker, public communications provider or local authority referred to in section 4(1).”.

(13) In section 10 (acquiring authority’s liability arising on vesting of the land)—

(a) in subsection (1), after “vested in an acquiring authority” insert “or a statutory undertaker, public communications provider or local authority”;

(b) for subsection (1A)(h), substitute—

“(1A) But if an agreement under section 8A is in force in relation to an interest in land when the land becomes vested apart from that interest, subsection (1) does not give rise to any liability in relation to the interest (but this is subject to section 8B(3)(b)).”.

(14) For section 11(1) (recovery of compensation overpaid)(i), substitute—

“(1) This section applies where after the execution of a general vesting declaration a person (“the claimant”) claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.”.

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

“(2) But see article 33(4) (acquisition of subsoil, etc., only) of the Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*, which excludes the acquisition of subsoil only from this Schedule.”.

(a) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(b) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 and section 108(5) of the Planning and Infrastructure Act 2025 (c. 34).

(c) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 and S.I. 2017/16.

(d) Section 7 was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016 and amended by section 109(3) of the Planning and Infrastructure Act 2025 (c. 34).

(e) Section 8 was amended by paragraph 4 of Schedule 18 to the Housing and Planning Act 2016, section 186(3) of the Levelling-up and Regeneration Act 2023 (c. 55) and section 109(4) of the Planning and Infrastructure Act 2025 (c. 34).

(f) Section 8A was inserted by section 186(4) of the Levelling-up and Regeneration Act 2023 (c. 55).

(g) Section 8B was inserted by section 109(2) of the Planning and Infrastructure Act 2025 (c. 34).

(h) Section 10(1A) was inserted by section 186(5) of the Levelling-up and Regeneration Act 2023, substituted by section 109(5) of the Planning and Infrastructure Act 2025 (c. 34).

(i) Section 11 was amended by paragraph 52(3) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(j) Schedule A1 was inserted by paragraphs 1 and 6 of Schedule 18 to the Housing and Planning Act 2016.

(16) 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 35 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

(17) In this article, “public communications provider” means a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003.

Modification of the 2017 Regulations

32.—(1) The Schedule to the 2017 Regulations is modified as follows.

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

“(1A) The [insert land or rights or both] described in Part [] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan annexed hereto vests in the statutory undertaker, public communications provider or local authority in question as from the end of the period of [insert period of 3 months or longer] from the date on which the service of notices required by section 6 of the Act is completed.”.

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

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

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

(5) In this article, “public communications provider” means a public communications provider as defined in section 151(1) of the Communications Act 2003.

Acquisition of subsoil, etc., only

33.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 26 (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 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 only—

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

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

Power to override easements and other rights

34.—(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

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

any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

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

(2) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(3) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

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

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

the liability is enforceable against the undertaker.

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

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

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

Modification of Part 1 of the 1965 Act

35.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions)(a) of the 2008 Act, 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 applicable period for the purposes of section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent)(c) of the Planning Act 2008, the 5 year period mentioned in article 28 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*”.

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

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

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

(b) Section 4A was inserted by section 202(1) of the Housing and Planning Act 2016 and subsequently amended by section 185(2)(b) of the Levelling-up and Regeneration Act 2023 (c. 55).

(c) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25 to, the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

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

(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 28 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*”.

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

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

“(2) But see article 33(4) (acquisition of subsoil, etc., only) of the Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*, which excludes the acquisition of subsoil only from this Schedule.”; and

(b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 22 (protective works to buildings), 23 (authority to survey and investigate land), 37 (temporary use of land for constructing the authorised development) or 38 (temporary use of land for maintaining the authorised development) of the Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*.”.

Rights over or under streets

36.—(1) The undertaker may enter on, appropriate and use 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 or for any other purpose ancillary to the authorised development.

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

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

(a) any subway or underground building; or

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

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

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

Temporary use of land for constructing the authorised development

37.—(1) The undertaker may, in connection with the construction of the authorised development—

(a) enter on and take temporary possession of—

(a) Schedule 2A was inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.

- (i) the land specified in columns (1) and (2) of Schedule 7 (land of which only 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)(a) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration)(b) of the 1981 Act;
- (b) remove any buildings and vegetation from that land referred to in sub-paragraph (a);
 - (c) construct temporary works (including the provision of means of access) and buildings on the land referred to in sub-paragraph (a); and
 - (d) construct any works on the land referred to in sub-paragraph (a) as are mentioned in Schedule 1 (authorised development).

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

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

- (a) in the case of any land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 7; 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, use of facilities, or other purpose, for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) 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 or return the land in such condition as is agreed with the owner of the land; but the undertaker is not required to—

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

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

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

(a) Section 11 was amended by section 34(1) of, and paragraph 14(3) of Schedule 4 of, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186, 187 and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 and S.I. 2009/1307.

(b) Section 4 was amended by section 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016, and section 108(3) of the Planning and Infrastructure Act 2025 (c. 34).

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

(8) Subject to article 45 (no double recovery), nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

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

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

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

Temporary use of land for maintaining the authorised development

38.—(1) Subject to paragraph (3), 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 land within the Order limits if possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and 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—

- (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 as is reasonably practicable in the circumstances.

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

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

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

(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 the removal of temporary works and restoration of land under paragraph (7) does not prevent the undertaker giving up possession of the land.

(9) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

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

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

(13) In this article "the maintenance period", in relation to any part of the authorised development, means—

- (a) the period of 5 years beginning with the date on which that part of the authorised development commences operation by supplying water to the water supply network, but excluding the supply of water during commissioning and testing;
- (b) in relation to landscape and ecology management areas, such period as is set out in the landscape and ecology management plan which is approved by the relevant planning authority pursuant to paragraph 4 of Schedule 2 (requirements) beginning with the date on which that part of the landscape and ecology management area is completed; or
- (c) in respect of any other part of the authorised development, the period of 5 years beginning with the date on which that part of the authorised development is first brought into operational use by the undertaker.

Statutory undertakers

39.—(1) Subject to the provisions of article 29(2) (compulsory acquisition of rights and restrictive covenants), Schedule 10 (protective provisions) and paragraph (2), the undertaker may—

- (a) exercise the powers conferred by article 26 (compulsory acquisition of land) and article 29 (compulsory acquisition of rights and restrictive covenants) in relation to so much of the Order land belonging to statutory undertakers; and
- (b) extinguish the rights of way, 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 40 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

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

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

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

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

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

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

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

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

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

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

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

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

(8) In this article—

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

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

Recovery of costs of new connection

41.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 39 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such sewer is removed under article 39, any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 40 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

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

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

Crown rights

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

- (a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

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

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

Disregard of certain interests and improvements

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

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

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

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

Set-off for enhancement in value of retained land

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 29 (compulsory acquisition of rights and restrictive covenants), the tribunal must set off against the value of the rights so acquired—

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

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

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

No double recovery

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

PART 6

MISCELLANEOUS AND GENERAL

Disapplication and modification of legislative provisions

46.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of the authorised development—

- (a) section 28E (duties in relation to sites of scientific interest)(a) of the Wildlife and Countryside Act 1981;
- (b) section 28H (statutory undertakers, etc.; duty in relation to carrying out operations)(b) of the Wildlife and Countryside Act 1981;
- (c) section 28I (statutory undertakers, etc.: duty in relation to authorising operations)(c) of the Wildlife and Countryside Act 1981;
- (d) section 80 (notice to local authority of intended demolition)(d) of the Building Act 1984;
- (e) section 32 (variation of awards)(e) of the Land Drainage Act 1991;
- (f) the provisions of any byelaws made under section 66 (powers to make byelaws)(f) of the Land Drainage Act 1991;
- (g) the provisions of any byelaws made under section 157 (byelaws with respect to undertakers' waterways and land)(g) of the Water Industry Act 1991;
- (h) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6, or 6A of Schedule 25 (byelaw-making powers of the appropriate agency)(h) to the Water Resources Act 1991;
- (i) regulation 12 (requirement for an environmental permit)(i) of the Environmental Permitting (England & Wales) Regulations 2016 in respect of a flood risk activity that is not an exempt flood risk activity; and
- (j) the provisions of the Neighbourhood Planning Act 2017(j) in so far as they relate to temporary possession of land under articles 37 (temporary use of land for constructing the authorised development) and 38 (temporary use of land for maintaining the authorised development) of this Order.

(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of “development”)(k) of the Community Infrastructure Levy Regulations 2010 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.

(3) For the purposes of this Order, regulation 6 (permitted work)(l) of the Hedgerows Regulations 1997 is modified so as to read as if there were inserted after paragraph 1(j) the following—

-
- (a) 1981 c. 69. Section 28E was inserted by section 75(1) of, and paragraph 1 of Schedule 9 to, the Countryside and Right of Way Act 2000 (c. 37). It was amended by section 105(1) of, and paragraph 79 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16). There are other amendments which are not relevant to this Order.
 - (b) Section 28H was inserted by section 75(1) of, and paragraph 1 of Schedule 9 to, the Countryside and Rights of Way Act 2000. It was amended by section 105(1) of and paragraph 79 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006.
 - (c) Section 28I was inserted by section 75(1) of, and paragraph 1 of Schedule 9 to, the Countryside and Rights of Way Act 2000. It was amended by section 105(1) of and paragraph 79 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006
 - (d) 1984 c. 55. Section 80 was amended by sections 4 and 5(2) of, and paragraph 58(3) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 24(1) of, and paragraph 11(1) and (2) of Schedule 5 to, the Housing and Planning Act 1986 (c. 63), paragraph 33 of Schedule 8 to the Gas Act 1986 (c. 44), paragraph 33 of Schedule 17 to the Electricity Act 1989 (c. 29) and S.I. 1990/1285.
 - (e) Section 32 was amended by paragraph 323 of Schedule 2(1) to the Natural Resources Body for Wales (Functions) Order 2013/755.
 - (f) Section 66 was amended by section 49(3) of, and paragraph 38 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29) and section 86(3) of the Water Act 2014 (c. 21).
 - (g) 1991 c. 56.
 - (h) Paragraph 5 was amended by section 100(2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84(2) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraph 49 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29), paragraph 32 of Schedule 25 to the Flood and Water Management Act 2010 and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 and section 224 of, and paragraph 24 of Schedule 16 and Part 5(B) of Schedule 22 to, the Marine and Coastal Access Act 2009. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.
 - (i) S.I. 2016/1154, amended by S.I. 2018/110.
 - (j) 2017 c. 20.
 - (k) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments that are not relevant to this Order.

“or

- (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

(4) For the purposes of section 9 (requirement of licence for felling)(a) of the Forestry Act 1967, any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the construction of the authorised development is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(5) The provisions of the following enactments do not apply in so far as those provisions still in force are incompatible with the exercise by the undertaker of the functions conferred by this Order—

- (a) the Portsmouth and Portsea Waterworks Act 1809(b); and
- (b) the Portsmouth Water Act 1941(c).

(6) Schedule 8 (modifications to legislative provisions applying to the authorised development and to the Havant Thicket Reservoir infrastructure) has effect and modifies the application of certain legislative provisions for the purposes of the authorised development and the Havant Thicket Reservoir infrastructure.

Deemed marine licence

47. The marine licence set out in Schedule 9 (deemed marine licence) is deemed to have been issued under Part 4 of the Marine and Coastal Access Act 2009 for the licensed activities set out in Part 1, and subject to the licence conditions set out in Part 2, of that licence.

Application of landlord and tenant law

48.—(1) This article applies to any agreement entered into by the undertaker under article 9 (consent to transfer benefit of Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

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

(3) No enactment or rule of law to which paragraph (2) applies is to apply 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.

Planning permission, etc.

49.—(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 and which does not constitute any part of

(l) S.I. 1997/1160.

(a) 1967 c. 10. Section 9 was amended by section 4 of, and paragraph 14 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). There are other amendments to section 9 that are not relevant to this Order.

(b) 1809 c. cxviii.

(c) 1941 c. xiv.

the authorised development then the carrying out of development pursuant to that planning permission does not constitute a breach of the terms of this Order.

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

(3) To the extent any development carried out or used pursuant to a planning permission granted under section 57 (requirement of planning permission) of the 1990 Act or compliance with any conditions of that permission is inconsistent with the exercise by the undertaker of any function under this Order including the construction, operation and maintenance of the authorised development—

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

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

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

Safeguarding

50.—(1) A relevant planning authority must—

- (a) consult the undertaker on any application for planning permission; and
- (b) inform the undertaker of any GPDO notification,

to which this article applies.

(2) Accordingly, the relevant planning authority must—

- (a) give the undertaker written notice of the application for planning permission or the GPDO notification, as the case may be, by sending the notice by first class post or such other means of service as may be agreed with the relevant planning authority, which will be deemed to be the date on which the relevant local planning authority gave the notice; and
- (b) not determine the application for planning permission, or respond to the GPDO notification, before the end of the period of 21 days beginning two business days after the relevant planning authority gave notice to the undertaker.

(3) But the relevant planning authority may determine the application for planning permission or respond to the GPDO notification during that period if the undertaker has—

- (a) made representations to the relevant planning authority about the application or notification, or
- (b) notified the relevant planning authority that it does not intend to make representations.

(4) In determining the application for planning permission or responding to the GPDO notification, the relevant planning authority must take into account any representations by the undertaker received in accordance with this article.

(5) The requirement under this article for a relevant planning authority to consult the undertaker on any application for planning permission and to inform the undertaker of any GPDO notification is a local land charge, and that requirement ceases to have effect once the undertaker has given written notice to the relevant planning authority that construction of the authorised development has been completed in the administrative area of the relevant planning authority and that the

undertaker has acquired the necessary interests in and rights over land for operation and use of the authorised development.

(6) This article applies to an application for planning permission for, and a GPDO notification relating to, development wholly or partly within the Order limits, other than an exempt application or notification.

(7) In this article—

- (a) an application for planning permission includes any application for prior consent or approval in relation to intended development permitted under the GPDO made pursuant to any exception, limitation or condition specified in the GPDO;
- (b) “exempt application or notification” means—
 - (i) an application for planning permission or a GPDO notification which relates to intended development that—
 - (aa) consists of an alteration to an existing building, or the change of use of an existing building or land; and
 - (bb) does not involve, or is not likely to involve, any construction, engineering or other operations below existing ground level; and
 - (ii) an application for planning permission or a GPDO notification which is due to be determined or responded to by a relevant planning authority during the period of 21 days beginning on the day after this Order comes into force;
- (c) “the GPDO” means The Town and Country Planning (General Permitted Development) (England) Order 2015(a);
- (d) “GPDO notification” means any consultation or notification in relation to intended development permitted under the GPDO pursuant to any exception, limitation or condition specified in the GPDO; and
- (e) “relevant planning authority” means the planning authority receiving a GPDO notification, or whose function it is to determine an application for planning permission, to which this article applies.

Exercise of the undertaker’s other statutory functions

51. Nothing in this Order fetters the exercise by the undertaker of its statutory functions exercisable under any other enactment.

Protective provisions

52. Schedule 10 (protective provisions) has effect.

Certification of plans, etc.

53.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents referred to in Schedule 11 (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 referred to in Schedule 11 requires to be amended to reflect the terms of the Secretary of State’s decision to make this 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 is admissible in any proceedings as evidence of the contents of the plan or document of which it is a copy.

(a) S.I. 2015/596.

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

Service of notices

54.—(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 (9) 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 is 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

(a) 1978 c. 30.

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

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

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

Arbitration

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

Consents, agreements and approvals

56.—(1) Where any application is made to a relevant authority, the consent, agreement 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 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) In this article—

“application” means an application or request for any consent, agreement or approval required or contemplated by articles 13 (application and modification of a permit scheme), 14 (power to alter layout, etc., of streets), 15 (construction and maintenance of new, altered and diverted streets), 16 (temporary closure, etc., of streets), 17 (permanent diversion of public rights of way), 18 (access to works), 19 (traffic regulation measures), 21 (discharge of water) and 23 (authority to survey and investigate land); and

“relevant authority” means a relevant planning authority, a traffic authority, a highway authority, a street authority or an owner of a public sewer or drain as defined in article 21(9)(a) (discharge of water).

Signed by authority of the Secretary of State for Department of Environment, Food and Rural Affairs

Address
Date

Signature
Title

Department of Environment, Food and Rural Affairs

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

A development which, in accordance with a direction made by the Secretary of State for the Department for Environment Food & Rural Affairs on 31 May 2022 under section 35 (directions in relation to projects of nation significance) of the 2008 Act and which was subsequently varied by the Secretary of State by letter dated 19 November 2024, is development for which development consent is required, and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act, comprising—

Work No. 1 – as shown on sheet 4 of the works plans and being the construction of a water recycling plant, comprising—

- (a) main process buildings;
- (b) administration buildings;
- (c) chemical storage units;
- (d) holding tanks;
- (e) up to three pumping stations comprising pump houses, kiosks, surge vessels and standby generators;
- (f) surface water drainage outfall to the Hermitage Stream;
- (g) pipelines to connect to Work Nos. 2, 3 and 4; and
- (h) access works from Harts Farm Way.

Work No. 2 – as shown on sheets 4 and 28A of the works plans and being the construction of pipelines between Work No. 5E and Work No. 1, comprising—

- (a) one pipeline to transfer treated wastewater between Work No. 5E and Work No. 1; and
- (b) one pipeline to transfer reject water between Work No. 1 and Work No. 5E.

Work No. 3 – as shown on sheets 3 and 4 of the works plans and being the construction of pipelines between Work No. 1 and Bedhampton Springs, comprising—

- (a) one pipeline to transfer recycled water between Work No. 1 and Bedhampton Springs;
- (b) one pipeline to transfer source water between Bedhampton Springs and Work No. 1; and
- (c) works to connect the pipelines to Bedhampton Springs.

Work No. 4 – as shown on sheets 4 to 26 of the works plans and being the construction of a pipeline between Work No. 1 and the Otterbourne Water Supply Works, consisting of—

- (a) one pipeline to transfer source water between Work No. 1 and Otterbourne Water Supply Works; and
- (b) works to connect the pipeline to the Otterbourne Water Supply Works.

Work No. 5A – as shown on sheets 11 and 12 of the works plans and being the construction of above ground plant, comprising—

- (a) an intermediate pumping station, associated infrastructure and buildings; and
- (b) pipeline connections to Work No. 4.

Work No. 5B – as shown on sheet 14 of the works plans and being the construction of above ground plant, comprising—

- (a) an intermediate pumping station, associated infrastructure and buildings; and
- (b) pipeline connections to Work No. 4.

Work No. 5C – as shown on sheet 6 of the works plans and being the construction of above ground plant, comprising—

- (a) a break pressure tank, associated infrastructure and buildings;
- (b) an intermediate pumping station, associated infrastructure and buildings; and
- (c) pipeline connections to Work No. 4.

Work No. 5D – as shown on sheet 20 of the works plans and being the construction of above ground plant, comprising—

- (a) a break pressure tank, associated infrastructure and buildings; and
- (b) pipeline connections to Work No. 4.

Work No. 5E – as shown on sheets 4 and 28A of the works plans and being the construction of above ground plant, comprising—

- (a) a pumping station, associated infrastructure and buildings;
- (b) connections works to Budds Farm Wastewater Treatment Works; and
- (c) pipelines to connect into Work No. 2.

Work No. 6 – as shown on sheets 3 to 11 and 13 to 26 of the works plans and being the establishment of temporary construction compounds, comprising—

- (a) laydown and storage areas;
- (b) office and welfare buildings and facilities;
- (c) vehicle parking; and
- (d) access works.

Work No. 7 – as shown on sheets 4, 6 to 8, 12 to 14 and 16 to 26 of the works plans and being the implementation of environmental mitigation and additional environmental enhancements.

Work No. 8 – as shown on sheets 3 to 8, 10, 13 to 15, 20, 24, 26 and 27 of the works plans and being the implementation of highway and access works as shown on the rights of way and access plans, comprising—

- (a) the implementation of highway and access works;
- (b) works to facilitate the passage of construction vehicles;
- (c) construction of temporary accesses and associated visibility splays;
- (d) improvement and temporary use of private access tracks for the purposes of construction;
- (e) creation of new streets and private means of access; and
- (f) creation, improvement and use of private means of access to the authorised development.

Work No. 9A – as shown on sheets 11 and 12 of the works plans and being the implementation of access works for Work No. 5A, comprising—

- (a) temporary construction access from Chalk Lane to Work No. 5A; and
- (b) improvement and use of access from Chalk Lane to Work No. 5A for the purposes of the operation and maintenance of Work No. 5A.

Work No. 9B – as shown on sheet 12 of the works plans and being the use and improvement of an existing access track from Albany Business Park to Work No.5A for the purposes of the operation and maintenance of Work No. 5A.

Work No. 10 – as shown on sheet 26 of the works plans, and being the construction of above ground plant comprising—

- (a) an invasive non-native species treatment plant and associated infrastructure;

- (b) alterations to an existing building or the construction of a new building;
- (c) alterations to and use of an existing tank;
- (d) connections works to Otterbourne Water Supply Works; and
- (e) pipelines to connect into Work No. 4.

Ancillary works

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

- (a) works within streets, including—
 - (i) alteration of the layout of any street permanently or temporarily, including increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any kerb, footway, cycleway, or verge within the street; and altering the level or increasing the width of any footway, cycleway or verge within the street; works for the strengthening, improvement, repair, maintenance or reconstruction of any street; and works associated with the tie-in of the authorised development to the existing highway;
 - (ii) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
 - (iii) relocation or provision of new road traffic signs, signals, street lighting, road restraints and carriageway markings;
 - (iv) works to alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments;
 - (v) works to facilitate traffic management, provide vehicle recovery services and to deliver information relating to the authorised development; and
 - (vi) works to stop up, provide or re-provide private means of access to land or premises; and
- (b) other works and development—
 - (i) for the strengthening, alteration or demolition of any buildings and structures;
 - (ii) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables, lights, cofferdams, fencing and other boundary treatments including bollards;
 - (iii) comprising connection works to mains, sewers, drains, pipes, and electrical infrastructure;
 - (iv) comprising ramps, steps, footpaths, footways, private means of access, laybys and crossing facilities;
 - (v) comprising works relating to temporary diversions of footpaths, footways, and cycleways;
 - (vi) external lighting, access roads, paths, walkways, vehicle parking, fencing, and operational and maintenance areas, including hardstanding;
 - (vii) comprising works within pumping stations and break pressure tanks and their associated buildings and structures, including structural alterations, pipework, penstock valves, associated equipment, and electrical, mechanical and control equipment;
 - (viii) comprising installation of electrical, mechanical and control equipment in other buildings and kiosks and modification to existing electrical, mechanical and control equipment in such buildings and kiosks;

- (ix) comprising installation of pumps in chambers and buildings;
- (x) comprising leak detection monitoring, sampling kiosks, telemetry infrastructure including outstations and other monitoring equipment;
- (xi) comprising pipeline casings, cathodic protection and pipeline indicator posts;
- (xii) comprising isolation valves, washout valves and air valves together with their associated below ground chambers and ventilation;
- (xiii) comprising the provision of surface water drainage systems, drainage treatment areas, ponds, lagoons, outfalls, pollution control devices and associated plant and equipment;
- (xiv) comprising settlement monitoring and mitigation measures for the benefit or protection of, or in relation to, any land, building or structure, including monitoring and safeguarding of existing infrastructure, utilities and services affected by the authorised development;
- (xv) comprising ground investigation works and remedial work in respect of any contamination or other adverse ground condition, including the installation and monitoring of associated apparatus;
- (xvi) comprising landscaping, re-grading, re-profiling, contouring, noise attenuation, works associated with ecological and archaeological investigation and mitigation, and other works to mitigate and manage any adverse effects of the construction, operation or maintenance of the authorised development;
- (xvii) comprising the processing, deposition or use of excavated materials;
- (xviii) comprising areas of hard or soft landscaping works, signage, public information boards and public realm;
- (xix) comprising site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, works of demolition, including demolition of existing structures, the relocation and re-provision of demolished structures and the creation of alternative highways or footpaths) and earthworks (including soil stripping and storage and site levelling);
- (xx) comprising 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, erection of construction plant and equipment, temporary display of notices or advertisements, welfare facilities, office facilities, construction lighting, haulage roads, and other buildings, machinery, apparatus, processing plant, works and conveniences;
- (xxi) comprising service compounds, plant and equipment rooms, offices, staff mess rooms, welfare facilities, and other ancillary and administrative accommodation;
- (xxii) comprising works for the benefit or protection of the authorised development; and
- (xxiii) comprising works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 3

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“above ground installations” means the above ground aspects of Work Nos. 1, 5A, 5B, 5C, 5D, and 5E;

“additional environmental enhancement” means the additional environmental enhancements described in the design principles;

“begin” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development, and “begun” and “beginning” are to be construed accordingly;

“biodiversity gain plan” means the document of that description listed in Schedule 11 (documents to be certified) and certified by the Secretary of State as the biodiversity gain plan for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development other than archaeological investigations, ecological surveys and mitigation, other surveys and monitoring (including site, soil and unexploded ordnance surveys), investigations for the purpose of assessing and monitoring ground conditions and levels, erection of fencing to site boundaries or marking out of site boundaries, erection of any temporary means of enclosure, receipt erection and removal of construction plant and equipment, and in so far as is necessary for any of the preceding operations, site preparation and site clearance, establishment of temporary site accesses, establishment of temporary construction compounds and “commencement” is to be construed accordingly;

“design principles” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the design principles for the purposes of this Order;

“framework construction traffic management plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the framework construction traffic management plan for the purposes of this Order;

“framework construction worker travel plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the framework construction worker travel plan for the purposes of this Order;

“framework rights of way management plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the framework rights of way management plan for the purposes of this Order;

“habitats management and monitoring plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the habitats management and monitoring plan for the purposes of this Order;

“habitats regulations assessment” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the habitats regulations assessment for the purposes of this Order;

“invasive non-native species biosecurity plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the invasive non-native species biosecurity plan for the purposes of this Order;

“operational environmental management plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the operational environmental management plan for the purposes of this Order;

“outline carbon management plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the outline carbon management plan for the purposes of this Order;

“outline construction environmental management plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“outline landscape and ecology management plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the outline landscape and ecology management plan for the purposes of this Order;

“outline skills and employment plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the outline skills and employment plan for the purposes of this Order;

“outline water monitoring plan” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the outline water monitoring plan for the purposes of this Order;

“outline written scheme of investigation” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order;

“relevant planning authority” means the local planning authority for the area in which the land to which the relevant provision of this Schedule applies is situated;

“substantially in accordance with” means that the plan or detail to be submitted should in the main accord with the document to which the phrase refers and where the proposal varies from that document the proposal must not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement; and

“sustainable drainage systems strategy” means the document of that description listed in Schedule 11 and certified by the Secretary of State as the sustainable drainage systems strategy for the purposes of this Order.

When the authorised development must begin

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

Detailed design

3.—(1) Subject to the provisions of this paragraph the authorised development must be constructed substantially in accordance with the relevant design principles.

(2) The relevant planning authority may approve a detailed design that departs from the design principles if it is satisfied that to do so would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) No part of the authorised development comprised in the above ground installations may commence until the details of the external appearance of that above ground installation together with a statement of compliance, has been submitted to and approved by the relevant planning authority.

(4) The relevant planning authority must consult the South Downs National Park Authority before determining an application for any approval required under sub-paragraph (3) where any

part of the authorised development that is the subject of that application comprises any part of Work Nos. 5B, 5C or 5D.

(5) The above ground installations must be constructed in accordance with the relevant details approved under sub-paragraph (3).

(6) Nothing in this paragraph requires the undertaker to implement any additional environmental enhancement.

(7) In this paragraph “statement of compliance” means a statement demonstrating how the relevant design principles for that part have been incorporated into the design of the relevant above ground installation.

Landscape and ecology management plan

4.—(1) No part of the authorised development is to commence until a landscape and ecology management plan for that part has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural England.

(2) A landscape and ecology management plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline landscape and ecology management plan and the design principles.

(3) The relevant planning authority must consult the South Downs National Park Authority before determining an application for any approval required under sub-paragraph (2) where any part of the authorised development that is the subject of that application comprises any part of Work Nos. 5B, 5C or 5D.

(4) The undertaker must implement and maintain a landscape and ecology management plan approved under sub-paragraph (2).

(5) Nothing in this paragraph requires the undertaker to implement any additional environmental enhancement.

Biodiversity net gain

5.—(1) No part of the authorised development is to commence until a detailed biodiversity gain plan for that part has been submitted to and approved in writing by the relevant planning authority.

(2) A detailed biodiversity gain plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the biodiversity gain plan and the habitats management and monitoring plan and include details of—

- (a) how the measures contained within it contribute to the delivery of the minimum ten percent biodiversity net gain for the whole of the authorised development;
- (b) details of the habitat management and monitoring to be implemented for that biodiversity gain over a period of no less than 30 years; and
- (c) an updated biodiversity metric calculation or an explanation of why a biodiversity metric calculation is not necessary.

(3) A detailed biodiversity gain plan must be implemented as approved.

(4) In this paragraph “biodiversity metric calculation” means a calculation in accordance with the Department of Environment, Food and Rural Affairs’ Statutory Metric (February 2024), or if this is withdrawn or replaced, a biodiversity metric approved by the relevant planning authority in consultation with Natural England.

(5) Where there exists a conflict between a landscape and ecology management plan approved under paragraph 4 and an approved detailed biodiversity net gain plan with respect to the duration by which biodiversity gain is to be maintained, then the provisions of the approved detailed biodiversity gain plan are to prevail.

Construction environmental management plan

6.—(1) No part of the authorised development may commence until a construction environmental management plan for that part has been submitted to and approved in writing by the relevant planning authority.

(2) A construction environmental management plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline construction environmental management plan.

(3) Each part of the authorised development must be constructed in accordance with the construction environmental management plan approved for that part.

Contaminated land

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

(2) The undertaker must provide to the relevant planning authority and the Environment Agency a copy of any risk assessment referred to in sub-paragraph (1) as soon as reasonably practicable after its completion.

(3) Where the undertaker determines that remediation of the contaminated land is necessary, as soon as reasonably practicable after making that determination a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose, must be submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

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

Construction traffic management plan

8.—(1) No part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved in writing by the relevant planning authority, in consultation with the relevant local highway authority and National Highways.

(2) A construction traffic management plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the framework construction traffic management plan and include a construction worker travel plan in substantial accordance with the framework construction worker travel plan.

(3) Each part of the authorised development must be constructed in accordance with the construction traffic management plan and construction worker travel plan approved for that part.

Public rights of way

9.—(1) No part of the authorised development may commence until a rights of way management plan relating to any public right of way proposed to be temporarily or permanently closed or diverted in connection with that part has been submitted to and approved in writing by the planning authority, in consultation with the relevant local highway authority.

(2) A rights of way management plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the framework rights of way management plan.

(3) Each part of the authorised development must be constructed in accordance with the rights of way management plan approved for that part.

Archaeology

10.—(1) No part of the authorised development may commence and no intrusive archaeological investigations may be carried out until a written scheme of investigation for that part of the authorised development or those intrusive archaeological investigations has been submitted to and approved in writing by the relevant planning authority, in consultation with Historic England.

(2) A written scheme of investigation submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline written scheme of investigation.

(3) Each part of the authorised development and the intrusive archaeological investigations must be carried out in accordance with the written scheme of investigation approved for that part or those intrusive archaeological investigations.

Skills and employment

11.—(1) No part of the authorised development may commence until a skills and employment plan for that part has been submitted to and approved in writing by the relevant planning authority.

(2) A skills and employment plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline skills and employment plan.

(3) Each part of the authorised development must be constructed in accordance with the skills and employment plan approved for that part.

Carbon management plan

12.—(1) No part of the authorised development may commence until a carbon management plan for that part has been submitted to and approved in writing by the relevant planning authority.

(2) A carbon management plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline carbon management plan.

(3) A carbon management plan must be implemented as approved.

Operational environmental management plan

13.—(1) Subject to the provisions of this paragraph the authorised development must be operated and maintained in accordance with the operational environmental management plan.

(2) If the undertaker considers it necessary to change the operational environmental management plan in relation to any part of the authorised development at any time during the operation and maintenance of that part of the authorised development, before doing so—

- (a) the undertaker must submit details of the proposed changes to the operational environmental management plan of that part to the relevant planning authority for approval;
- (b) the relevant planning authority must not approve such proposed changes unless it is satisfied that to do so would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement; and
- (c) the operation and maintenance of the relevant part of the authorised development must be carried out in accordance with the approved changes to the operational environmental management plan.

Invasive non-native species biosecurity plan

14.—(1) Subject to the provisions of this paragraph the authorised development must be constructed, operated and maintained in accordance with the invasive non-native species biosecurity plan.

(2) If the undertaker considers it necessary to change the invasive non-native species biosecurity plan in relation to any part of the authorised development at any time during the construction, operation and maintenance of that part of the authorised development, before doing so—

- (a) the undertaker must submit details of the proposed changes to the outline invasive non-native species biosecurity plan of that part to the relevant planning authority for approval;
- (b) the relevant planning authority must not approve such proposed changes unless it is satisfied that to do so would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement; and
- (c) the construction, operation and maintenance of the relevant part of the authorised development must be carried out in accordance with the approved changes to the invasive non-native species biosecurity plan.

Sustainable drainage

15.—(1) No part of the authorised development comprising an above ground installation may commence until details of the proposed surface water drainage for that part have been submitted to and approved in writing by the relevant planning authority, in consultation with the lead local flood authority and the Environment Agency.

(2) The details submitted for approval under sub-paragraph (1) must be substantially in accordance with the sustainable drainage systems strategy.

(3) The details of the proposed surface water drainage must be implemented as approved.

Water monitoring

16.—(1) No part of the authorised development may commence until a water monitoring plan for that part has been submitted to and approved in writing by the relevant planning authority, in consultation with the Environment Agency.

(2) The water monitoring plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline water monitoring plan.

(3) Each part of the authorised development must be constructed, operated and maintained in accordance with the water monitoring plan approved for that part.

Solent Waders and Brent Goose mitigation

17.—(1) No part of Work No. 1 may commence until—

- (a) written details have been submitted to the relevant planning authority—
 - (i) demonstrating that the undertaker has secured land to enable the provision of Solent Waders Brent Goose mitigation; and
 - (ii) of a regime of management measures for that mitigation together with a timetable for their implementation; and
- (b) the relevant planning authority, following consultation with Natural England has approved the matters listed in sub-paragraph (a).

(2) The details of the matters listed in sub-paragraph (1)(a) submitted for approval must substantially accord with the description of the Solent Waders and Brent Goose mitigation contained in the habitats regulation assessment.

(3) The undertaker must provide and maintain the Solent Waders and Brent Goose mitigation in accordance with the timetable and details approved under sub-paragraph (1)(a).

Amendments to approved details

18. With respect to any requirement which requires the authorised development to be constructed, operated or maintained 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 following an application made by the undertaker.

Anticipatory steps towards compliance with any requirement

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

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

20. In this Part of this Schedule—

“the appeal parties” means the relevant planning authority, the requirement consultee and the undertaker;

“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; and

“start date” means the date of the notification given by the Secretary of State under paragraph 24(2)(b).

Application made under requirements

21.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required pursuant to a requirement (including consent, 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 its decision, including the reasons, on the application, within a period of 42 days beginning with the later of—

- (a) the day immediately following that on which the application is received by the relevant planning authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 22; or
- (c) such longer period as may be agreed by the undertaker and the relevant planning authority.

(2) Subject to paragraph 24, 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 to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1) and—

- (a) the application is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

then the application is taken to have been refused by the relevant planning authority at the end of that period.

Further information

22.—(1) In relation to any part of an application made under this Schedule, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary, it must, within 14 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 and the reasons why it considers such further information to be necessary.

(3) In the event that the relevant planning authority does not give such notification as specified in sub-paragraph (2) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Fees

23.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within eight weeks from the relevant date in paragraph 2 (when authorised development must begin) unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 21 (applications made under requirement) of this Schedule.

Appeals

24.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in Part 1 of this Schedule or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 21(4);

(a) S.I.2012/2920.

- (c) on receipt of a request for further information pursuant to paragraph 22 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 steps to be followed in the appeal process are as follows—

- (a) 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 any requirement consultee;
- (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;
- (c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date 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;
- (d) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (c);
- (e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and
- (f) the appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appeal to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in sub-paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) 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 them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

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

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the relevant planning authority. The relevant planning 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) does not affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) 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 advice on planning appeals and award costs published on 3 March 2014 by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

SCHEDULE 3
STREETS

Articles 14, 15, 16, 17 and 18

PART 1

PERMANENT ALTERATION OF LAYOUT OF STREETS

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street name and number</i>	<i>(3)</i> <i>Description of alteration</i>
Havant Borough Council	Harts Farm Way	Within the area shown hatched orange and labelled P-alterations 1 on sheet 4 of the access and public rights of way plans, works for the provision of a means of vehicular access to the authorised development and a pedestrian crossing of Harts Farm Way.
Havant Borough Council	New Down Lane	Within the area shown hatched orange and labelled P-alterations 2 on sheet 6 of the access and public rights of way plans, works for the provision of a means of vehicular access to the authorised development.
Fareham Borough Council	Track off Chalk Lane	Within the area shown hatched orange and labelled P-alterations 3 on sheet 12 of the access and public rights of way plans, works for the provision of a means of vehicular access to the authorised development.
Fareham Borough Council	Chalk Lane/Albany Business Centre	Within the area shown hatched orange and labelled P-alterations 4 on sheet 12 of the access and public rights of way plans, works for the provision of a means of vehicular access to the authorised development.
Fareham Borough Council	Chalk Lane	Within the area shown hatched orange and labelled P-alterations 5 on sheet 12 of the access and public rights of way plans, works for the provision of a means of vehicular access to the authorised development.
Winchester City Council	Track off Titchfield Lane	Within the area shown hatched

		orange and labelled P- alterations 6 on sheet 14 of the access and public rights of way plans, works for the provision of a means of vehicular access to the authorised development.
Winchester City Council	Titchfield Lane/Blind Lane/Winchester Road (A334)	Within the area shown hatched orange and labelled P- alterations 7 on sheet 15 of the access and public rights of way plans, permanent alterations to enable the passage of construction vehicles, including but not limited to kerb widening.
Winchester City Council	Track off Winters Hill	Within the area shown hatched orange and labelled P- alterations 8 on sheet 20 of the access and public rights of way plans, works for the provision of a means of vehicular access to the authorised development.

PART 2

TEMPORARY ALTERATION OF LAYOUT OF STREETS

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street name</i>	<i>(3)</i> <i>Description of alteration</i>
Havant Borough Council	Bedhampton Road and Brookside Road	Within the area hatched orange and labelled alterations 1 on sheet 3 of the access and public rights of way plans, temporary alterations to enable the passage of construction vehicles, including but not limited to the removal of street signs and street furniture and subsequent reinstatement of the street.
Havant Borough Council	West Street and Meyrick Road	Within the area hatched orange and labelled alterations 2 on sheets 3 and 4 of the access and public rights of way plans, temporary alterations to enable the passage of construction vehicles, including but not limited to the removal of street signs and street furniture and subsequent reinstatement of the street.
Havant Borough Council	Meyrick Road	Within the area hatched orange and labelled alterations 3 on

		sheets 3 and 4 of the access and public rights of way plans, temporary alterations to enable the passage of construction vehicles, including but not limited to the removal of on-street parking sections and subsequent reinstatement of the street.
Havant Borough Council	Mill Lane	Within the area hatched orange and labelled alterations 4 on sheet 4 of the access and public rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Havant Borough Council	A27 slip road	Within the area hatched orange and labelled alterations 5 on sheet 4 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Portsmouth City Council	Gillman Road	Within the area hatched orange and labelled alterations 6 on sheet 5 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Portsmouth City Council	Widley Walk/Portsdown Hill Road	Within the area hatched orange and labelled alterations 7 on sheet 6 of the access and rights of way plans, temporary alterations to enable the safe passage of pedestrians displaced by construction works affecting Southwick and Widley 28.
Winchester City Council	Widley Walk	Within the area hatched orange and labelled alterations 8 on sheet 7 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Mill Lane	Within the area hatched orange

		and labelled alterations 9 on sheet 7 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Pigeon House Lane	Within the area hatched orange and labelled alterations 10 on sheet 7 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Southwick Road (B2177)	Within the area hatched orange and labelled alterations 11 on sheet 8 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Crooked Walk Lane	Within the area hatched orange and labelled alterations 12 on sheet 9 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Portchester Lane	Within the area hatched orange and labelled alterations 13 on sheet 9 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Monument Lane	Within the area hatched orange and labelled alterations 14 on sheet 10 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Boarhunt Road	Within the area hatched orange and labelled alterations 15 on sheet 10 of the access and

		rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Boarhunt Road	Within the area hatched orange and labelled alterations 16 on sheet 10 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Fareham Borough Council	Whitedell Lane	Within the area hatched orange and labelled alterations 17 on sheet 11 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Forest Lane	Within the area hatched orange and labelled alterations 18 on sheets 12 and 13 of access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Fareham Borough Council	Castle Farm Lane	Within the area hatched orange and labelled alterations 19 on sheet 13 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Fareham Borough Council	Hoads Hill (A32)	Within the area hatched orange and labelled alterations 20 on sheet 13 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Mayles Lane	Within the area hatched orange and labelled alterations 21 on sheets 13 and 14 of the access and rights of way plans, temporary alterations for the

		purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Tanfield Lane	Within the area hatched orange and labelled alterations 22 on sheets 13 and 14 of access and rights of way plans, temporary alterations for the purpose of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Titchfield Lane	Within the area hatched orange and labelled alterations 23 on sheet 15 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Blind Lane	Within the area hatched orange and labelled alterations 24 on sheet 15 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Pricketts Hill	Within the area hatched orange and labelled alterations 25 on sheet 15 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	High Street	Within the area hatched orange and labelled alterations 26 on sheet 16 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	St Annes Lane	Within the area hatched orange and labelled alterations 27 on sheet 16 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of

		access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Sandy Lane	Within the area hatched orange and labelled alterations 28 on sheet 17 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Curdrige Lane	Within the area hatched orange and labelled alterations 29 on sheet 17 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Botley Road (B3035)	Within the area hatched orange and labelled alterations 30 on sheet 18 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Winters Hill	Within the area hatched orange and labelled alterations 31 on sheet 20 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Winchester Road (B2177)	Within the area hatched orange and labelled alterations 32 on sheet 20 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Sciviers Lane	Within the area hatched orange and labelled alterations 33 on sheet 21 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent

		reinstatement of the street.
Winchester City Council	Alma Lane	Within the area hatched orange and labelled alterations 34 on sheet 21 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Mortimers Lane (B3037)	Within the area hatched orange and labelled alterations 35 on sheet 21 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Winchester Road (B2177)	Within the area hatched orange and labelled alterations 36 on sheet 21 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Stroudwood Lane	Within the area hatched orange and labelled alterations 37 on sheet 21 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Eastleigh Borough Council	Winchester Road (B3354)	Within the area hatched orange and labelled alterations 38 on sheet 23 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Eastleigh Borough Council	Winchester Road (B3354)	Within the area hatched orange and labelled alterations 39 on sheet 23 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Church Lane	Within the area hatched orange

		and labelled alterations 40 on sheet 24 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Bishopstoke Lane	Within the area hatched orange and labelled alterations 41 on sheet 24 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Highbridge Road (B335)	Within the area hatched orange and labelled alterations 42 on sheet 25 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Kiln Lane	Within the area hatched orange and labelled alterations 43 on sheet 26 of the access and rights of way plans, temporary alterations for the purposes of the provision of a means of access to the authorised development and subsequent reinstatement of the street.
Winchester City Council	Kiln Lane/Main Road	Within the area hatched orange and labelled alterations 44 on sheet 26 of the access and rights of way plans, temporary alterations to enable the passage of construction vehicles, including but not limited to localised carriageway widening, realignment of road markings, alteration to existing traffic island, the provision of improved pedestrian and cyclist refuge facilities, the removal of street signs and street furniture and subsequent reinstatement of the street.
Winchester City Council	Wickham Road/Botley Road	Within the area hatched orange and labelled alterations 45 on sheet 27 of the access and rights of way plans, temporary alterations to enable the

		passage of construction vehicles, including but not limited to kerb widening, the removal of street signs and street furniture and subsequent reinstatement of the street.
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PART 3

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Measure</i>
Havant Borough Council	Footpath Havant 30	As shown on sheet 4 of the access and rights of way plans, from the point shown as reference TCPRoW2a for a distance of 50 metres in a generally southerly direction to the point shown as reference TCPRoW2b.	Temporarily closed to all users save for traffic under the direction of the undertaker.
Havant Borough Council	Footpath Havant 30	As shown on sheet 4 of the access and rights of way plans, from the point shown as reference TCPRoW3a for a distance of 240 metres in a generally southerly direction to the point shown as reference TCPRoW3b.	Temporarily closed to all users save for traffic under the direction of the undertaker.
Portsmouth City Council	Footpath Southwick & Widley 28	As shown on sheet 6 of the access and rights of way plans, from the point shown as reference TCPRoW4a for a distance of 105 metres in a generally southerly direction, to the point shown as reference TCPRoW4b.	Temporarily closed to all users save for traffic under the direction of the undertaker.
Winchester City Council	Footpath Southwick & Widley 3	As shown on sheet 8 of the access and rights of way plans, from the point shown as reference	Temporarily closed to all users save for traffic under the direction of the undertaker.

		TCPRoW5a for a distance of 75 metres in a generally south-easterly direction, to the point shown as reference TCPRoW5b.	
Winchester City Council	Footpath Boarhunt 19	As shown on sheet 10 of the access and rights of way plans from the point shown as reference TCPRoW6a for a distance of 230 metres in a generally westerly direction, to the point shown as reference TCPRoW6b.	Temporarily closed to all users save for traffic under the direction of the undertaker.
Winchester City Council	Footpath Wickham 10	As shown on sheet 13 of the access and rights of way plans from the point shown as reference TCPRoW9a for a distance of 50 metres in a generally north-westerly direction, to the point shown as reference TCPRoW9b.	Temporarily closed to all users save for traffic under the direction of the undertaker.
Winchester City Council	Footpath Shedfield 4	As shown on sheet 16 of the access and rights of way plans from the point shown as reference TCPRoW16a for a distance of 680 metres in a generally south-easterly direction to the point shown as reference TCPRoW16b.	Temporarily closed to all users save for traffic under the direction of the undertaker.
Winchester City Council	Footpath Upham 20	As shown on sheet 20 of the access and rights of way plans from the point shown as reference TCPRoW22a for a distance of 5 metres in a generally south-west direction and then in a generally south-easterly direction for 15 metres to the point shown as reference TCPRoW22b.	Temporarily closed to all users save for traffic under the direction of the undertaker.
Winchester City	Footpath Colden	As shown on sheet 25	Temporarily closed to

Council	Common 2a	of the access and rights of way plans from the point shown as reference TCPRoW27a for a distance of 135 metres in a generally south-easterly direction to the point shown as reference TCPRoW27b.	all users save for traffic under the direction of the undertaker.
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PART 4

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Extent to be temporarily closed</i>	<i>(4)</i> <i>Substitute to be provided</i>
Havant Borough Council	Footpath Havant 34	As shown on sheet 4 of the access and rights of way plans, from the point shown as reference TCPRoW1a.1, for a distance of 50 metres in a generally south-easterly direction to the point shown as reference TCPRoW1b.1.	As shown on sheet 4 of the access and rights of way plans, from the point shown as reference DPRoW1a.1, for a distance of 10 metres in a generally north-easterly direction and then in a generally easterly direction for a distance of 30 metres and then in a generally south-easterly direction for a distance of 15 metres to the point shown as DPRoW1b.1.
Fareham Borough Council	Footpath Fareham 107	As shown on sheet 11 of the access and rights of way plans, from the point shown as reference TCPRoW7a, for a distance of 40 metres in a generally southerly direction and then in a generally westerly direction for a distance of 640 metres to the point shown as reference TCPRoW7b.	As shown on sheet 11 of the access and rights of way plans, from the point shown as reference DPRoW2a, for a distance of 450 metres in a generally north-westerly direction and then in a generally south-westerly direction for a distance of 150 metres and then in a generally north-westerly direction for a distance of 55 metres

			to the point shown as reference DPRoW2b.
Fareham Borough Council	Footpath Fareham 103	As shown on sheets 11 and 12 of the access and rights of way plans, from the point shown as reference TCPRoW8a.1, for a distance of 150 metres in a generally south-westerly and then in a generally south-westerly direction for 205 metres and then in a generally south-easterly direction for 50 metres to the point shown as reference TCPRoW8b.1.	As shown on sheets 11 and 12 of the access and rights of way plans, from the point shown as reference DPRoW3a, for a distance of 35 metres in a generally south-easterly direction and then in a generally southerly direction for 245 metres and then in a generally south-westerly direction for a distance of 140 metres to the point shown as reference DPRoW3b.
Fareham Borough Council	Unnamed way (presumed to be footpath Fareham 103 according to common useage)	As shown on sheets 11 and 12 of the access and rights of way plans, from the point shown as reference TCPROW8a.2, for a distance of 115 metres in a generally south-easterly direction for a distance of 115 metres to the point shown as reference TCPRoW8b.2.	As shown on sheets 11 and 12 of the access and rights of way plans, from the point shown as reference DPRoW3a, for a distance of 35 metres in a generally south-easterly direction and then in a generally southerly direction for a distance of 245 metres and then in a generally south-westerly direction for a distance of 140 metres to the point shown as reference DPRoW3b.
Winchester City Council	Bridleway Wickham 501	As shown on sheets 13 and 14 of the access and rights of way plans, from the point shown as reference TCPRoW10a, for a distance of 225 metres in a generally easterly direction to the point shown as TCPRoW10b.	As shown on sheets 13 and 14 of the access and rights of way plans, from the point shown as DPRoW4a, for a distance of 10 metres in a generally north-easterly direction and then in a generally easterly direction for 195 metres and then in a generally south-easterly direction for 15 metres to the point shown as reference DPRoW4b.

Winchester City Council	Footpath Wickham 5	As shown on sheets 13 and 14 of the access and rights of way plans, from the point shown as reference TCPRoW11a, for a distance of 290 metres in a generally south-westerly direction to the point shown as TCPRoW11b.	As shown on sheets 13 and 14 of the access and rights of way plans, from the point shown as reference DPRoW5a, for a distance of 10 metres in a generally south-easterly direction and then in a generally south-westerly direction for a distance of 190 metres and then in a generally north-westerly direction for a distance of 10 metres to the point shown as reference DPRoW5b.
Winchester City Council	Footpath Wickham 1	As shown on sheets 14 and 15 of the access and rights of way plans, from the point shown as reference TCPRoW12a, for a distance of 135 metres in a generally south-easterly direction to the point shown as reference TCPRoW12b.	As shown on sheets 14 and 15 of the access and rights of way plans, from the point shown as reference DPRoW6a, for a distance of 30 metres in a generally south-westerly direction and then in a generally south-easterly direction for 45 metres and then in a generally north-easterly direction for 20 metres and then in a generally south-easterly direction for 25 metres to the point shown as reference DPRoW6b; or from the point shown as reference DPRoW6a, for a distance of 55 metres in a generally south-westerly direction and then in a generally south-easterly direction for 40 metres and then in a generally north-easterly direction for 45 metres and then in a generally south-easterly direction for 25 metres to the point shown as reference

			DPRoW6b.
Winchester City Council	Footpath Shedfield 12	As shown on sheet 16 of the access and rights of way plans, from the point shown as reference TCPRoW13a, for a distance of 195 metres in a generally south-easterly direction and then in a south-westerly direction for a distance of 175 metres to the point shown as reference TCPRoW13b.	As shown on sheet 16 of the access and rights of way plans, from the point shown as reference DPRoW7a for a distance of 15 metres in a generally south-easterly direction and then in a generally south-westerly direction for 55 metres and then in a generally south-easterly direction for 95 metres and then in a generally south-westerly direction for 95 metres and then in a generally south-easterly direction for 60 metres and then in a generally south-westerly direction for 90 metres and then in a generally south-easterly direction for 40 metres to the point shown as reference DPRoW7b.
Winchester City Council	Footpath Shedfield 13	As shown on sheet 16 of the access and rights of way plans, from the point shown as reference TCPRoW14a, for a distance of 55 metres in a generally south-westerly direction to the point shown as reference TCPRoW14b.	As shown on sheet 16 of the access and rights of way plans, from the point shown as reference DPRoW8a, for a distance of 15 metres in a generally easterly direction and then in a generally south-westerly direction for 50 metres and then in a generally westerly direction for 15 metres to the point shown as reference DPRoW8b.
Winchester City Council	Footpath Shedfield 3	As shown on sheet 16 of the access and rights of way plans, from the point shown as reference TCPRoW15a, for a distance of 50 metres in a generally south-westerly direction to	As shown on sheet 16 of the access and rights of way plans, from the point shown as reference DPRoW9a, for a distance of 25 metres in a generally north-easterly direction and

		the point shown as reference TCPRoW15b.	then in a generally westerly direction for 20 metres and then in a generally south-westerly direction for 60 metres and then in a generally south-easterly direction for 40 metres to the point shown as reference DPRoW9b; or from the point shown as reference DPRoW9a, for a distance of 50 metres in a generally north-easterly direction and then in a generally westerly direction for 40 metres and then in a generally south-westerly direction for 60 metres and then in a generally south-easterly direction for 70 metres to the point shown as reference DPRoW9b.
Winchester City Council	Footpath Shedfield 2	As shown on sheets 16 and 17 of the access and rights of way plans, from the point shown as reference TCPRoW17a, for a distance of 140 metres in a generally south-westerly direction to the point shown as reference TCPRoW17b.	As shown on sheets 16 and 17 of the access and rights of way plans, from the point shown as reference DPRoW10a, for a distance of 95 metres in a generally easterly direction to the point shown as reference DPRoW10b.
Winchester City Council	Footpath Shedfield 4	As shown on sheets 16 and 17 of the access and rights of way plans, from the point shown as reference TCPRoW18a, for a distance of 95 metres in a generally southerly direction to the point shown as reference TCPRoW18b.	As shown on sheets 16 and 17 of the access and rights of way plans, from the point shown as reference DPRoW10a, for a distance of 95 metres in a generally easterly direction to the point shown as reference DPRoW10b.
Winchester City Council	Footpath Bishops Waltham 502	As shown on sheets 18 and 19 of the access and rights of	As shown on sheets 18 and 19 of the access and rights of

		way plans, from the point shown as reference TCPRoW19a, for a distance of 65 metres in a generally south-easterly direction to the point shown as reference TCPRoW19b.	way plans, from the point shown as reference DPRoW11a, for a distance of 50 metres in a generally south-easterly direction and then in a generally easterly direction for 45 metres and then in a generally north-westerly direction for 20 metres to the point shown as reference DPRoW11b.
Winchester City Council	Footpath Bishops Waltham 502	As shown on sheet 19 of the access and rights of way plans, from the point shown as reference TCPRoW20a, for a distance of 55 metres in a generally southerly direction to the point shown as reference TCPRoW20b.	As shown on sheet 19 of the access and rights of way plans, from the point shown as reference DPRoW12a for a distance of 15 metres in a generally westerly direction and then in a generally southerly direction for a distance of 50 metres and then in an easterly direction for a distance of 20 metres to the point shown as reference DPRoW12b.
Winchester City Council	Footpath Bishops Waltham 43	As shown on sheet 19 of the access and rights of way plans, from the point shown as reference TCPRoW21a, for a distance of 90 metres in a generally easterly direction to the point shown as reference TCPRoW21b.	As shown on sheet 19 of the access and rights of way plans, from the point shown as reference DPRoW13a, for a distance of 25 metres in a generally southerly direction and then in a generally easterly direction for a distance of 70 metres and then in a generally northerly direction for a distance of 20 metres to the point shown as reference DPRoW13b.
Eastleigh Borough Council	Bridleway Fair Oak and Horton Heath 23	As shown on sheet 21 of the access and rights of way plans, from the point shown as reference TCPRoW23a, for a distance of 310 metres	As shown on sheet 21 of the access and rights of way plans, from the point shown as reference DPRoW14a, for a distance of 330 metres

		in a generally westerly direction and then in a generally southerly direction for 215 metres to the point shown as reference TCPRoW23b.	in a generally westerly direction to the point shown as reference DPRoW14b.
Eastleigh Borough Council	Footpath Fair Oak and Horton Heath 27	As shown on sheet 23 of the access and rights of way plans, from the point shown as reference TCPRoW24a, for a distance of 100 metres in a generally southerly direction to the point shown as reference TCPRoW24b.	As shown on sheet 23 of the access and rights of way plans, from the point shown as reference DPRoW15a, for a distance of 25 metres in a generally easterly direction and then in a generally southerly direction for a distance of 90 metres and then in a generally westerly direction for a distance of 25 metres to the point shown as reference DPRoW15b.
Eastleigh Borough Council and Winchester City Council	Footpath Colden Common 22	As shown on sheets 23 and 24 of the access and rights of way plans, from the point shown as reference TCPRoW25a, for a distance of 55 metres in a generally south-westerly direction to the point shown as reference TCPRoW25b.	As shown on sheets 23 and 24 of the access and rights of way plans, from the point shown as DPRoW16a, for a distance of 25 metres in a generally westerly direction and then in a generally southerly direction for 90 metres and then in a generally easterly direction for 25 metres to the point shown as reference DPRoW16b.
Winchester City Council	Footpath Colden Common 21	As shown on sheet 24 of the access and rights of way plans, from the point shown as reference TCPRoW26a, for a distance of 200 metres in a generally easterly direction to the point shown as reference TCPRoW26b.	As shown on sheet 24 of the access and rights of way plans, from the point shown as reference DPRoW17a, for a distance of 10 metres in a generally southerly direction and then in a generally westerly direction for a distance of 200 metres to the point shown as reference DPRoW17b.

Winchester City Council	Footpath Otterbourne 7	As shown on sheets 25 and 26 of the access and rights of way plans, from the point shown as reference TCPRoW28a, for a distance of 50 metres in a generally south-westerly direction and then in a generally westerly direction for a distance of 30 metres to the point shown as reference TCPRoW28b.	As shown on sheets 25 and 26 of the access and rights of way plans, from the point shown as reference DPRoW18a, for a distance of 10 metres in a generally north-westerly direction and then in a generally south-westerly direction for a distance of 40 metres and then in a generally westerly direction for a distance of 15 metres and then in a generally south-westerly direction for a distance of 15 metres to the point shown as reference DPRoW18b.
Winchester City Council	Footpath Otterbourne 6	As shown on sheet 26 of the access and rights of way plans, from the point shown as reference TCPRoW29a, for a distance of 225 metres in a generally south-easterly direction to the point shown as reference TCPRoW29b.	As shown on sheet 26 of the access and rights of way plans, from the point shown as reference DPRoW19a, for a distance of 170 metres in a generally north-easterly direction and then in a south-easterly direction for a distance of 175 metres and then in a generally south-westerly direction for a distance of 250 metres to the point shown as reference DPRoW19b.
Havant Borough Council	Footpath Havant 34	As shown on sheet 31 of the access and rights of way plans, from the point shown as reference TCPRoW1a.2 for a distance of 30 metres in a generally north-westerly direction and then in a generally south-westerly direction for 85 metres to the point shown as reference TCPRoW1b.2.	As shown on sheet 31 of the access and rights of way plans, from the point shown as reference DPRoW1a.2, for a distance of 95 metres in a generally south-westerly direction and then in a generally north-westerly direction for 35 metres to the point shown as DPRoW1b.2.
Fareham Borough	Footpath Fareham 103	As shown on sheet 32	As shown on sheet 32

Council		of the access and rights of way plans, from the point shown as reference TCPRoW30a for a distance of 150 metres in a generally south-westerly direction and then in a generally southerly direction for 140 metres and then in a generally south-easterly direction for 85 metres to the point shown as reference TCPRoW30b.	of the access and rights of way plans, from the point shown as reference DPRoW 20a for a distance of 35 metres in a generally south-easterly direction and then in a generally southerly direction for 245 metres and then in a generally south-westerly direction for a distance of 80 metres to the point shown as DPRoW 20b.
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PART 5

AUTHORISATION OF USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Measure</i>
Havant Borough Council	Footpath Havant 30	As shown on sheet 4 of the access and rights of way plans, from the point shown as reference MVPRoW1a for a distance of 50 metres in a generally southerly direction to the point shown as reference MVPRoW1b.	Motor vehicles under the direction of the undertaker may travel along the public right of way.
Fareham Borough Council	Footpath Fareham 103	As shown on sheets 11 and 12 of the access and rights of way plans, from the point shown as reference MVPRoW2a.1, for a distance of 25 metres in a generally south-easterly direction to the point shown as reference MVPRoW2b.1.	Motor vehicles under the direction of the undertaker may travel along the public right of way.
Winchester City Council	Footpath Bishops Waltham 42a	As shown on sheet 20 of the access and rights of way plans, from the point shown as reference	Motor vehicles under the direction of the undertaker may travel along the public right of way.

		MVPRoW3a, for a distance of 125 metres in a generally southerly direction to the point shown as reference MVPRoW3b.	
Fareham Borough Council	Footpath Fareham 103	As shown on sheet 32 of the access and rights of way plans, from the point shown as reference MVPRoW2a.2, for a distance of 65 metres in a generally south-easterly direction to the point shown as reference MVPRoW2b.2.	Motor vehicles under the direction of the undertaker may travel along the public right of way.

PART 6

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP AND REPLACED

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>Extent of replacement public right of way</i>
Fareham Borough Council	Footpath Fareham 103 (as shown on the definitive map)	As shown on sheets 11 and 12 of the access and rights of way plans, from the point shown as reference PCPRoW1a, for a distance of 135 metres in a generally southerly direction to the point shown as reference PCPRoW1b.	As shown on sheets 11 and 12 of the access and rights of way plans, from the point shown as reference PDPRoW1a, for a distance of 120 metres in a generally south-westerly direction and then in a generally south-easterly direction for a distance of 25 metres to the point shown as PDPRoW1b.
Fareham Borough Council	Unnamed way (presumed to be footpath Fareham 103 according to common usage)	As shown on sheets 11 and 12 of the access and rights of way plans, from the point reference PCPRoW2a, for a distance of 115 metres in a generally southerly direction to the point shown as reference PCPRoW2b.	As shown on sheets 11 and 12 of the access and rights of way plans, from the point shown as reference PDPRoW1a, for a distance of 120 metres in a generally south-westerly direction and then in a generally south-easterly direction for a

			distance of 25 metres to the point shown as PDPRoW1b.
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PART 7
PERMANENT MEANS OF ACCESS

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of means of access</i>
Havant Borough Council	Harts Farm Way	As shown on sheet 4 of the access and rights of way plans, provision of a means of access to the authorised development from the northern side of Hart Farm Way between the points marked P-Access 1a and P-Access 1b.
Portsmouth City Council	New Down Lane	As shown on sheet 6 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of New Down Lane between the points marked P-Access 2a and P-Access 2b.
Fareham Borough Council	Chalk Lane	As shown on sheet 12 of the access and rights of way plans, provision of a means of access to the authorised development from the southern side of Chalk Lane between the points marked P-Access 3a and P-Access 3b.
Fareham Borough Council	Chalk Lane	As shown on sheet 12 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Chalk Lane between the points marked P-Access 4a and P-Access 4b.
Winchester City Council	Track of Titchfield Lane	As shown on sheet 14 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Track off Titchfield Lane between the points marked P-Access 5a and P-Access 5b.
Winchester City Council	Winters Hill	As shown on sheet 20 of the access and rights of way plans, provision of a means of access to the authorised development from the northern side of

		Winters Hill between the points marked P-Access 6a and P-Access 6b.
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PART 8

TEMPORARY MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of means of access</i>
Havant Borough Council	Meyrick Road	As shown on sheets 3 and 4 of the access and rights of way plans, provision of a means of access to the authorised development from the southern end of Meyrick Road between the points marked Access 1a and Access 1b.
Havant Borough Council	Southmoor Lane	As shown on sheet 4 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Southmoor Lane between the points marked Access 2a and Access 2b.
Havant Borough Council	Mill Lane	As shown on sheet 4 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Mill Lane between the points marked Access 3a and Access 3b.
Havant Borough Council	A27 Slip Road	As shown on sheet 4 of the access and rights of way plans, provision of a means of access to the authorised development from the northern side of A27 slip road between the points marked Access 4a and Access 4b.
Portsmouth City Council	Gillman Road	As shown on sheet 5 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Gillman Road between the points marked Access 5a and Access 5b.
Portsmouth City Council	New Down Lane	As shown on sheet 6 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of New

		Down Lane between the points marked Access 6a and Access 6b.
Portsmouth City Council	New Down Lane	As shown on sheet 6 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of New Down Lane between the points marked Access 7a and Access 7b.
Portsmouth City Council	Widley Walk	As shown on sheet 7 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Widley Walk between the points marked Access 8a and Access 8b.
Portsmouth City Council	Widley Walk	As shown on sheet 7 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Widley Walk between the points marked Access 9a and Access 9b.
Portsmouth City Council	Mill Lane	As shown on sheet 7 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Mill Lane between the points marked Access 10a and Access 10b.
Portsmouth City Council	Mill Lane	As shown on sheet 7 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Mill Lane between the points marked Access 11a and Access 11b.
Winchester City Council	Pigeon House Lane	As shown on sheet 7 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Pigeon House Lane between the points marked Access 12a and Access 12b.
Winchester City Council	Pigeon House Lane	As shown on sheet 7 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of

		Pigeon House Lane between the points marked Access 13a and Access 13b.
Winchester City Council	Southwick Road (B2177)	As shown on sheet 8 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Southwick Road between the points marked Access 14a and Access 14b.
Winchester City Council	Southwick Road (B2177)	As shown on sheet 8 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Southwick Road between the points marked Access 15a and Access 15b.
Winchester City Council	Crooked Walk Lane	As shown on sheet 9 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Crooked Walk Lane between the points marked Access 16a and Access 16b.
Winchester City Council	Crooked Walk Lane	As shown on sheet 9 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Crooked Walk Lane between the points marked Access 17a and Access 17b.
Winchester City Council	Portchester Lane	As shown on sheet 9 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Portchester Lane between the points marked Access 18a and Access 18b.
Winchester City Council	Portchester Lane	As shown on sheet 9 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Portchester Lane between the points marked Access 19a and Access 19b.
Winchester City Council	Monument Lane	As shown on sheet 10 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of

		Monument Lane between the points marked Access 20a and Access 20b.
Winchester City Council	Monument Lane	As shown on sheet 10 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Monument Lane between the points marked Access 21a and Access 21b.
Winchester City Council	Boarhunt Road	As shown on sheet 10 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Boarhunt Road between the points marked Access 22a and Access 22b.
Winchester City Council	Boarhunt Road	As shown on sheet 10 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Boarhunt Road between the points marked Access 23a and Access 23b.
Fareham Borough Council	Whitedell Lane	As shown on sheet 11 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Whitedell Lane between the points marked Access 24a and Access 24b.
Fareham Borough Council	Whitedell Lane	As shown on sheet 11 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Whitedell Lane between the points marked Access 25a and Access 25b.
Fareham Borough Council	Chalk Lane	As shown on sheet 12 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Chalk Lane between the points marked Access 26a and Access 26b.
Fareham Borough Council	Forest Lane	As shown on sheets 12 and 13 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern

		side of Forest Lane between the points marked Access 27a and Access 27b.
Fareham Borough Council	Forest Lane	As shown on sheets 12 and 13 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Forest Lane between the points marked Access 28a and Access 28b.
Winchester City Council	Castle Farm Lane	As shown on sheet 13 of the access and rights of way plans, provision of a means of access to the authorised development from the southern side of Castle Farm Lane between the points marked Access 29a and Access 29b.
Winchester City Council	Castle Farm Lane	As shown on sheet 13 of the access and rights of way plans, provision of a means of access to the authorised development from the northern side of Castle Farm Lane between the points marked Access 30a and Access 30b.
Winchester City Council	Hoads Hill (A32)	As shown on sheet 13 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Hoads Hill (A32) between the points marked Access 31a and Access 31b.
Winchester City Council	Hoads Hill (A32)	As shown on sheet 13 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Hoads Hill (A32) between the points marked Access 32a and Access 32b.
Winchester City Council	Mayles Lane	As shown on sheets 13 and 14 of the access and rights of way plans, provision of a means of access to the authorised development from the southern side of Mayles Lane between the points marked Access 33a and Access 33b.
Winchester City Council	Tanfield Lane	As shown on sheets 13 and 14 of the access and rights of way plans, provision of a means of access to the authorised development from the western

		side of Tanfield Lane between the points marked Access 34a and Access 34b.
Winchester City Council	Titchfield Lane	As shown on sheet 14 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Titchfield Lane between the points marked Access 35a and Access 35b.
Winchester City Council	Titchfield Lane	As shown on sheet 15 of the access and rights of way plans, provision of a means of access to the authorised development from the southern side of Titchfield Lane between the points marked Access 36a and Access 36b.
Winchester City Council	Blind Lane	As shown on sheet 15 of the access and rights of way plans, provision of a means of access to the authorised development from the southern side of Blind Lane between the points marked Access 37a and Access 37b.
Winchester City Council	Blind Lane	As shown on sheet 15 of the access and rights of way plans, provision of a means of access to the authorised development from the northern side of Blind Lane between the points marked Access 38a and Access 38b.
Winchester City Council	Pricketts Hill	As shown on sheet 15 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Pricketts Hill between the points marked Access 39a and Access 39b.
Winchester City Council	Pricketts Hill	As shown on sheet 15 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Pricketts Hill between the points marked Access 40a and Access 40b.
Winchester City Council	High Street	As shown on sheet 16 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of High

		Street between the points marked Access 41a and Access 41b.
Winchester City Council	St Annes Lane	As shown on sheet 16 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of St Annes Lane between the points marked Access 42a and Access 42b.
Winchester City Council	Sandy Lane	As shown on sheet 17 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Sandy Lane between the points marked Access 43a and Access 43b.
Winchester City Council	Sandy Lane	As shown on sheet 17 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Sandy Lane between the points marked Access 44a and Access 44b.
Winchester City Council	Curdrige Lane	As shown on sheet 17 of the access and rights of way plans, provision of a means of access to the authorised development from the southern side of Curdrige Lane between the points marked Access 45a and Access 45b.
Winchester City Council	Curdrige Lane	As shown on sheet 17 of the access and rights of way plans, provision of a means of access to the authorised development from the northern side of Curdrige Lane between the points marked Access 46a and Access 46b.
Winchester City Council	Botley Road (B3035)	As shown on sheet 18 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Botley Road (B3035) between the points marked Access 47a and Access 47b.
Winchester City Council	Winters Hill	As shown on sheet 20 of the access and rights of way plans, provision of a means of access to the authorised development from the southern side of

		Winters Hill between the points marked Access 48a and Access 48b.
Winchester City Council	Winchester Road (B2177)	As shown on sheet 20 the access and rights of way plans, provision of a means of access to the authorised development from the southern side of Winchester Road between the points marked Access 49a and Access 49b.
Winchester City Council	Sciviers Lane	As shown on sheet 21 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Sciviers Lane between the points marked Access 50a and Access 50b.
Winchester City Council	Sciviers Lane	As shown on sheet 21 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Sciviers Lane between the points marked Access 51a and Access 51b.
Winchester City Council	Alma Lane	As shown on sheet 21 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Alma Lane between the points marked Access 52a and Access 52b.
Winchester City Council	Alma Lane	As shown on sheet 21 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Alma Lane between the points marked Access 53a and Access 53b.
Winchester City Council	Mortimers Lane (B3037)	As shown on sheet 21 of the access and rights of way plans, provision of a means of access to the authorised development from the southern side of Mortimers Lane (B3037) between the points marked Access 54a and Access 54b.
Winchester City Council	Mortimers Lane (B3037)	As shown on sheet 21 of the access and rights of way plans, provision of a means of access to the authorised development from the northern side of

		Mortimers Lane (B3037) between the points marked Access 55a and Access 55b.
Eastleigh Borough Council	Winchester Road (B2177)	As shown on sheet 21 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Winchester Road (B2177) between the points marked Access 56a and Access 56b.
Eastleigh Borough Council	Stroudwood Lane	As shown on sheet 21 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Stroudwood Lane between the points marked Access 57a and Access 57b.
Eastleigh Borough Council	Stroudwood Lane	As shown on sheet 21 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Stroudwood Lane between the points marked Access 58a and Access 58b.
Eastleigh Borough Council	Winchester Road (B3354)	As shown on sheet 23 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Winchester Road (B3354) between the points marked Access 59a and Access 59b.
Eastleigh Borough Council	Winchester Road (B3354)	As shown on sheet 23 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Winchester Road (B3354) between the points marked Access 60a and Access 60b.
Winchester City Council	Church Lane	As shown on sheet 24 of the access and rights of way plans, provision of a means of access to the authorised development from the southern side of Church Lane between the points marked Access 61a and Access 61b.
Winchester City Council	Bishopstoke Lane	As shown on sheet 24 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of

		Bishopstoke Lane between the points marked Access 62a and Access 62b.
Winchester City Council	Bishopstoke Lane	As shown on sheet 24 of the access and rights of way plans, provision of a means of access to the authorised development from the western side of Bishopstoke Lane between the points marked Access 63a and Access 63b.
Winchester City Council	Highbridge Road (B335)	As shown on sheet 25 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Highbridge Road (B335) between the points marked Access 64a and Access 64b.
Winchester City Council	Kiln Lane	As shown on sheet 26 of the access and rights of way plans, provision of a means of access to the authorised development from the southern side of Kiln Lane between the points marked Access 65a and Access 65b.
Winchester City Council	Kiln Lane	As shown on sheet 26 of the access and rights of way plans, provision of a means of access to the authorised development from the northern side of Kiln Lane between the points marked Access 66a and Access 66b.
Winchester City Council	Waterworks Road	As shown on sheet 26 of the access and rights of way plans, provision of a means of access to the authorised development from the eastern side of Waterworks Road between the points marked Access 67a and Access 67b.

SCHEDULE 4

Article 25

WORKS TO TREES AND HEDGEROWS

PART 1

TREES SUBJECT TO A TREE PRESERVATION ORDER OR WITHIN A CONSERVATION AREA

<i>(1)</i> <i>Tree preservation order and tree group reference</i>	<i>(2)</i> <i>Location</i>	<i>(3)</i> <i>Type of tree or group of trees</i>	<i>(4)</i> <i>Indicative works to be carried out</i>
In the district of Havant Borough Council			
0483	Marked as 0483 on Sheet 3 of the Tree Preservation Orders Plan.	Group - Horse Chestnut, Lime and Ash trees.	Felling works to the eastern section of the TPO Group within the Order limits.
0477	Marked as 0477 on Sheet 3 of the Tree Preservation Orders Plan.	Group - mixed coniferous and deciduous trees consisting mainly of Sycamore, Oak and Ash trees together with other species.	Felling works to the northern section of the TPO Group within the Order limits.
Group of trees within Old Bedhampton Conservation Area	G149 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Goat willow, Elder	Felling works to the northern section of the tree group within the Order limits.
Group of trees within Old Bedhampton Conservation Area	G151 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Common hawthorn	Felling works to the western section of the tree group within the Order limits.
Individual tree within Old Bedhampton Conservation Area	T942 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Elm	Felling works
Individual tree within Old Bedhampton Conservation Area	T943 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Elm	Felling works
Individual tree within Old Bedhampton Conservation Area	T944 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Elm	Felling works
Individual tree within Old Bedhampton	T945 in the Tree Constraints Plan	Elm	Felling works

Conservation Area	within the Arboricultural Impact Assessment.		
Individual tree within Old Bedhampton Conservation Area	T946 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Elm	Felling works
Individual tree within Old Bedhampton Conservation Area	T947 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Common hawthorn	Felling works
Individual tree within Old Bedhampton Conservation Area	T948 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Common hawthorn	Felling works
Individual tree within Old Bedhampton Conservation Area	T949 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Common hawthorn	Felling works
Group of trees within Old Bedhampton Conservation Area	G152 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Common hawthorn	Felling works to the western section of the tree group within the Order limits.
Individual tree within Old Bedhampton Conservation Area	T950 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Elder	Felling works
Group of trees within Old Bedhampton Conservation Area	G154 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Bramble, English elm	Felling works
Individual tree within Old Bedhampton Conservation Area	T1419 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Sycamore	Felling works
Individual tree within Old Bedhampton Conservation Area	T1420 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Sycamore	Felling works
Individual tree within Old Bedhampton Conservation Area	T1423 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Sycamore	Felling works
Individual tree within Old Bedhampton Conservation Area	T1424 in the Tree Constraints Plan within the	Sycamore	Felling works

	Arboricultural Impact Assessment.		
Individual tree within Old Bedhampton Conservation Area	T1426 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Elder	Felling works
Individual tree within Old Bedhampton Conservation Area	T1427 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Sycamore	Felling works
Individual tree within Old Bedhampton Conservation Area	T1428 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Sycamore	Felling works
Group of trees within Old Bedhampton Conservation Area	G293 in the Tree Constraints Plan within the Arboricultural Impact Assessment.	Sycamore	Felling works
In the district of Winchester City Council			
00037-2003-TPO 0015A1	Marked as 00037-2003-TPO 0015A1 on Sheet 2 of the Tree Preservation Orders Plan.	Group - Sweet chestnut, Common beech, Common holly, Cherry laurel, Turkey oak, Pedunculate oak, Lime species.	Felling works to the western section of the TPO Group within the Order limits.
00067-2003-TPO 0254T5	Marked as 00067-2003-TPO 0254T5 on Sheet 2 of the Tree Preservation Orders Plan.	Individual - Oak	Felling works
00024-2015-TPO 2160T4	Marked as 00024-2015-TPO 2160T4 on Sheet 2 of the Tree Preservation Orders Plan.	Individual - Oak	Felling works
00067-2003-TPO 0254T4	Marked as 00067-2003-TPO 0254T4 on Sheet 2 of the Tree Preservation Orders Plan.	Individual - Oak	Felling works
00686-2003-TPO 1594G2	Marked as 00686-2003-TPO 1594G2 on Sheet 1 of the Tree Preservation Orders Plan.	Group - Oak trees along a hedgerow.	Felling works to the south-western section of the TPO Group within the Order limits.

PART 2

REMOVAL OF HEDGEROWS

<i>(1)</i>	<i>(2)</i>
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<i>Hedgerow reference</i>	<i>Location shown on the corresponding sheet of Environmental Statement Figure 8.9 – UK Habitat Classifications for linear features and important hedgerows within the field survey area</i>
<i>In the district of Havant Borough Council</i>	
H4	3
<i>In the district of Portsmouth City Council</i>	
H9	3
H14	4
H16	4
H17	4
H19	4
<i>In the district of Portsmouth City Council and Winchester City Council</i>	
H15	4
H24	4
<i>In the district of Winchester City Council</i>	
H20	4
H21	4
H28	4
H29	4
H30	4
H31	4
H32	4
H33	4
H35	4
H36	4
H37	4
H40	5
H41	5
H42	5
H44	5
H45	5
H52	6
H53	6
H69	6
H70	6
H71	6
H77	7
H78	7
H80	7
H84	7
H85	7
H86	7
H87	7
H89	7
H90	7
H91	7
H92	7
H105	7

H106	7
H107	7
H108	7
H109	7
H112	7
H114	7
H115	7
H121	7
H125	7
H133	8
H136	8
H137	8
H138	8
H139	8
H141	8
H144	8
H145	8
H148	8
H149	8
H150	8
H151	8
H152	8
H154	8
H155	8
H157	8
H167	8
H171	8
H173	8
H174	8
H175	9
H176	9
H179	9
H180	9
H182	9
H183	9
H184	9
H185	9
H192	9
H194	9
H195	9
H196	9
H201	9
H204	9
H205	9
H207	9
H208	9
H209	9
H215	9
H216	9
H233	9

H254	10
H255	10
H257	10
H258	10
H259	10
H260	10
H261	10
H263	10
H265	10
H266	10
H271	10
H272	10
H273	10
H274	10
H276	10
H281	10
H282	10
H284	10
H285	10
H288	7
H289	8
In the district of Winchester City Council and Fareham Borough Council	
H55	6
In the district of Fareham Borough Council	
H48	6
H49	6
H54	6
H56	6
H57	6
H59	6
H61	6
H62	6
H64	6
H65	6
H66	6
In the district of Eastleigh Borough Council and Winchester City Council	
H253	10
In the district of Eastleigh Borough Council	
H218	9
H221	9
H222	9
H224	9
H225	9
H228	9
H229	9
H241	9
H242	10
H243	10
H245	10
H246	10

H247	10
H248	10
H251	10

SCHEDULE 5

Article 29

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Plot Reference Number(s) shown on land plans</i>	<i>(3)</i> <i>Purpose(s) for which new rights may be acquired or restrictive covenants may be imposed</i>
Hampshire	01-003, 01-004, 01-007, 01-018, 03-042, 03-043, 04-036a, 04-037, 04-038, 04-039, 04-040, 06-097a, 06-098, 06-099b, 06-102b, 06-104b, 11-021, 11-023, 11-024, 12-002, 12-003, 12-004, 12-005, 12-006, 12-007, 12-008, 12-009, 14-009a, 14-010, 20-008, 20-009, 20-010, 20-011, 20-012, 26-024, 26-026	<p>alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development and the Havant Thicket Reservoir infrastructure including visibility splays, bridges and road widening and to remove impediments (including vegetation) to such access;</p> <p>pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development and the Havant Thicket Reservoir infrastructure;</p> <p>install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, bollards, public rights of way, bridleway, footway, cycle track and any other ancillary apparatus and any other works as necessary;</p> <p>place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to the undertaker, statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables and restore existing land drainage and discharge into any drain or watercourse;</p> <p>install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping, protected species measures and other environmental mitigation works together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other environmental mitigation works; and</p> <p>restrict and remove the erection of buildings or structures, restrict the</p>

		altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting, boreholes and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development and the Havant Thicket Reservoir infrastructure.
Hampshire	03-046, 03-047, 03-048, 04-001, 04-002, 04-003, 04-004, 04-005, 04-006, 04-007, 04-008, 04-009, 04-010, 04-015, 04-018, 04-019, 04-020, 04-021, 04-022, 04-023, 04-024, 04-025, 04-026, 04-027, 04-028, 04-029, 04-030, 04-031, 04-032, 04-033, 04-034, 04-035, 06-097b, 06-099a, 06-103, 06-104a, 06-105, 06-106, 07-001, 07-002, 07-003, 07-004, 07-005, 07-006, 07-007, 08-003, 08-005, 08-007, 09-001, 09-002, 09-003, 09-006, 09-007, 10-001, 10-002, 10-004, 10-009, 10-010, 11-001, 11-002, 11-003, 11-004, 11-006, 11-009, 11-013, 11-020, 12-010, 12-011, 12-013, 12-014, 12-015, 12-016, 12-017, 13-001, 13-002, 13-003, 13-004, 13-005, 13-006, 13-008, 13-010, 13-014, 13-015, 13-016, 13-017, 13-021, 13-023, 13-025, 13-026, 13-027, 13-028, 13-029, 13-030, 13-031, 13-033, 13-035, 13-036, 13-037, 13-038, 13-039, 13-040, 13-041, 13-042, 13-043, 14-006, 14-007, 14-008, 14-009b, 14-012, 15-002, 15-003, 15-008, 15-009, 15-011, 15-013, 15-014, 15-015, 15-018, 15-019, 15-020, 15-021, 15-022, 15-023, 15-024, 15-025, 16-001, 16-002, 16-003, 16-004, 16-005, 16-006, 16-007, 16-009, 16-010, 16-011, 16-014, 16-017, 16-018, 16-019, 16-020, 16-021, 16-022, 16-023, 16-024, 16-025, 16-031, 16-032, 16-033, 16-034, 16-035, 16-036, 16-037, 16-038, 16-039, 16-040, 16-041, 16-042, 16-043, 16-044, 16-045, 16-046, 16-049, 16-050, 16-052, 16-053, 16-054, 16-055, 16-056, 16-057, 16-060, 17-001, 17-002, 17-003, 17-004, 17-005, 17-006, 17-009, 17-010, 17-015, 17-016, 17-017, 17-018, 18-005, 18-006, 18-007, 18-008, 18-009, 18-013,	<p>install, connect, retain, use, maintain, inspect, alter, adjust, remove, refurbish, repair, reconstruct, replace, improve, test, commission, cleanse, protect, manage, remove, decommission or render unusable, underground pipelines, and other associated infrastructure including but not limited to accessories as defined in section 219(1) (general interpretation) of the Water Industry Act 1991, access chambers, shafts, pipework fittings and fixtures, tunnels, air valves, manholes, marker posts, telemetry infrastructure, communication and control infrastructure, monitoring apparatus, signage, and any other works as necessary;</p> <p>remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development;</p> <p>alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays, bridges and road widening and to remove impediments (including vegetation) to such access;</p> <p>continuous vertical and lateral support for the authorised development;</p> <p>install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, bollards, public rights of way, bridleway, footway, cycle track and any other ancillary apparatus and any other works as necessary;</p> <p>place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to the undertaker, statutory undertakers, utility companies and others in, under or above land, including mains, sewers,</p>

	<p>18-014, 18-016, 18-017, 19-001, 19-002, 19-003, 19-004, 19-007, 20-001, 20-005, 20-006, 20-021, 20-022, 20-023, 20-024, 20-025, 20-026, 20-027, 20-028, 21-001, 21-002, 21-003, 21-004, 21-006, 21-009, 21-010, 21-011, 21-012, 21-013, 21-014, 21-015, 21-016, 21-017, 21-019, 21-023, 21-024, 21-025, 21-026, 21-027, 22-002, 22-004, 22-005, 22-006, 22-007, 22-008, 22-011, 23-001, 23-002, 23-005, 23-007, 23-014, 23-015, 23-019, 23-021, 23-022, 23-023, 23-028, 24-001, 24-005, 24-006, 24-007, 24-008, 25-003, 25-007, 25-008, 25-009, 25-010, 25-011, 25-012, 25-013, 25-014, 25-015, 25-016, 25-017, 25-018, 25-019, 25-022, 25-023, 25-024, 26-006, 26-007, 26-008, 26-014, 26-021, 26-022, 26-023, 26-025</p>	<p>drains, pipes, cables and restore existing land drainage and discharge into any drain or watercourse;</p> <p>install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping, protected species measures and other environmental mitigation works together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other environmental mitigation works; and</p> <p>restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting, boreholes and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development or obstruct, interrupt or interfere with the free flow and passage of water, wastewater or other material through the pipeline, or render access to it more difficult or expensive.</p>
Hampshire	<p>04-045, 04-046, 04-047, 04-048, 04-049, 04-050, 04-051, 04-052, 04-053, 04-054, 04-055, 04-056, 04-057, 04-058, 04-059, 04-060, 04-061, 04-062, 04-063, 04-064, 04-065, 04-066, 04-067, 04-068, 04-069, 04-070, 04-071, 04-072, 04-073, 04-074, 04-075, 04-076, 04-077, 04-078, 04-079, 04-080, 04-081, 04-082, 04-083, 04-084, 04-085, 04-086, 04-087, 04-088, 04-089, 04-090, 04-091, 04-092, 04-093, 04-094, 04-095, 04-096, 04-097, 04-098, 04-099, 04-100, 04-101, 04-102, 04-103, 04-104, 04-105, 04-106, 04-107, 04-108, 04-109, 04-110, 04-111, 05-001, 05-002, 05-003, 05-004, 05-005, 05-006, 05-007, 05-008, 05-009, 05-010, 05-011, 05-012, 05-013, 05-014, 05-015, 05-016, 05-017, 05-018, 05-019, 05-020, 05-021, 05-022, 05-023, 05-024, 05-025, 05-026, 05-027, 05-028, 05-030, 05-031, 05-032, 05-033, 05-034, 05-035, 06-001, 06-002, 06-003, 06-004, 06-005, 06-006, 06-007, 06-008, 06-009, 06-010, 06-011, 06-012, 06-013, 06-014, 06-015, 06-016, 06-017, 06-018, 06-019,</p>	<p>install, connect, retain, use, maintain, inspect, alter, adjust, remove, refurbish, repair, reconstruct, replace, improve, test, commission, cleanse, protect, manage, remove, decommission or render unusable, underground pipelines, and other associated infrastructure including but not limited to accessories as defined in section 219(1) (general interpretation) of the Water Industry Act 1991, pipework fittings and fixtures, tunnels, air valves, telemetry infrastructure, communication and control infrastructure, monitoring apparatus and any other works as necessary;</p> <p>remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development;</p> <p>continuous vertical and lateral support for the authorised development; and</p> <p>restrict the altering of ground levels, restrict the carrying out operations or actions (including but not limited to blasting, boreholes and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the</p>

	<p>06-020, 06-021, 06-022, 06-023, 06-024, 06-025, 06-026, 06-027, 06-028, 06-029, 06-030, 06-031, 06-032, 06-033, 06-034, 06-035, 06-036, 06-037, 06-038, 06-039, 06-040, 06-041, 06-042, 06-043, 06-044, 06-045, 06-046, 06-047, 06-048, 06-049, 06-050, 06-051, 06-052, 06-053, 06-054, 06-055, 06-056, 06-057, 06-058, 06-059, 06-060, 06-061, 06-062, 06-063, 06-064, 06-065, 06-066, 06-067, 06-068, 06-069, 06-070, 06-071, 06-072, 06-073, 06-074, 06-075, 06-076, 06-077, 06-078, 06-079, 06-080, 06-081, 06-082, 06-083, 06-084, 06-085, 06-086, 06-087, 06-088, 06-089, 06-090, 06-091, 06-092,</p>	<p>authorised development or obstruct, interrupt or interfere with the free flow and passage of water, wastewater or other material through the pipeline, or render access to it more difficult or expensive.</p>
<p>Hampshire</p>	<p>04-036b, 06-102a, 12-012, 16-047, 16-048, 16-051, 16-058, 16-059, 17-007, 17-008, 18-010, 22-001, 22-009, 22-010, 23-003, 23-004</p>	<p>install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping, protected species measures and other environmental mitigation works together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other environmental mitigation works;</p> <p>remain, pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works;</p> <p>alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays, bridges and road widening and to remove impediments (including vegetation) to such access;</p> <p>place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to the undertaker, statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables and restore existing land drainage and discharge into any drain or watercourse; and</p> <p>restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but</p>

		not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.
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MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or 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 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date)(a) of the 1961 Act 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 6 (modification of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants) to the Hampshire Water Transfer and Water Recycling Project Development Consent Order 202* (the “202* Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the 202* Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection 3(a) to have entered on that land 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(b) 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

(a) Section 5A was inserted by section 103(2) of the Planning and Compulsory Purchase Act 2004 (c. 5) and amended by section 199(2) of, and paragraph 4 of Schedule 17 to, the Housing and Planning Act 2016 (c. 22), section 186(7) of the Levelling-up and Regeneration Act 2023 (c. 55), and section 109(7) of the Planning and Infrastructure Act 2025 (c. 34). There are other amendments to section 5A which are not relevant to this Order.

(b) 1973 c. 26.

by article 35 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 26 (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 29(1) (compulsory acquisition of rights and restrictive covenants)—

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

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

(2) References in the 1965 Act to land are, in the appropriate context, 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 restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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

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

are modified 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)(a) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restricted covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 26 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry)(b), 11B (counter-notice requiring possession to be taken on specified date)(c), 12 (unauthorised entry)(d) and 13 (refusal to give possession to acquiring authority)(e) of the 1965 Act are modified correspondingly.

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
 - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs 2 and 4 of Schedule 16 to the Housing and Planning Act 2016.
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 35(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 NOT IN NOTICE TO TREAT

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 of the 1981 Act as applied by article 31 (application of the 1981 Act) of the Hampshire Water Transfer and Water Recycling Project Development Consent Order 202* in respect of the land to which the notice to treat relates.

(2) But see article 33(4) (acquisition of subsoil, etc., only) of the Hampshire Water Transfer and Water Recycling Project Development Consent Order 202* which excludes the acquisition of subsoil only from this Schedule.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

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

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

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

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

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

Determination by Upper Tribunal

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

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

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

- (a) the effect of the acquisition of the right or the imposition of the restrictive covenant,
- (b) the use to be made of the right or restrictive covenant proposed to be acquired or imposed, and
- (c) if the right or restrictive 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 restrictive covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

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

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

(2) If the acquiring authority withdraws the notice to treat under this paragraph 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.”.

Application of the 2017 Regulations

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

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed (including for the benefit of a statutory undertaker); or
- (b) the land over which the right is to be exercisable, or the restrictive covenant imposed is or is to be enforceable.

SCHEDULE 7

Article 37

LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Area	<i>(2)</i> Plot Reference Number(s) shown on land plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Relevant part of the authorised development
Hampshire	11-016, 11-017, 15-016, 15-017, 26-009, 26-010	Temporary use (including access) to facilitate the construction of Work Nos. 1 to 10	Work No. 4
Hampshire	11-018, 12-001	Temporary use (including construction compounds) to facilitate the construction of Work Nos. 1 to 10	Work No. 5
Hampshire	03-044, 03-045, 05-029, 07-008, 08-001, 08-006, 09-004, 09-005, 10-003, 10-005, 10-007, 10-008, 11-005, 11-007, 11-008, 11-010, 11-011, 11-012, 13-013, 13-018, 13-019, 13-032, 14-013, 14-014, 15-001, 15-010, 15-012, 16-008, 16-012, 16-013, 16-015, 16-016, 16-026, 16-027, 16-028, 16-029, 16-030, 17-011, 17-012, 17-013, 17-014, 18-001, 18-002, 18-003, 18-004, 18-018, 19-005, 20-007, 21-018, 21-020, 21-021, 21-022, 22-003, 23-024, 23-025, 23-032, 24-011, 25-001, 25-002, 25-004, 25-005, 25-006, 25-020, 25-021, 26-020	Temporary use (including highway and access works and construction compounds) to facilitate the construction of Work Nos. 1 to 10	Work No. 6
Hampshire	03-038, 03-039, 03-040, 03-041, 04-011, 04-012, 04-013, 04-014, 06-100, 08-004, 10-006, 13-009, 13-011, 13-012, 13-020, 13-022, 13-024, 13-034, 14-001, 14-002, 14-003, 14-004, 14-005, 15-004, 15-005, 15-006, 15-007, 20-018, 20-019, 24-002,	Temporary use (including highway and access works) to facilitate the construction of Work Nos. 1 to 10	Work No. 8

	24-003, 24-004, 26-001, 26-002, 26-003, 26-004, 26-005, 26-028, 27-001		
Hampshire	06-093, 06-094, 23-017, 23-020, 23-029, 23-031	Temporary use (including environmental mitigation works) to facilitate the construction of Work Nos. 1 to 10	Work No. 7
Hampshire	06-101, 08-002, 19-006, 20-002, 20-003, 20-004, 23-006, 23-008, 23-010, 23-011, 23-012, 23-018, 23-026, 23-027, 23-030	Temporary use (including highway and access works, construction compounds and environmental mitigation) to facilitate the construction of Work Nos. 1 to 10	Work No. 6 Work No. 7
Hampshire	13-007	Temporary use (including highway and access works and construction compounds) to facilitate the construction of Work Nos. 1 to 10	Work No. 6 Work No. 8

MODIFICATIONS TO LEGISLATIVE PROVISIONS APPLYING TO
THE AUTHORISED DEVELOPMENT AND TO THE HAVANT
THICKET RESERVOIR INFRASTRUCTURE

PART 1

MODIFICATIONS TO THE WATER RESOURCES ACT 1991

1.—(1) The Water Resources Act 1991^(a) has effect in relation to the authorised development and the Havant Thicket Reservoir infrastructure subject to the modifications set out in this Part.

(2) In this Part, references to sections are references to sections of the Water Resources Act 1991.

Interpretation

2. Section 72 (Interpretation of Chapter 2) has effect as if, at the appropriate place, there were inserted—

““Havant Thicket Reservoir” means the reservoir located at grid reference SU 715 097 and for the purposes of Chapter 2 of Part 2 of this Act is deemed to include as the same source of supply the pipes for the transfer of water to and from the Bedhampton Waterworks, Meyrick Road, Havant, PO9 1NN (known as Bedhampton Springs);”.

Enforcement and enforcement notices

3. Section 24 (restrictions on abstraction) has effect as if, after subsection (4), there were inserted—

“(4A) Where the contravention of subsection (1) occurs in relation to a breach of the aggregated limit for abstraction from Havant Thicket Reservoir, the rules of enforcement in Part 6 of Schedule 8 to The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202* must be applied to determine the person that is guilty of the offence for the purposes of subsection (4) and the extent of the contravention by that person.”.

4. Section 25A (enforcement notices) has effect as if, after subsection (2) (which requires a likelihood of significant damage to the environment before an enforcement notice can be served), there were inserted—

“(2A) In relation to a licence to abstract water from Havant Thicket Reservoir, the condition in subsection (2) that significant damage to the environment is being caused or is likely to be caused does not apply and the appropriate agency must instead be satisfied that there is being caused or is likely to be caused a risk to the resilience of a public water supply.

(2B) The appropriate agency must not serve an enforcement notice under subsection (1) in relation to a licence for abstraction from Havant Thicket Reservoir, other than in accordance with the rules for enforcement in Part 6 of Schedule 8 to The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*, and the proper application of the rules for enforcement will be evidence of the extent of any breach of section 24(1) above.”.

(a) 1991 c. 57.

Protected rights

5. Section 39A (protected rights for the purposes of this Chapter) has effect as if—

(a) for subsection (1) there were substituted—

“(1) Subject to subsection (1A), for the purposes of this Chapter, a right is a protected right if—”; and

(b) after subsection (1), there were inserted—

“(1A) A right of Portsmouth Water Limited as holder of a full licence to abstract water from Havant Thicket Reservoir is not taken to be, by virtue of section 48(1) below, a protected right for the purposes of this Chapter.

(1B) For the purposes of an application for a full licence for Portsmouth Water Limited to abstract not more than 25 megalitres of water per day from Havant Thicket Reservoir, where no such licence has previously been granted it is deemed that the grant of the licence will not constitute a derogation from any protected rights held by Southern Water Services Limited in relation to abstraction from Havant Thicket Reservoir.”.

Standing in relation to called-in applications and appeals

6. Section 42 (consideration of called-in applications) has effect as if, after subsection (2), there were inserted—

“(2A) If the application relates to abstraction or impounding in connection with Havant Thicket Reservoir, any opportunity to appear and to be heard afforded to the applicant under paragraph (b) of subsection (2) must also be afforded to Southern Water Services Limited, and if Southern Water Services Limited makes a request to be heard with respect to the application, the Secretary of State must act as mentioned in paragraph (a) or (b) of subsection (2).”.

7. Section 43 (appeals to the Secretary of State) has effect as if there were added a new subsection—

“(6) Where the application referred to in subsection (1) relates to abstraction or impounding in connection with Havant Thicket Reservoir, Southern Water Services Limited may take such action as the applicant is permitted to do under this section, provided always that the notice of appeal must be served on the applicant for the licence at the same time as it is served on the appropriate agency under subsection (4).”.

8. Section 44 (determination of appeals) has effect as if, after subsection (2), there were inserted—

“(2A) If the appeal relates to abstraction or impounding in connection with Havant Thicket Reservoir, any opportunity to appear and be heard afforded to the applicant under paragraph (b) of subsection (2) must also be afforded to Southern Water Services Limited, and if Southern Water Services Limited makes a request to be heard with respect to the appeal, the Secretary of State shall act as mentioned in paragraph (a) or (b) of subsection (2).”.

Form and content of licences

9. Section 46 (form and contents of licences) has effect as if—

(a) for subsection (5) there were substituted—

“(5) Every licence under this Chapter to abstract water shall state—

(a) the date on which it takes effect; and

(b) the date on which it expires or that the licence will remain in force until revoked.”; and

(b) after subsection (7), there were inserted—

“(8) Every full licence for abstraction from Havant Thicket Reservoir must contain such provisions as appear to the appropriate agency to correspond as nearly as may be to the provisions of Part 5 of Schedule 8 to The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*.”.

Proposals for modification of licences

10.—(1) Section 52 (proposals for modification at instance of the appropriate agency or Secretary of State) has effect as if—

- (a) after subsection (1) (which provides the power for the appropriate agency to formulate proposals to revoke or vary a licence), there were inserted—

“(1ZA) The proposals formulated under subsection (1) must not have the effect of reducing the minimum quantity of water authorised to be abstracted by Southern Water Services Limited from Havant Thicket Reservoir below the quantities specified in paragraph 37(a) of Schedule 8 to The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*, unless with the consent of Southern Water Services Limited.”;

- (b) for subsection (3), there were substituted—

“(3) A direction under this subsection may—

- (a) direct the appropriate agency to formulate proposals for revoking the licence in question; or
(b) direct the appropriate agency to formulate proposals for varying that licence in such manner as may be specified in the direction,

save that no direction may be given, the effect of which would be to reduce the minimum quantity of water authorised to be abstracted by Southern Water Services Limited from Havant Thicket Reservoir below the quantities specified in paragraph 37(a) of Schedule 8 to The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*, other than with the consent of Southern Water Services Limited.”; and

- (c) for subsection (4), there were substituted—

“(4) Notice in the prescribed form of any proposals formulated under this section with respect to any licence that relates to or is connected with Havant Thicket Reservoir must—

- (a) be served on the holder of the licence;
(b) be served on Southern Water Services Limited; and
(c) be published in the prescribed way or (if no way is prescribed) in a way calculated to bring it to the attention of persons likely to be affected if the licence were revoked or varied as proposed.”.

Liability for derogation from protected rights

11. Section 60 (liability of the appropriate agency for derogation from protected right) has effect as if, after subsection (6), there were inserted—

“(6A) In any action brought against the appropriate agency in relation to the grant of a licence that derogates from the protected right to abstract water from Havant Thicket Reservoir held by Southern Water Services Limited, the applicant for that licence must indemnify the appropriate agency for its liability under this section.”.

12. Sections 61ZA and 61ZB (which provide that compensation will not be payable for certain reductions in licensed abstractions) do not apply in relation to licences for abstraction in relation to Havant Thicket Reservoir.

PART 2

MODIFICATIONS TO THE WATER RESOURCES (ABSTRACTION AND IMPOUNDING) REGULATIONS 2006

13.—(1) The Water Resources (Abstraction and Impounding) Regulations 2006(a) have effect in relation to the authorised development and the Havant Thicket Reservoir infrastructure subject to the modifications set out in this Part.

(2) In this Part, references to numbered regulations are references to the numbered regulations in the Water Resources (Abstraction and Impounding) Regulations 2006.

14. Regulation 7 (exemption from advertising requirements) has effect as if, in paragraph (1) (which identifies exemptions from advertising an application for a new abstraction licence), before the full stop in sub-paragraph (b)(iii), there were inserted—

“; and

(c) the application is made by Southern Water Services Limited for a licence in relation to proposed abstraction from Havant Thicket Reservoir”.

15. After regulation 9, there is inserted—

“Applications relating to the Havant Thicket Reservoir

9A.—(1) An application in relation to abstraction or impounding in connection with Havant Thicket Reservoir may only be made with the consent of Southern Water Services Limited.

(2) Paragraph (1) does not apply where—

(a) the application is for a full licence as described in subsection (1B) of section 39A of the Act; or

(b) the application is for a full licence which, if granted, would—

(i) take effect immediately after the expiry of an existing licence of the same type (“the existing licence”);

(ii) be held by the same person as the holder of the existing licence;

(iii) not permit a different quantity of water to be abstracted than may be abstracted under the existing licence; and

(iv) not in any other respect be different from the existing licence.

(3) Where an application relates to abstraction or impounding in connection with Havant Thicket Reservoir, the Agency must serve notice in writing of the application on Southern Water Services Limited within 14 days beginning on the relevant date.

(4) The notice must include—

(a) a copy of the application; and

(b) a statement that Southern Water Services Limited may make representations in writing to the Agency in relation to the application within 28 days beginning on the date on which the notice is served.

(5) The Agency or, in the case of a called-in application, the Secretary of State—

(a) must not determine the application until after the period referred to in paragraph (4)(b); and

(b) in determining the application, must have regard to any representations duly made by Southern Water Services Limited in relation to the application.

(a) S.I. 2006/641.

(6) Paragraphs (1) and (3) do not apply if the application is made by Southern Water Services Limited.

(7) An application will be in connection with Havant Thicket Reservoir if it relates to—

- (a) the abstraction of water from Havant Thicket Reservoir;
- (b) the abstraction of water for the purposes of transferring it to Havant Thicket Reservoir; or
- (c) the impounding of water within, adjacent to or as an extension of Havant Thicket Reservoir.”.

16. Regulation 8 (acknowledgement of receipt) has effect as if, after paragraph (1), there were inserted—

“(1A) The Agency must serve on Southern Water Services Limited an acknowledgement in writing in a case of an application to which Regulation 9A(2)(b) applies.”.

17. Regulation 10 (duties of the Agency in dealing with applications) has effect as if, after paragraph (6), there were inserted—

“(7) In a case where regulation 9A applies—

- (a) the notice referred to in paragraph (1) must be served on Southern Water Services Limited at the same time as it is served on the applicant; and
- (b) where paragraph (6) applies, the notice must be accompanied by a statement that Southern Water Services Limited is entitled to request to appear before, and be heard by, a person appointed for the purpose of determining the application.”.

18. Regulation 13 (notice of appeal) has effect as if, for paragraph (2), there were substituted—

“(2) The Agency must, within 14 days beginning on the date on which it receives a notice of appeal under section 43, serve a copy of that notice on—

- (a) any person who, within the period referred to in subsection (4)(b) of section 37 (publication of application for licence), made representations in writing in relation to the application;
- (b) any authority served with a notice in accordance with regulation 9(1) that, within the period referred to in regulation 9(2)(b), made representations in writing in relation to the application; and
- (c) Southern Water Services Limited if, within the period referred to in regulation 9A(2)(b), it made representations in writing in relation to the application.”.

19. Regulation 25 (content of enforcement notices), has effect as if sub-paragraphs (c) and (d) (which require an enforcement notice to describe the significant damage to the environment and identify the water subject to that damage) were omitted and there were inserted—

“(ba) include a statement that the breach poses or is likely to pose a risk to a public water supply;”.

PART 3

MODIFICATIONS TO THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) REGULATIONS 2016

20.—(1) The Environmental Permitting (England and Wales) Regulations 2016^(a) have effect in relation to the authorised development and the Havant Thicket Reservoir infrastructure subject to the modifications set out in this Part.

(a) S.I. 2016/1154.

(2) In this Part, references to numbered regulations are references to the numbered regulations in the Environmental Permitting (England and Wales) Regulations 2016.

21. Regulation 2 (interpretation), has effect as if, in the appropriate place, there were inserted—

““Havant Thicket Reservoir” means the reservoir located at grid reference SU 715 097;”.

22. Regulation 13 (grant of an environmental permit) has effect as if there were inserted the following paragraph—

“(4) An application for an environmental permit for a water discharge activity in relation to Havant Thicket Reservoir may only be made with the consent of Southern Water Services Limited.”.

23. Regulation 20 (variation of an environmental permit) has effect as if there were inserted the following paragraph—

“(2A) An application to vary an environmental permit for a water discharge activity in relation to Havant Thicket Reservoir may not be made other than with the consent of Southern Water Services Limited.”.

24. Regulation 22 (revocation of an environmental permit: general) has effect as if there were inserted the following paragraph—

“(2A) An environmental permit for a water discharge activity in relation to Havant Thicket Reservoir may not be revoked in whole or in part other than with the consent of Southern Water Services Limited.”.

25. Regulation 31 (appeals to an appropriate authority) has effect as if, in paragraph (1) (which identifies persons that may bring an appeal), there were inserted—

“(ba) Southern Water Services Limited, where the regulator grants an application for an environmental permit or varies or revokes an existing environmental permit authorising a water discharge activity in relation to Havant Thicket Reservoir and Southern Water Services Limited is aggrieved by that decision or by any condition (or absence of condition) in the environmental permit so granted;”.

26. Regulation 63 (reference of applications to an appropriate authority) has effect as if, for paragraph (3), there were substituted—

“(3) When an application is referred to an appropriate authority, the appropriate authority—

- (a) may afford the applicant and the regulator and, where the application relates to an environmental permit for a water discharge activity in relation to Havant Thicket Reservoir, Southern Water Services Limited, an opportunity of appearing before and being heard by a person appointed by the appropriate authority, and
- (b) must do so in any case where a request is duly made by the applicant or the regulator or, as the case may be, Southern Water Services Limited, to be so heard.”

Modifications to Schedule 3 (Exempt Facilities)

27. Paragraph 1 (vegetation management activities) in Part 2 of Schedule 3 has effect as if, in sub-paragraph (2)(a) (which lists persons to be given prior notice of the exempt water discharge activity), before “ and” at the end of sub-paragraph (vii), there were inserted—

“(viii) in relation to a water discharge activity that relates to Havant Thicket Reservoir, Southern Water Services Limited and any other person or body having the benefit of The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202* in relation to its provisions applying to the Havant Thicket Reservoir infrastructure,”.

28. Paragraph 3 (small discharges of sewage effluent: England) has effect as if, in sub-paragraph (2) (which lists conditions for the discharge to be exempt), before the full stop in paragraph (f)(ii), there were inserted—

“;

(g) the discharge is not made into Havant Thicket Reservoir”.

Modifications to Schedule 5 (Environmental Permits)

29. Paragraph 1 (interpretation) has effect as if, for the definition of “public consultee”, there were substituted—

““public consultee” means a person who the regulator considers is affected by, is likely to be affected by, or has an interest in, an application and in relation to an application for the grant, variation or transfer of an environmental permit authorising a water discharge activity in relation to Havant Thicket Reservoir, includes Southern Water Services Limited and any other person or body having the benefit of The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202* in relation to its provisions applying to the Havant Thicket Reservoir infrastructure.”.

30. Paragraph 6 (public participation in relation to certain applications) of Part 1 (grant, variation, transfer and surrender of environmental permits) to Schedule 5 has effect as if, after sub-paragraph (1), there were inserted—

“(1A) Where this paragraph applies, the application relates to a water discharge activity in relation to Havant Thicket Reservoir and the applicant is not Southern Water Services Limited, the regulator must, within the consultation communication period—

- (a) send written notice to Southern Water Services Limited identifying the nature of the application and the place and times its public register and any information to be excluded from the public register may be inspected,
- (b) invite Southern Water Services Limited to make representations on the application, and
- (c) specify to Southern Water Services Limited the address to which and the period within which representations are to be made.”.

31. Paragraph 17 (notification of a determination or decision) of Part 1 to Schedule 5 has effect as if, for sub-paragraph (2), there were substituted—

“(2) The regulator must—

- (a) notify the applicant or, for a regulator-initiated variation, the operator of—
 - (i) its determination or decision,
 - (ii) the rights of appeal the applicant or operator has under regulation 31, and
 - (iii) the requirements relating to the exercise of those rights in paragraphs 2 and 3 of Schedule 6; and
- (b) if paragraph 10 applies, notify the appropriate authority of the determination or decision; and
- (c) notify Southern Water Services Limited where the application or regulator-initiated variation relates to a water discharge activity in relation to Havant Thicket Reservoir of—
 - (i) its determination or decision,
 - (ii) the rights of appeal that Southern Water Services Limited has under regulation 31, and
 - (iii) the requirements relating to the exercise of those rights in paragraphs 2 and 3 of Schedule 6.”.

Modifications to Schedule 6 (Appeals to the appropriate authority)

32. In paragraph 2 (making an appeal) of Schedule 6, sub-paragraph (1) has effect as if it were substituted by the following—

- “(1) A person making an appeal must—
- (a) send the appropriate authority written notice of the appeal and the documents specified in sub-paragraph (2),
 - (b) at the same time send the regulator copies of the notice and documents, and
 - (c) if the appeal is brought under regulation 31(1)(ba), at the same time send the applicant or (in the case of a regulator-initiated variation) the operator copies of the notice and documents.”.

33. Paragraph 4 (notice to affected and interested persons) of Schedule 6 has effect as if for sub-paragraph (1) there were substituted—

“(1) The regulator must, within 10 working days after receipt of a copy of a notice of appeal, give notice of it to any person whom the regulator considers is affected by, is likely to be affected by, or has an interest in, the subject matter of the appeal, and give notice and provide a copy of the documents to Southern Water Services Limited where the appeal relates to a water discharge activity in relation to Havant Thicket Reservoir.”.

PART 4

MODIFICATION TO THE WATER SUPPLY (WATER QUALITY) REGULATIONS 2016

34. The Water Supply (Water Quality) Regulations 2016^(a) have effect in relation to the authorised development and the Havant Thicket Reservoir infrastructure subject to the modification set out in this Part.

35. For the definition of “abstraction point” in regulation 17(6) of the Water Supply (Water Quality) Regulations 2016, there is substituted—

““abstraction point” means—

- (i) an abstraction point identified under paragraph (1); or
- (ii) Havant Thicket Reservoir, being a reservoir located at grid reference SU 715 097, where water is abstracted by a water undertaker pursuant to a licence granted under Chapter 2 of Part 2 of the Water Resources Act 1991, as modified by The Hampshire Water Transfer and Water Recycling Project Development Consent Order 202*.”.

PART 5

STATUTORY PROVISIONS FOR INCLUSION IN LICENCES FOR ABSTRACTION FROM HAVANT THICKET RESERVOIR

Interpretation

36. In this Part of this Schedule—

“Bedhampton Springs” means the facility known as Bedhampton Waterworks, Meyrick Road, Havant, PO9 1NN;

“Havant Thicket Reservoir” means the reservoir located at grid reference SU 715 097; and

(a) S.I. 2016/614.

“the shared pipelines” means the pipelines for the transfer of water from and to Havant Thicket Reservoir to and from the point of abstraction, to the extent that the water transferred may be for the purposes of more than one abstraction licence.

Provisions to be included in the undertaker’s licence

37. Any full licence granted to and held by Southern Water Services Limited authorising the abstraction of water from Havant Thicket Reservoir must—

- (a) specify a minimum quantity of water authorised to be abstracted that is not less than—
 - (i) 115 megalitres per day; and
 - (ii) 41,975 megalitres per annum; and
- (b) specify that the licence will remain in force until revoked.

Provisions to be included in licences not held by the undertaker

38. No licence to which this Part of this Schedule applies granted to a person other than Southern Water Services Limited may authorise abstraction of a quantity of water that exceeds 25 megalitres per day or, if there is more than one such licence, that exceeds 25 megalitres per day aggregated across all such licences.

Provisions to be included in all licences

39.—(1) Any full licence that meets the condition in sub-paragraph (2) must—

- (a) specify the point of abstraction to be a location at or near to grid reference SU 7055 0639, being the end of the shared pipelines at Bedhampton Springs, that enables and facilitates the recording of water abstracted by the individual licence holder from the shared pipelines;
- (b) be subject to a minimum quantity of water authorised to be abstracted, aggregated across all such full licences, of not less than the quantities specified in paragraph 37(a);
- (c) require that measurement of the water so abstracted is recorded on equipment to be located as close as is reasonably practicable to the point of abstraction; and
- (d) require the sharing of abstraction information and data with the holders of all other such full licences at regular intervals and on request.

(2) The condition is that water to be abstracted pursuant to the licence is to be conveyed along the shared pipelines.

PART 6

RULES FOR ENFORCEMENT OF RELEVANT LICENCES

Apportionment of responsibility for breach of an aggregated limit

40. Where the aggregated limit has been breached, the person responsible for the purposes of section 24(1) of the Water Resources Act 1991 is—

- (a) Southern Water Services Limited, to the extent that abstraction has been carried out by Southern Water Services Limited in excess of the quantity of water authorised for abstraction specified in its abstraction licence; and
- (b) the holder of any other licence, in relation to the remainder of the excess above the aggregated limit.

SCHEDULE 9

Article 47

DEEMED MARINE LICENCE

PART 1

LICENSED MARINE ACTIVITIES

Interpretation

1.—(1) Notwithstanding article 2(1) of the Order, in this licence—

“the 2009 Act” means the Marine and Coastal Access Act 2009(a);

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

“commence” means beginning to carry out any part of the licensed activities, and “commenced” and “commencement” is to be construed accordingly;

“condition” means those conditions in Part 2 of this Schedule;

“intertidal zone” means the area within the normal tidal limit for Langstone Harbour;

“licensed activities” means any activity described in Part 1 of this licence;

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

“Marine Noise Registry” means the register maintained by the Joint Nature Conservation Committee (JNCC) that records the spatial and temporal distribution of impulsive noise generating activities in the marine area;

“mean high water springs” (MHWS) means the average of high-water heights occurring at the time of spring tides;

“MMO” means the Marine Management Organisation, Tyneside House, Skinnerburn Road, Newcastle upon Tyne, NE4 7AR who is the body created under the 2009 Act and who is responsible for the monitoring and enforcement of this licence;

“the Order” means the Hampshire Water Transfer and Water Recycling Project Development Consent Order 202[*];

“SuDS” means the Sustainable Drainage System;

“SuDS discharge” means the activity described in paragraph 2(a); and

“undertaker” means Southern Water Services Limited (Company No. 02366670).

(2) Terms used in this licence that are not defined in paragraph (1) or article 2(1) of the Order have the meaning in the 2009 Act.

(3) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(4) Unless otherwise specified all geographical co-ordinates given in this licence are in latitude and longitude degrees and minutes to six decimal places.

(5) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and address for returns and correspondence are—

(a) 2009 c. 23.

(b) 2008 c. 29.

- (a) Marine Management Organisation
Marine Licensing Team
Tyneside House
Skinnerburn Road
Newcastle upon Tyne
NE4 7AR
Tel: 0300 123 1032;
- (b) Marine Management Organisation (Local Office)
MMO Shoreham
Pilots' Watch House
Basin Road South
Portslade
West Sussex
BN41 1WD
Tel: 0208 026 9057; and
- (c) MMO Marine Pollution Response Team
Tel (during office hours): 0300 200 2024
Tel (outside office hours): 07770 977 825 or 0345 051 8486.

(6) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consent@marinemanagement.org.uk, or where contact to the Local Office if the MMO is required, shoreham@marinemanagement.org.uk, or where contact to the Marine Pollution Response Team is required dispersants@marinemanagement.org.uk.

(7) Notwithstanding article 52 (service of notices) of the Order, unless otherwise advised in writing by the MMO, the Marine Case Management System ("MCMS") must be used for all notices, licence returns or applications to vary this licence. The MCMS address is: <https://marinelicensing.marinemanagement.org.uk/>.

Details of licensed marine activities

2. Subject to the licence conditions in Part 2 of this licence, this licence authorises the undertaker (and any agent, contractor or subcontractor acting on its behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act—

- (a) the construction of a SuDS discharge which may include—
 - (i) an outfall structure at or below the level of mean high water springs, including the construction of a concrete headwall type outfall structure;
 - (ii) a cofferdam;
 - (iii) a discharge conduit (pipe option or swale channel option) at or below the level of mean high water springs;
 - (iv) site preparation; and
 - (v) associated ancillary works; and
- (b) maintain the SuDS discharge described in paragraph (a).

3. Such activities described in paragraph 2 are authorised in relation to the construction, maintenance and operation of the SuDS discharge.

4. The grid coordinates of the licensed activities are specified below—

<i>Point ID</i>	<i>Latitude</i>	<i>Longitude</i>
1	50.848225	-1.002745
2	50.848167	-1.002910
3	50.846160	-1.001712
4	50.846229	-1.001443

General provisions

5. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 5 (benefit of the Order).

6. Subject to paragraph 21(3), any time period given in this licence to either the undertaker or the MMO may be extended with the agreement of the other party in writing such agreement not to be unreasonably withheld or delayed.

7. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

8. Any amendments to or variations from the approved details, plan or scheme must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to changes where it has been demonstrated to the satisfaction of the MMO that such changes are not likely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

CONDITIONS

Design parameters

9.—(1) The SuDS discharge must be constructed in accordance with the parameters in this condition.

(2) The outfall structure comprised in the licensed activities must not exceed 4.5 metres by 5.5 metres by 4 metres.

(3) The discharge conduit (pipe option or swale channel option) must not exceed 50 metres by 10 metres.

(4) The cofferdam—

- (a) must not exceed 5 metres by 10 metres in area; and
- (b) may be constructed by piling techniques.

Maintenance of the licensed activities

10. The undertaker may at any time maintain the SuDS discharge, except to the extent that this licence or an agreement made under this licence provides otherwise.

Notifications and inspections

11.—(1) The undertaker must ensure that—

- (a) a copy of this licence and any subsequent revisions or amendments to it is provided to—
 - (i) all agents contractors and sub-contractors notified to the MMO in accordance with condition 18; and

- (ii) the masters of any vessel notified to the MMO in accordance with condition 18; and
 - (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) must provide a completed confirmation form to the MMO confirming receipt of this licence.
- (2) Only those persons and vessels notified to the MMO in accordance with condition 18 are permitted to carry out the licensed activities.
- (3) Copies of this licence must be available for inspection at the following locations—
- (a) the undertaker’s registered address; and
 - (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors.
- (4) The undertaker must provide access to facilitate any inspection of the licenced marine activities that the MMO considers necessary during the construction and maintenance of those licenced marine activities.
- (5) The undertaker must notify Langstone Harbour Board at least 14 days prior to the commencement of the licensed activities advising of the start date of the licensed activities.

Pre-construction documentation

12.—(1) The licensed activities must not commence until the following have been submitted to and approved in writing by the MMO—

- (a) a construction method statement; and
- (b) a marine pollution contingency plan.

(2) Unless otherwise agreed in writing with the MMO, the construction method statement must include the following—

- (a) the details of the entity responsible for the carrying out of the licensed activity;
- (b) a programme of works including the timings, duration, and the location of the licensable marine activity;
- (c) a statement setting out how the programme of works has sought, as far as reasonably practicable, to avoid the carrying out of the licensable marine activity during the eel migration periods, being mid-February to May and August to December;
- (d) the detailed methodology to be employed in carrying out the licensable marine activity, including method of delivery to site and plant to be used during the licensable marine activities;
- (e) contractor and vessel details (if relevant);
- (f) plans and sections;
- (g) details of where the licensable marine activity was assessed in the environmental statement;
- (h) details of materials to be placed in or removed from the marine area;
- (i) environmental mitigation measures; and
- (j) a lighting management plan, if 24-hour working is required to undertake the licensed activity.

(3) Unless otherwise agreed in writing with the MMO, the marine pollution contingency plan must set out—

- (a) the undertaker’s assessment of the likely risks which could arise as a result of a spill or collision during the carrying out of the licensed activities; and
- (b) the methods and procedures that the undertaker will put in place to address those risks.

(4) Except where otherwise agreed in writing with the MMO, the statement or plan required to be approved under sub-paragraph (1) must be submitted for approval at least 42 days prior to the intended commencement of the relevant licensed activity.

(5) The MMO must determine an application for approval made under this condition within a period of 42 days commencing on the date the application is received by the MMO.

(6) The licensed activities must be carried out in accordance with the approved statement or plan, unless otherwise agreed in writing with the MMO.

Chemicals and debris

13.—(1) Unless otherwise agreed in writing with the MMO—

- (a) waste concrete, slurry or wash water from concrete or cement activities must not be discharged, intentionally or unintentionally, into the marine environment;
- (b) concrete and cement mixing and washing areas must be contained and sited at least 10 metres from any water body or surface water drain;
- (c) any coatings and treatments must be suitable for use in the marine environment;
- (d) the storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers; and
- (e) all wastes must be stored in designated areas that are isolated from surface water drains and open water and are bunded to contain any spillage.

(2) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported in writing to the MMO, Marine Pollution Response Team within 12 hours or the spill occurring or such other timescale as is specified in the marine pollution contingency plan agreed under condition 13(1)(b).

Piling techniques

14.—(1) Where a licensed activity involves piling the undertaker must comply with the requirements set out in paragraph (2).

(2) Any piling must not be carried out during the over-wintering bird season (September to March inclusive). Subject to paragraph (3), any piling must not be carried out in land partially or wholly submerged in water.

(3) Where any part of the licensed activity will be carried out in areas that are submerged or partially submerged in water—

- (a) sheet piles must be driven using hydraulic equipment or vibratory hammers, with a soft-start procedure following the JNCC protocol for minimising the risk of injury to marine mammals from piling noise;
- (b) soft-start procedures ensure an incremental increase in pile power, following JNCC protocol these will be over a period of not less than 20 minutes until full operational power is achieved; and
- (c) where piling of any sort ceases for at least 10 minutes the soft-start procedures must be repeated.

Noise registry

15. Where percussive piling is required as part of a construction method statement approved by the MMO under condition 13(1)(a), the undertaker must—

- (a) prior to the commencement of a licensed activity in the marine area which involves percussive pile driving—
 - (i) submit details of the expected location, start and end dates of percussive pile driving to the Marine Noise Registry by 25 March of each year, in order to satisfy the forward look requirements of the Marine Noise Registry; and

- (ii) send copies of the notification submitted under sub-paragraph (i) to the MMO Marine Licensing Team within 7 days of the date of submission of that notification; and
- (b) within 12 weeks of completion of a licensed activity in the marine area which involves percussive pile driving—
 - (i) submit details of the actual location, start and end dates of percussive pile driving to the Marine Noise Registry in order to satisfy the close out requirements of the Marine Noise Registry; and
 - (ii) send copies of the notification submitted under sub-paragraph (i) to the MMO Marine Licencing Team within 7 days of the date of submission that notification.

Removal of temporary structures, etc.

16. The undertaker must remove all equipment, temporary structures, waste and debris associated with the licensed activities within 42 days of the completion of those licensed activities, unless otherwise agreed in writing by the MMO.

Notice of completion of licensable marine activity

17. The undertaker must notify the MMO in writing of the completion of the last licensed activity no more than 14 days following the completion of that licensed activity.

Reporting of engaged agents, contractors and vessels

18.—(1) The undertaker must provide the following information to the MMO Local Office and Marine Licensing Team—

- (a) the name, company number, address and function of any agent, contractor or sub-contractor appointed to engage in the licensed activities not less than 24 hours prior to such agent, contractor or sub-contractor commencing any licensed activity; and
- (b) a list of any vessel being used to carry out any licensed activity not less than 24 hours prior to commencement of the licensed activity.

(2) Any changes to the information provided must be notified to the MMO in writing prior to the agent, contractor, sub-contractor or vessel engaging in the licensed activities.

(3) A notice under paragraph (1) must provide the commencement date or intended commencement date of the licensed activity to which the notice relates.

PART 3

PROCEDURE FOR THE DISCHARGE OF CONDITIONS

Meaning of “return”

19. In this Part, “return” means a submission by the undertaker for approval by the MMO required under Part 2 of this licence.

Further information regarding return

20.—(1) The MMO may request in writing such further information from the undertaker as is necessary to enable the MMO to consider the return.

(2) If the MMO does not make a request under paragraph (1) within 21 days of the day immediately following that on which the return is received by the MMO, it is deemed to have sufficient information to consider the return and is not entitled to request further information after this date without the prior agreement of the undertaker.

(3) Where the MMO requests further information from the undertaker under paragraph (1), the time period for the MMO to determine the return will be extended as if that time period began on the date the further information is submitted to the MMO.

Determination of return

21.—(1) In determining the return the MMO may have regard to—

- (a) the return and any supporting information or documentation;
- (b) any further information provided by the undertaker in accordance with paragraph 20; and
- (c) such other matters as the MMO considers relevant.

(2) In determining the return the MMO may—

- (a) grant the return unconditionally;
- (b) grant the return subject to conditions as the MMO thinks fit; or
- (c) refuse the return.

(3) The MMO must provide the undertaker with notice of its decision under paragraph (2) as soon as reasonably practicable and not more than 42 days after the later of the date the return was submitted to the MMO or the date on which any further information was provided in accordance with paragraph 20.

(4) Where the MMO refuses the return or grants the return subject to conditions, it must provide the reasons for the refusal or imposition of conditions.

(5) If the MMO does not provide the undertaker with notice of its decision within the time limit specified in sub-paragraph (3), the return will be deemed to have been granted unconditionally.

PART 4

ENFORCEMENT

22. Any breach of this licence does not constitute a breach of this Order but is subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act.

PROTECTIVE PROVISIONS

PART 1

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

1.—(1) The provisions of this Part of this Schedule have effect for the protection of utility undertakers unless otherwise identified in another Part of this Schedule or agreed in writing between the undertaker and the utility undertaker in question.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and the utility undertaker concerned, where the benefit of this Order is transferred or granted to another person under article 9 (consent to transfer benefit of Order), any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between the utility undertaker concerned and the transferee or grantee (as the case may be).

(3) Sub-paragraph (2) does not apply where the benefit of this Order is transferred or granted to the utility undertaker concerned (but see paragraph 10(2)(b)).

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by the utility undertaker for the purposes of electricity supply;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
 - (i) mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of water supply; and
 - (ii) mains, pipes or other apparatus that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991(b); and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(c) (adoption of sewers and disposal works) of that Act or an

(a) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

(b) 1991 c. 56. Section 51A was inserted by section 92(1) of the Water Act 2003 (c. 37) and amended by section 10(1) and (2) of the Water Act 2014 (c. 21).

(c) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 and paragraph 90 of Schedule 7 to the Water Act 2014.

agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date)(a) 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 in each case 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;

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

“utility undertaker” means—

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

On street apparatus

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

Apparatus in closed streets

4. Regardless of the temporary closure, alteration or diversion of streets under the powers conferred by article 11 (streets works), a utility undertaker is at liberty at all times to take all necessary access across any such street and to carry out and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary closure, alteration or diversion was in that street, subject to serving 7 days’ notice on the undertaker (save in cases of emergency).

Protective works to buildings

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

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this

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

(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).

Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 55 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 55, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 55 (arbitration).

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

Retained apparatus

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan 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 utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must—

- (a) be notified to the undertaker within a period of 21 days beginning with the date on which the plan and description under sub-paragraph (1) are submitted to it;
- (b) not constitute a breach of this Order; and
- (c) not impose requirements with which the undertaker is unable to comply through the exercise of the powers conferred by this Order.

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

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

(6) 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 utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (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 situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 55 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount

which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

10.—(1) Subject to the provisions of this paragraph, if by reason or in consequence of the construction of any of the works referred to in paragraph 5 or 6(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any unscheduled interruption in any service provided, or in the supply of any goods, by a utility undertaker, the undertaker must—

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

by reason or in consequence of any such damage or interruption.

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

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents; or
- (b) any part of the authorised development carried out by a utility undertaker in the exercise of any functions conferred on it by this Order pursuant to a transfer or grant under article 9 (consent to transfer benefit of Order).

(3) The utility undertaker must at all times take reasonable steps to prevent and mitigate any such expenses, loss, damage, penalty or costs.

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

(5) The undertaker's total limit of liability under this paragraph is £10,000,000.

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003;

“electronic communications apparatus” means the code set out in Schedule 3A (the electronic communications code) to the 2003 Act(a);

“electronic communications code” has the same meaning as in section 106 (application of the electronic communications code)(b) of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

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

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

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

13. The exercise of the powers of article 39 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

14.—(1) Subject to sub-paragraphs (2) to (5), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

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

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

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker 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) The undertaker’s total limit of liability under this paragraph is £10,000,000.

(5) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 55 (arbitration).

15. This Part of this Schedule, and Part 10 of the electronic communications code, does not apply to—

(a) Schedule 3A was inserted by section 4 of and Schedule 1 to the Digital Economy Act 2017 (c. 30).
(b) Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).
(c) The electronic communications code was inserted by Schedule 1 to the Digital Economy Act 2017.

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

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

PART 3

FOR THE PROTECTION OF PORTSMOUTH WATER

Application

17. For the protection of Portsmouth Water, the following provisions, unless otherwise agreed in writing between the undertaker and Portsmouth Water, have effect.

Interpretation

18. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Portsmouth Water to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) any mains, pipes, pumping stations, connections, reservoirs or any other ancillary apparatus or installation belonging to or maintained by Portsmouth Water for the purposes of water supply, water removal or drainage;
- (b) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991; and
- (c) includes any pumps or other accessories forming part of any such 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;

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

“specified works” means any of the authorised development which—

- (a) will or may be situated over, or within X metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 22(2) (removal of apparatus) or otherwise; or
- (b) may adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 22(2) or otherwise.

Precedence of the 1991 Act in respect of apparatus in streets

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

Apparatus in closed streets

20. Regardless of the temporary closure or diversion of any street under the powers conferred by article 16 (temporary closure etc., of public right of way), Portsmouth Water is at liberty at all times to take all necessary access across any such closed street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that street subject to serving 7 days' notice on the undertaker (save in cases of emergency).

Protective works to buildings

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

(2) Where the undertaker proposes to provide to Portsmouth Water an alternative means of access to any apparatus in compliance with sub-paragraph (1), the powers conferred by article 22 must not be exercised until Portsmouth Water has approved the proposed alternative means of access (such approval not to be unreasonably withheld or delayed). Such approval will be provided within 21 days of the details of the alternative means of access to apparatus being provided to Portsmouth Water or such other period as may be agreed between the undertaker and Portsmouth Water.

Removal of apparatus

22.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in respect of the specified works which any apparatus is placed or requires that Portsmouth Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of Portsmouth Water 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 Portsmouth Water in accordance with sub-paragraphs (1) to (3).

(2) If, for the purpose of executing any specified works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Portsmouth Water 42 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed location of the alternative apparatus and accesses 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 Portsmouth Water reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Portsmouth Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Portsmouth Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for Portsmouth Water to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Portsmouth Water and the undertaker or in default of agreement settled in accordance with article 55 (arbitration).

(5) Portsmouth Water must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 55, and after the grant to Portsmouth Water of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently

to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

23.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Portsmouth Water facilities and rights for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Portsmouth Water or in default of agreement settled in accordance with article 55 (arbitration).

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

(3) In settling those terms and conditions in respect of alternative apparatus, the arbitrator will—

- (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 the 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 or on the land for which the alternative apparatus is to be substituted.

Retained apparatus

24.—(1) Not less than 28 days before starting the execution of any specified works in, on or under any land purchased, held, appropriated or used pursuant to the powers of this Order that are near to, or will, or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 22, the undertaker must submit to Portsmouth Water for approval a plan of the specified works to be executed for approval by Portsmouth Water.

(2) Prior to submitting a plan of the specified works to be executed under sub-paragraph (1), the undertaker must consult with the Portsmouth Water in relation to its proposals for the specified works and share a draft plan of the works for the Portsmouth Water to review and provide feedback no later than 28 days after receiving the draft plan and as part of that feedback the Portsmouth Water may request that testing or surveys are undertaken prior submitting the plan of works under sub-paragraph (1).

(3) The undertaker must not commence the works outlined in sub-paragraph (1) until the plan of works has been approved by Portsmouth Water (such approval not to be unreasonably withheld or delayed). Approval will be provided within 21 days of the plan of works being submitted under sub-paragraph (1) or such other period as the undertaker and Portsmouth Water otherwise agree except where sub-paragraph (4) is engaged.

(4) If Portsmouth Water does not approve the plan of works submitted under sub-paragraph (1), it may request reasonable amendments to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted, and may require the undertaker to re-submit the plan of works for approval to Portsmouth Water. Portsmouth Water must advise the undertaker within 14 days of submission of the revised plan of works whether it is approved.

(5) Those works must be executed only in accordance with the plan, submitted and approved under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by Portsmouth Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Portsmouth Water is entitled to watch and inspect the execution of those works.

(6) If the revised plan of works is not approved within 14 days, either the undertaker or Portsmouth Water may require a meeting to be held within 28 days of submission of the revised plan of works between the chief engineers or a suitably qualified alternative representative of the undertaker and Portsmouth Water to agree the plan of works.

(7) If the undertaker and Portsmouth Water fail to reach an agreement on the plan of works, the dispute must be resolved in accordance with article 55 (arbitration).

(8) If Portsmouth Water in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 27 to apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

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

(10) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Portsmouth Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements in so far as is reasonably practicable in the circumstances.

Expenses and costs

25.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Portsmouth Water the reasonable expenses incurred by Portsmouth Water in, or in connection with, the inspection, surveying, testing, identification, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in connection with the specified works.

(2) For the purposes of sub-paragraph (1), the identification of any apparatus will include any surveys and investigations as may be reasonably necessary to identify the specific location of Portsmouth Water's apparatus.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined in accordance with article 55 (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 Portsmouth Water in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(5) For the purposes of sub-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 pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to Portsmouth Water in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus that has reached the end of its design life so as to confer on Portsmouth Water 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.

26.—(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 22(1) 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 Portsmouth Water, or there is any interruption in any service provided, or in the supply of any goods, by Portsmouth Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Portsmouth Water in making good such damage or restoring the supply; and
- (b) provide reasonable compensation to Portsmouth Water for any other expenses, loss, damages, penalty or costs incurred by Portsmouth Water, 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 Portsmouth Water, its officers, servants, contractors or agents.

(3) Portsmouth Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The undertaker's total limit of liability under this paragraph is £10,000,000.

Access

27.—(1) If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is obstructed or rendered materially less convenient (in Portsmouth Water's opinion, acting reasonably) the undertaker must provide such alternative means of access to such apparatus as will enable Portsmouth Water to maintain or use the apparatus no less effectively or conveniently than was possible before such obstruction. Such approval will be provided within 21 days of the details of the alternative means of access to apparatus being provided to Portsmouth Water or such other period as may be agreed between the undertaker and Portsmouth Water.

(2) Where the undertaker proposes to provide to Portsmouth Water an alternative means of access to any apparatus in compliance with sub-paragraph (1), the powers conferred by the Order must not be exercised until Portsmouth Water has approved the proposed alternative means of access (such approval not to be unreasonably withheld or delayed).

Enactments and agreements

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

Conflicting development

29. Portsmouth Water must not take any steps in relation to any land within the Order limits that would materially prevent the undertaker from carrying out the authorised development, including by procuring or entering into any arrangements with a third party to carry out any work or operation on, in, under or over any such land, without the undertaker's agreement (not to be unreasonably withheld).

Arbitration

30. For the avoidance of doubt any difference under any provision of this Part of this Schedule, unless otherwise provided for, must be referred to and settled by arbitration in accordance with article 55 (arbitration), by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

PART 4

FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITIES

Application

31. The provisions of this Part of this Schedule—

- (a) have effect unless otherwise agreed in writing between the appropriate Council and the undertaker; and
- (b) do not apply to highway operations in respect of which the relationship between the undertaker and the appropriate Council are regulated by Part 3 (street works in England and Wales) of the 1991 Act.

Interpretation

32. In this Part of this Schedule—

“appropriate Council” means—

- (a) the Hampshire County Council, in relation to any part of the authorised development constructed in the area of that council; and
- (b) the Portsmouth City Council, in relation to any part of the authorised development constructed in the area of that council;

“highway” means a street vested in or maintainable by the appropriate Council as highway authority under the 1980 Act;

“highway operations” means the construction of any part of the authorised development which will involve the interference with a highway or the traffic in a highway and any temporary closure, alteration or diversion of a highway; and

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of constructions).

Approval of plans etc.,

33. Without affecting the application of sections 59(a) and 60(b) of the 1991 Act (duty of street authority to co-ordinate and undertakers to co-operate) before commencing any highway operations, the undertaker must submit to the appropriate council for its approval, such approval not to be unreasonably withheld or delayed, proper and sufficient plans and must not commence the highway operations until such plans have been approved or settled by arbitration.

34. If, within 56 days after any plans have been submitted to the appropriate Council under paragraph 33, it has not intimated its disapproval and the grounds of disapproval, it is deemed to have approved them.

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

(b) As amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.

35. In the event of any disapproval of plans by the appropriate Council under paragraph 33, the undertaker may re-submit the plans with modifications and, in that event, if the appropriate Council has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it is deemed to have approved them.

36. So much of the authorised development as forms part of or is intended to become a highway, or part of any such highway, and which are not street works as respects which the provisions of Part 3 (street works in England and Wales) of the 1991 Act apply, must be completed in accordance with the reasonable requirements of the appropriate Council which is to become the highway authority, except where compliance with those requirements would constitute a breach of this Order or where the undertaker would be unable to comply with those requirements through the exercise of the powers conferred by this Order, or, in case of difference between the undertaker and the appropriate Council as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration.

Conduct of highway operations

37. The undertaker must not, except with the consent of the appropriate Council, deposit any soil, subsoil or materials or stand any vehicle or plant on any highway (except on so much of it as is for the time being temporarily closed, altered or diverted or occupied under the powers conferred by this Order) so as to obstruct the use of the highway by any person or, except with the same consent, deposit any soil, subsoil or materials on any highway except within a hoarding.

38. The undertaker must, if reasonably so required by the appropriate Council, provide and maintain during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular traffic or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with the standard recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs Regulations and General Directions 1994^(a) in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

Indemnity

39.—(1) Subject to the provisions of this paragraph, the undertaker must indemnify the appropriate Council against any claim which may arise as a result of any subsidence of, or damage to, any highway or any retained sanitary convenience, refuge, sewer, drain, lamp column, traffic sign, bollard, bin for refuse or road materials or associated apparatus or any other property or work belonging to, or under the jurisdiction or control of, or maintainable by, the appropriate Council on or under any highway which may be caused by, or in consequence of, any act or default of the undertaker, its contractors, servants or agents but the appropriate Council must give to the undertaker reasonable notice of any such claim and no settlement or compromise of it may be made without the undertaker's prior consent and, if the undertaker withholds such consent, the undertaker will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(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 the appropriate Council, its officers, contractors, servants or agents.

(3) The undertaker's total limit of liability under this paragraph is £10,000,000.

(a) S.I. 1994/1519.

Approval to be given in writing

40. Wherever in this Part of this Schedule provision is made with respect to the approval or consent of the appropriate Council, that approval or consent must be in writing and may be given subject to such reasonable terms and conditions as the appropriate Council may require in the interests of safety and in order to minimise inconvenience to persons using the highway, but must not be unreasonably withheld.

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

41.—(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 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(a);

“Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” is construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“emergency” means an occurrence which presents an immediate risk—

(a) to health, life, property or environment from serious flooding;

(b) to health, life, property or environment from serious detrimental impact on drainage; or

(c) an incident which is likely to cause serious harm to a species or habitat;

“exempt flood risk activity” has the meaning given in regulation 5 of the 2016 Regulations;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning given in section 113 of the Water Resources Act 1991(b);

“non-tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the 2016 Regulations;

“plans” includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“sea defence” means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency’s area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949(c) or by any local authority or any navigation, harbour or conservancy authority;

(a) S.I. 2016/1154.

(b) 1991 c. 57. The definition of “main river” has been amended by section 59(3) of the Water Act 2014 (c. 21).

(c) 1949 c. 74.

“specified work” means so much of any work or operation authorised by this Order that is not an exempt flood risk activity as is in, on, under, over or within—

- (a) 16 metres of the base of a sea defence which is likely to—
 - (i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence, or
 - (ii) interfere with the Agency’s access to or along that sea defence or the Agency’s ability to undertake works to ensure the efficacy of that sea defence;
- (b) 8 metres of the base of a remote defence which is likely to—
 - (i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or
 - (ii) interfere with the Agency’s access to or along that remote defence;
- (c) 16 metres of a drainage work involving a tidal main river;
- (d) 8 metres of a drainage work involving a non-tidal main river;
- (e) any distance of a drainage work and is otherwise likely to—
 - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
 - (ii) affect the flow, purity or quality of water in any main river or other surface waters;
 - (iii) cause obstruction to the free passage of fish or damage to any fishery;
 - (iv) affect the conservation, distribution or use of water resources; or
 - (v) affect the conservation value of the main river and habitats in its immediate vicinity,or which involves—
- (f) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and
- (g) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work; and

“tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the 2016 Regulations.

Submission and approval of plans

42.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 52.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been approved if it is neither given nor refused within 2 months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub-paragraph (1) the period between the making of this request and the provision of further particulars in response to it is not to be taken into account in the calculation of the 2 months for the purposes of this sub-paragraph; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or the prevention of environmental harm in the discharge of its environmental duties, except where compliance with those requirements would constitute a breach of this Order or where the

undertaker would be unable to comply with those requirements through the exercise of the powers conferred by this Order.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

43.—(1) Without limiting paragraph 42 the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work, except where compliance with those requirements would constitute a breach of this Order or where the undertaker would be unable to comply with those requirements through the exercise of the powers conferred by this Order.

Timing of works and service of notices

44.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 43, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Schedule

45.—(1) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2), the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice, and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified within the notice served.

(2) The risks specified in sub-paragraph (1) are—

- (a) risk of flooding;
- (b) risk of harm to the environment;
- (c) risk of detrimental impact on drainage;
- (d) damage to the fishery.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may

by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 52.

Maintenance of works

46.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 52.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

47. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

48. If by reason of the construction of any specified work or the failure of any such work, the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide suitable alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available as soon as reasonably practicable after the undertaker becomes aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

Free passage of fish

49.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage within the period specified in the notice.

(3) If, the undertaker fails to take such steps as are described in the notice served under sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

50.—(1) Subject to sub-paragraph (2), the undertaker indemnifies the Agency in respect of all reasonable costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

(2) The Agency must provide the undertaker for approval an estimate of anticipated costs, charges and expenses it may incur under sub-paragraph (1), in advance of commencing activities which may incur those costs.

51.—(1) Subject to the provisions of this paragraph, the undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads;
- (c) legal costs;

“losses” includes physical damage;

“claims” and “demands” include as applicable—

- (a) costs (within the meaning of this sub-paragraph) incurred in connection with any claim or demand;
- (b) any interest element of sums claimed or demanded; and

“liabilities” includes—

- (a) contractual liabilities;
- (b) tortious liabilities (including liabilities for negligence or nuisance);
- (c) liabilities to pay statutory compensation or for breach of statutory duty; and
- (d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed. The undertaker retains the right to take over conduct of any such claim on request.

(4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

(7) The undertaker’s total limit of liability under this paragraph is £10,000,000.

Disputes

52. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 55 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 6

FOR THE PROTECTION OF NATIONAL HIGHWAYS

Application

53.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly stated in this Order, nothing in this Order affects or prejudices the operation of the powers and duties of National Highways or the Secretary of State under the

Highways Act 1980, the Road Traffic Regulation Act 1984, the New Roads and Street Works Act 1991, the Transport Act 2000(a), or Town and Country Planning (General Permitted Development) (England) Order 2015.

(3) This Part of this Schedule does not apply where the relationship between National Highways and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Interpretation

54.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) below the latter prevail.

(2) In this Part of this Schedule—

“administration fee” means the fee payable pursuant to the provisions of this Part of this Schedule that represent the internal costs of National Highways in administering the implementation of the specified work and charged as a flat fee based on the value of the specified works only;

“as built information” means one digital copy of the following information—

- (a) as constructed drawings in both PDF and Auto CAD DWG formats for anything designed by the undertaker; in compliance with GG184 (Specification for the use of Computer Aided Design) or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) the health and safety file; and
- (k) such other such information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway’s Asset Data Management Manual as is in operation at the relevant time;

“condition survey” means a survey of the condition of National Highways’ structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“detailed design information” means drawings specifications and calculation as appropriate for the following—

- (a) regime of California Bearing Ratio testing;
- (b) earthworks including supporting geotechnical assessments required by CD622 (managing geotechnical risk) of the DMRB or any successor document and any required strengthened earthworks appraisal form certification;
- (c) proposed departures from DMRB standards;
- (d) utilities diversions;

(a) 2000 c.38.

- (e) topographical survey;
- (f) health and safety information including any asbestos survey required by GG105 (asbestos management) or any successor document; and
- (g) other such information that may be reasonably required by National Highways to inform the detailed design of a specified work;

“DMRB” means the Design Manual for Roads and Bridges or any replacement, revision or modification of it;

“the framework contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the trunk road which are within the Order limits or any successor or replacement contract that may be current at the relevant time;

“the highway operations and maintenance contractor” means the contractor appointed by National Highways under the framework contract;

“highways structure” means structures or installations within the scope of the DMRB and that are situated under, over or adjacent to a motorway or other trunk road;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of a specified work as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of a specified work;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“specified work” means so much of any work authorised by this Order, including any maintenance of that work, as is in or under a trunk road; and

“trunk road” for the purpose of these protective provisions means any highway for which National Highways is the highway authority.

General

55. References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Prior approvals

56.—(1) No specified work may commence until—

- (a) the programme of works has been approved by National Highways;
- (b) the following details relating to the specified work have been submitted to and approved by National Highways—
 - (i) the detailed design information;
 - (ii) details of any proposed road space bookings with National Highways;
 - (iii) (if details have been supplied pursuant to sub-paragraph (ii) above) a scheme of traffic management; and
 - (iv) the identity of the contractor and nominated persons;
- (c) where relevant, a scheme of traffic management has been submitted by the undertaker and approved by National Highways (such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time);

- (d) any further information that National Highways may reasonably request within 14 days of the submission of the detailed design of a specified work has been supplied to National Highways; and
- (e) a condition survey, and a reasonable regime of monitoring the structures, assets and pavements that are the subject of the condition survey, has been submitted to and approved by National Highways.

(2) National Highways must prior to the commencement of a specified work inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways to consider the information required under sub-paragraph (1) and of the identity of the person or persons who are authorised to give consent or approval on behalf of National Highways for any matter requiring approval or consent in these provisions.

(3) Any approval of National Highways required by this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds for refusal;
- (c) is deemed to have been approved if it is neither given nor refused within 56 days of the submission of the relevant information (if further information is requested by National Highways any such request must be submitted to the undertaker within 28 days of the submission of the relevant information under this sub-paragraph and the provision of such further information by the undertaker will not be deemed to constitute a new application for approval pursuant to this paragraph); and
- (d) may be given subject to any reasonable condition as National Highways considers to be necessary for the protection of the trunk road provided that compliance with such conditions would not lead to a breach of this Order or any condition with which the undertaker would be unable to comply through the exercise of the powers conferred by this Order.

Construction of the specified works

57.—(1) Unless otherwise agreed in writing, the undertaker must give National Highways 28 days' notice in writing of the date on which the specified work will start.

(2) If the construction of any part of a specified work requires the booking of road space with National Highways, the undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out of the specified work and no specified work for which a road space booking with National Highways is required is to commence without a road space booking having first been secured from National Highways.

(3) Any specified work must be carried out to the reasonable satisfaction of National Highways (acting reasonably) in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 56(1) or as subsequently varied by agreement between the undertaker and National Highways;
- (b) where relevant, the DMRB, the Specification for Highways Works (contained within the Manual of Contract Documents for Highways Works) together with all other relevant standards as required by National Highways to include, inter alia, all relevant interim advice notes and any amendment to or replacement thereof for the time being in force save to the extent that any departures or exceptions from those standards apply which have been approved by National Highways; and
- (c) any reasonable conditions of National Highways notified by National Highways to the undertaker pursuant to paragraph 56(3)(d).

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to a specified work for the purposes of inspection and supervision of a specified work or method of construction of such work.

(5) If any specified work is constructed—

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway comprised in a trunk road, any highway structure or asset comprised in a trunk road or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule or put right any damage notified to the undertaker under this Part of this Schedule.

(6) If within 56 days of the date on which a notice under sub-paragraph (5) is served on the undertaker, the undertaker has failed to take steps to comply with the notice, National Highways may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 30 days of demand. Where the steps required to be taken pursuant to any notice require the submission of any information for the prior approval of National Highways under paragraph 56 of, the submission of that information will evidence that the undertaker has taken steps to comply with a notice served by National Highways under sub-paragraph (5).

(7) National Highways may, at its discretion, in its notice in writing to the undertaker given pursuant to sub-paragraph (6) state that National Highways intend to put right the damage notified to the undertaker, and if it intends to do so it must give the undertaker not less than 28 days' notice of its intention to do so and National Highways may recover from the undertaker any reasonable expenditure incurred by National Highways in doing so.

Payments

58.—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways reasonably incurs (including costs and expenses for using internal or external staff) in relation to any specified work and in relation to any approvals sought under this Order including—

- (a) the checking and approval of the information required under paragraph 56(1);
- (b) the supervision of a specified work;
- (c) contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any specified work, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of this paragraph, in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor;
- (d) the administration fee and legal costs, reasonably and properly incurred; and
- (e) any value added tax which is payable by National Highways only in respect of such costs and expenses arising under this sub-paragraph (1) and for which it cannot obtain reinstatement from HM Revenue and Customs,

sub-paragraphs (a) to (e) together comprising “the NH costs”.

(2) National Highways must provide the undertaker with an itemised schedule showing its estimate of the NH costs, including its estimate of the administration fee, prior to the commencement of the specified works and the undertaker must pay to National Highways an amount equal to the estimated sum prior to National Highways incurring any cost and prior to commencing the specified works.

(3) If at any time after the payment referred to in sub-paragraph (2) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs notified pursuant to sub-paragraph (2) it may give written notice to the undertaker of the amount that it believes the NH costs will exceed the estimate (“the excess”) and the undertaker must pay to National Highways within 30 days of the date of the notice a sum equal to the excess.

(4) National Highways must give the undertaker an itemised final account of NH costs referred to in sub-paragraph (1) within 30 days of the undertaker notifying to National Highways that a specified work has been completed.

(5) Within 30 days of the issue of the final account—

- (a) if the final account shows a further sum as due to National highways the undertaker must pay to National Highways the sum shown due to it; or
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

Indemnification

59.—(1) Subject to the provisions of this paragraph the undertaker must indemnify National Highways from and against all costs, expenses, damages, losses and liabilities suffered by National Highways arising from or in connection with any claim, demand, action or proceedings resulting from damage caused by the construction, maintenance or use of the specified works.

(2) Sub-paragraph (1) does not apply if the costs, expenses, damages, losses, liabilities or damages were caused by or arose out of the neglect or default of National Highways or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(3) If any person makes a claim or notifies an intention to make a claim against National Highways which may reasonably be considered likely to give rise to a liability under this paragraph then National Highways must—

- (a) as soon as reasonably practicable give the undertaker reasonable notice of any such third party claim or demand, specifying the nature of the indemnity liability reasonable detail; and
- (b) not make any admission of liability, agreement or compromise in relation to the indemnity liability without first consulting the undertaker and consider their representations.

(4) National Highways must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within National Highway's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Highway's control. If reasonably requested to do so by the undertaker, National Highways must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why.

(5) The undertaker's total limit of liability under this paragraph is £10,000,000.

Arbitration

60. Any difference or dispute arising between the undertaker and National Highways under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Highways, be determined by arbitration in accordance with article 55 (arbitration).

SCHEDULE 11

Articles 2 and 53

DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Reference</i>
access and rights of way plans	Access and Public Rights of Way plan	2.4
book of reference	Book of Reference	4.3
biodiversity gain plan	Biodiversity Gain Plan	7.11
Crown land plans	Crown Land plans	2.5
design principles	Design Principles Document	5.11
environmental statement	ES Vol I (Main Report) ES Vol II (Appendices) ES Vol III (Figures)	6.1 6.2 6.3
environmental statement figure 8.9 – UK Habitat Classifications for linear features and important hedgerows within the field survey area	Environmental Statement Figure 8.9 – UK Habitat Classifications for linear features and important hedgerows within the field survey area	6.3
framework construction traffic management plan	Framework Construction Traffic Management Plan	7.2
framework construction worker travel plan	Framework Construction Traffic Management Plan Appendix A – Framework Construction Worker Travel Plan	7.2
framework rights of way management plan	Framework Construction Traffic Management Plan Appendix B – Framework Rights of Way Management Plan	7.2
habitats management and monitoring plan	Biodiversity Gain Plan Appendix E – Outline Habitat Management and Monitoring Plan	7.11
habitats regulations assessment	Habitats Regulations Assessment – Stage 2 Appropriate Assessment and Marine Conservation Zone – Stage 1 Assessment	5.2
invasive non-native species biosecurity plan	Invasive Non Native Species (INNS) Biosecurity Plan	7.10
land plans	Land plans	2.2
operational environmental management plan	Operational Environmental Management Plan	7.7
outline carbon management plan	Outline Carbon Management Plan	7.8
outline construction environmental management plan	Outline Construction Environmental Management Plan	7.1

outline landscape and ecology management plan	Outline Landscape and Ecology Management Plan	7.5
outline skills and employment plan	Outline Skills and Employment Plan	7.9
outline water monitoring plan	ES Vol II - ES Appendix 19.9 Outline Water Monitoring Plan	6.2
outline written scheme of investigation	Outline Written Scheme of Investigation	7.6
sustainable drainage systems strategy	ES Vol II - ES Appendix 19.1 Flood Risk Assessment – Appendix G Sustainable Drainage Systems Strategy	6.2
traffic management strategy	Traffic Management Strategy	7.3
tree constraints plan	ES Vol II – ES Appendix 13.5 Arboricultural impact assessment – Appendix B Tree Constraints Plan	6.2
tree preservation orders plan	Tree Preservation Orders Plan	2.9
works plans	Works plans	2.3

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Southern Water Services Limited to construct, operate and maintain the Hampshire Water Transfer and Recycling Project. This is a scheme to recycle water at a new water recycling plant in Havant, for distribution in Southern Water Services Limited's water supply network, and to transfer it from Budds Farm Wastewater Treatment Works to Otterbourne Water Supply Works and associated works.

This Order would permit Southern Water Services Limited to acquire, compulsorily or by agreement, land and rights in and to use land for this purpose.

A copy of all documents mentioned in this Order and certified in accordance with article 53 (certification of plans, etc.) of this Order may be inspected free of charge during working hours at Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX.



from
Southern
Water. 

The Southern Water logo graphic consists of three white, stylized wavy lines that resemble water waves, positioned to the right of the word "Water".