

202[X] No. 0000

INFRASTRUCTURE PLANNING

The Hinckley National Rail Freight Interchange Order 202X

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 in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c) by a [Panel of [] members (the Panel) /single appointed person] appointed by the Secretary of State in accordance with Chapter [2/3] of Part 6 of the 2008 Act.

The [Panel/single appointed person], having considered the representations made and not withdrawn and the application with the accompanying documents, in accordance with section [74/83] of the 2008 Act has reported to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn and the report of the [Panel/single appointed person] has decided to make an Order granting development consent for the development described in the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

The Secretary of State in exercise of the powers conferred by section 114, 115, 117, 120 and 122 of, and Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1 PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Hinckley National Rail Freight Interchange Order 202[X] and comes into force on [] 202[].

(a) 2008 c. 29, Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20). Section 37 was amended by sections 128(2) and 137 of, and paragraphs 1 and 5 of Part 1 of Schedule 13 to, the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732 and S.I. 2013/522, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682 and S.I. 2017/572. There are other amendments to the Regulations which are not relevant to this Order.

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

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(a);
- “the 1965 Act” means the Compulsory Purchase Act 1965(b);
- “the 1980 Act” means the Highways Act 1980(c);
- “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(e);
- “the 1990 Act” means the Town and Country Planning Act 1990(f);
- “the 1991 Act” means the New Roads and Street Works Act 1991(g);
- “the 2008 Act” means the Planning Act 2008(h);
- “the 2010 Regulations” means the Community Infrastructure Levy Regulations 2010(i);
- “the 2017 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(j);
- “A47 link road” means the new road to be constructed as part of the authorised development between junction two of the M69 motorway and the B4668 Leicester Road being Works No. 7;
- “access and rights of way plans” means the plans of that description referred to in Schedule 16 (certification of plans and documents) and certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;
- “address” includes any number or address used for the purposes of electronic transmission;
- “apparatus” for the purposes of article 8 (street works) and article 34 (apparatus and rights of statutory undertakers in stopped up streets) has the same meaning as in Part 3 of the 1991 Act;
- “authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act and any works carried out under the requirements;
- “book of reference” means the document of that description referred to in Schedule 16 and certified as the book of reference by the Secretary of State for the purposes of this Order;
- “bridleway” has the same meaning as in the 1980 Act;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “carriageway” has the same meaning as in the 1980 Act;
- “chief officer of police” means the chief constable of Leicestershire Police Force or any successor in function;
- “commence” or “commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), as part of the authorised development unless the context indicates otherwise;
- “cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(k);

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- (a) 1961 c.33.
- (b) 1965 c.56.
- (c) 1980 c.66.
- (d) 1981 c.66.
- (e) 1984 c.27.
- (f) 1990 c.8.
- (g) 1991 c.22.
- (h) 2008 c. 29.
- (i) S.I. 2010/948 as amended by S.I. 2011/987, S.I. 2012/635, S.I. 2012/2975, S.I. 2013/982, S.I. 2014/385, S.I. 2015/377, S.I. 2015/644, S.I. 2015/836 and S.I. 2018/172.
- (j) S.I. 2017/572, amended by S.I. 2017/1012.
- (k) 1980 c. 66. The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

“development consent obligation” means the development consent obligation entered into by agreement under section 106 (planning obligations) of the 1990 Act^(a) dated [] in respect of the authorised development and any subsequent amendment to the obligation;

“electronic communications code” has the same meaning as in section 106 of the Communications Act 2003^(b);

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the Communications Act 2003; and

(a) an electronic communications network which the Secretary of State is providing or proposing to provide.

“environmental statement” means the document of that description referred to in Schedule 16 and certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“hedgerow” has the same meaning as in the Hedgerow Regulations 1997^(c);

“HGV” means any vehicle with an operational weight capable of exceeding 7.5 tonnes;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“highway classification plans” means the plans of that description referred to in Schedule 16 and certified as the highway classification plans by the Secretary of State for the purposes of this Order;

“highway plans” means the plans of that description referred to in Schedule 16 and certified as the highway plans by the Secretary of State for the purposes of this Order;

“highway works” means the works comprised in Works Nos. [] ;

“land plans” means the plans of that description referred to in Schedule 16 and certified as the land plans by the Secretary of State for the purposes of this Order;

“lead local flood authority” means Leicestershire County Council or any successor in function as lead local flood authority or equivalent body;

“level crossings” means the level crossings shown on the access and rights of way plans;

“local highway authority” means the highway authority for the relevant area;

“maintain” includes inspect, repair, adjust, alter, clear, refurbish or improve and any derivative of “maintain” is to be construed accordingly;

“main site” means that part of the land within the Order limits comprising the areas of land described on the works plans as Works Nos. 1 – 7 ;

“National Highways” means National Highways Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 of the Appointment of a Strategic Highways Company Order 2015^(d) or any successor in function;

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

“Order limits” means the limits shown on the works plans represented by a red line within which the authorised development may be carried out;

(a) 1990 c. 8. Section 106 was substituted by section 12(1) of the Planning and Compensation Act 1991 (c. 34) and was subsequently amended by section 33 of the Greater London Authority Act 2007 (c. 24), section 174 of the Planning Act 2008 (c. 29) and paragraphs 1 and 3 of Schedule 2 to the Growth and Infrastructure Act 2013 (c. 27).

(b) 2003 c. 21. Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

(c) S.I. 1997/1160.

(d) S.I. 2015/376.

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

“parameters plan” means the plan of that description referred to in Schedule 16 and certified as the parameters plan by the Secretary of State for the purposes of this Order;

“public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board or a lead local flood authority or a sewerage undertaker;

“railway” has the same meaning as in the 2008 Act;

“railway plans” means the plans of that description referred to in Schedule 16 and certified as railway plans by the Secretary of State for the purposes of this Order;

“relevant highway authority” means in any provision of this Order the highway authority for any area of land to which that provision relates;

“relevant planning authority” means as regards the operation and enforcement of any part of this Order the district planning authority within whose administrative boundary that part of the authorised development relevant to the operation or enforcement of the provision in question is situated;

“relevant street authority” means in any provision of this Order the street authority for any area of land to which that provision relates;

“relevant traffic authority” means in any provision of this Order the traffic authority for any area of land to which that provision relates;

“relocation works” means works executed, or apparatus provided, under paragraph (2) of article 35 (apparatus and rights of statutory undertakers in stopped up streets);

“requirements” means the requirements set out in Part 1 of Schedule 2 (requirements);

“speed limit plans” means the plans of that description referred to in Schedule 16 and certified as the speed limit plans by the Secretary of State for the purposes of this Order;

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

“statutory utility” means a statutory undertaker for the purposes of the 1990 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(b);

“strategic road network” means that part of the highway network comprising trunk roads and motorways;

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

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

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

“traffic officer” means a person designated under section 2 (designation of Traffic Officers) of the Traffic Management Act 2004(e);

“traffic regulation plans” means the plans of that description referred to in Schedule 16 and certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

“tribunal” means the Lands Chamber Upper Tribunal;

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- (a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.
- (b) 2003 c. 21. There are amendments to section 151 of the Communications Act 2003 which are not relevant to this Order.
- (c) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26).
- (d) 1984 c. 27. Section 121A was inserted by section 168(1) of, and paragraph 70 of Part II of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22), and was amended by section 1(b) of, and paragraphs 70 and 95(1) and (3) of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). There are other amendments to schedule 121A of the Act which are not relevant to this Order.
- (e) 2004 c. 18.

“tree preservation order” has the meaning given in section 198 of the 1990 Act(a);

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

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

“the undertaker” means—

- (a) Tritax Symmetry (Hinckley) Limited (company number 10885167) whose registered office is at Unit B, Grange Park Court, Roman Way, Northampton, NN1 5EA; and
- (b) in respect of the main site only, any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person;

“verge” means any part of the street which is not a carriageway;

“water authority” means Severn Trent Water Limited (company number 02366686) registered at Severn Trent Centre, 2 St John’s Street, Coventry, CV1 2LZ and any successor in function;

“warehousing” means the warehousing constructed as part of the authorised development;

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

“the works plans” means the plans of that description referred to in 16 and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

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

(4) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development) and references to numbered requirements are to the requirements as numbered in Part 1 of Schedule 2 (requirements).

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

(6) Where the term approximate precedes a figure of measurement or quantum then the flexibility accorded by that word is limited by the parameters and the limits of deviation as described in article 4 and does not authorise any works which would result in significant environmental effects which have not been assessed in the environmental statement.

(7) Where in this Order a document or a plan is referred to by reference to a document number, the reference is to the document or plan of that number referred to in Schedule 16.

(a) 1990 c. 8. Section 198 was amended by sections 192(1), (2)(a), (b) and (c), and section 238 of, and paragraphs 7 and 8 of Schedule 8, and Schedule 13 to, the Planning Act 2008 (c. 29), and sections 31, 32, 84 of, and paragraph 20 of Schedule 6, paragraph 34 of Schedule 7 and Schedule 19, and Parts I and II of, the Planning and Compensation Act 1991 (c. 34) and section 42(3) of the Planning and Compulsory Purchase Act 2004 (c. 5).

(b) 1980 c. 66. Section 10 was amended by section 22(2)(a), (b) and (cc) of the New Roads and Street Works Act 1991 (c. 22), section 1(6) of, and paragraphs 1, 10(1)-(4) of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7), section 36 of, and paragraphs 21 and 22 of Schedule 2 to, the Planning Act 2008 (c. 29). Section 19(1) was amended by section 1(6) of, and paragraphs 1 and 15 of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

PART 2

PRINCIPAL POWERS

Development consent granted by the Order

3. Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out and used within the Order limits.

Parameters of authorised development

4. The authorised development is to be carried out within the parameters shown and described on the parameters plan and in carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in respect of the highway works deviate vertically from the levels shown on the highway plans to a maximum of 1.5 metres upwards or downwards;

except that these maximum limits described in (a) and (b) do not apply to constrain the authorised development when it is demonstrated by the undertaker, on application, to the relevant planning authority's satisfaction, and the relevant planning authority certifies accordingly, that a deviation in excess of these limits would not be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement.

Authorisation of use

5. Subject to the provisions of this Order and to the requirements, the undertaker and any persons authorised by the undertaker may operate and use that part of the authorised development comprised in Works Nos. 1 – 7 inclusive for the purposes of a rail freight terminal and warehousing, any purposes for which such parts of the authorised development is designed and for any purposes ancillary to those purposes.

Maintenance of authorised development

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

(2) Paragraph (1) does not apply to the highway works the maintenance of which is governed by article 14 (maintenance of highway works) and Parts 2 and 3 of Schedule 14 (protective provisions).

(3) Paragraph (1) does not extend to any maintenance works which would be likely to give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

Benefit of Order

7.—(1) Subject to paragraphs (2), (3) and (4) the undertaker shall have the benefit of the Order.

(2) Tritax Symmetry (Hinckley) Limited, has the sole benefit of the provisions of Part 5 (powers of acquisition) unless the Secretary of State consents to the transfer of the benefit of those provisions.

(3) Tritax Symmetry (Hinckley) Limited has the sole benefit of the powers conferred by this Order to carry out the highway works in accordance with the provisions of Parts 2 and 3 of Schedule 14 (protective provisions) unless—

- (a) the Secretary of State consents to the transfer of the benefit of those provisions; or

- (b) the provisions of paragraph 4(6) of Part 2 or paragraph 4(6) of Part 3 of Schedule 13 apply in which case the relevant highway authority shall have the benefit of the powers to carry out the relevant highway works.

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

PART 3 STREETS

Street works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) construct bridges and tunnels;
- (f) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (g) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (h) reduce the width of the carriageway of the street;
- (i) make and maintain crossovers and passing places; and
- (j) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (i).

(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 and is subject to the provisions of Parts 2 and 3 of Schedule 14 (protective provisions).

Power to alter layout, etc., of streets

9.—(1) Subject to paragraph (2), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the main site and the layout of any street at its junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

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

(2) The powers conferred by paragraph (1) must not be exercised without the consent of the local highway authority but such consent must not be unreasonably withheld and if the local highway authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

Permanent stopping up of streets

10.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently each of the streets specified in columns (1) and (2) of Schedule 4 (streets to be permanently stopped up) to the extent specified, by reference to the letters shown on the access and rights of way plan, in column (3) of the Schedule.

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

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

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

(4) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).

(5) Any stopping up carried out under this article must be carried out in accordance with any relevant provisions of Schedule 14 (Protective provisions).

Temporary closure of streets

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

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

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

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

(4) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily close, alter or divert any street without the consent of the relevant street authority which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of higher standard than the temporarily closed street.

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

(7) If a street authority which receives an application for consent under paragraph (5) accompanied with all relevant information fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was submitted with all relevant information, it is deemed to have granted consent.

Public rights of way – creation, substitution, stopping up and closure of level crossings

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

- (a) stop up each of the public rights of way specified in columns (1) and (2) of Part 1 of Schedule 5 (public rights of way to be permanently stopped up for which a substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule;

- (b) provide the substitute public rights of way described in column (4) of Part 1 of Schedule 5 between the specified terminus points and where specified, on a detailed alignment to be agreed with the local highway authority at the stage of the authorised development identified in column (5) of that Part of that Schedule;
- (c) temporarily stop up public rights of way specified in columns (2) and (3) of Part 4 of Schedule 5 (public rights of way to be temporarily stopped up) or to the extent agreed with the relevant highway authority and provide substitute temporary public rights of way on an alignment to be agreed with the local highway authority prior to the temporary stopping up of the public right of way concerned; and
- (d) stop up each of the public rights of way specified in columns (1) and (2) of Part 2 of Schedule 5 (public rights of way to be permanently stopped up for which no substitute is to be provided) to the extent specified in column (3) of that Part of that Schedule at the stage of the authorised development identified in column (4) of that Part of that Schedule.

(2) No public right of way specified in columns (1) and (2) of Part 1 of Schedule 5 may be wholly or partly stopped up under this article unless the permanent substitute public rights of way referred to in column (4) of Part 1 of Schedule 5 or an alternative temporary substitute public right of way agreed by the local highway authority has first been provided by the undertaker, to the reasonable satisfaction of the local highway authority.

(3) Any temporary substitute right of way must be maintained by the undertaker with appropriate signage until the completion and opening of the permanent substitute public right of way specified in column (4) of Part 1 of Schedule 5.

(4) The undertaker must in connection with carrying out of the authorised development provide the new public rights of way specified in columns (1) and (2) of Part 3 of Schedule 5 (new public rights of way to be created) to the extent specified in column (3) of that Part of that Schedule at the stage of the authorised development in column (4) of that Part of that Schedule.

(5) Subject to the provisions of this article the level crossings shall be stopped up and discontinued at the relevant stage of the authorised development specified in Parts 1 and 2 Schedule 5.

Accesses

13.—(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or the relevant street authority as appropriate (such consent not to be unreasonably withheld), form and lay out such means of access (permanent or temporary) 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.

(2) The agreement of the relevant highway authority or the relevant street authority as appropriate is not required for the formulation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 14 (protective provisions).

(3) If a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

(4) The private means of access as set out in column (2) of Part 1 of Schedule 6 (private means of access to be replaced) may be removed by the undertaker and if removed must be replaced by the means of access as set out in column (3) of Part 1 of Schedule 6 at the stage of the authorised development identified in column (4) of that Part of that Schedule.

(5) The private means of access as set out in column (2) of Part 2 of Schedule 6 (private means of access to be closed for which no substitute is to be provided) may be closed by the undertaker at the stage of the authorised development identified in column (3) of that Part of that Schedule without a substitute being provided.

(6) The undertaker must provide the private means of access as set out in column (2) of Part 3 of Schedule 6 (new private means of access created) at the stage of the authorised development identified in column (3) of that Part of that Schedule.

Maintenance of highway works

14.—(1) The highway works must be completed in accordance with the provisions of Parts 2 and 3 of Schedule 14 (protective provisions).

(2) With effect from the date of the handover certificate referred to in paragraph 7 of Part 2 of Schedule 14 the highway works to which that certificate relates will be maintained by and at the expense of National Highways.

(3) With effect from the date of the final certificate referred to in paragraph 7 of Part 3 of Schedule 14 the highway works to which that certificate relates will be maintained by and at the expense of the local highway authority.

(4) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 6 of Part 2 of Schedule 14 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(5) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 6 of Part 3 of Schedule 14 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.

(6) For the purposes of this article, the definition of “maintain” in article 2 shall not apply and the word “maintain” shall be given its ordinary meaning when applied to highways.

Classification of highways

15.—(1) The new highways described in Schedule 7 (new highways) are to be—

- (a) classified as set out in column (3) of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such; and
- (b) provided for the use of the classes of traffic defined in Schedule 4 (classes of traffic for purposes of special roads) to the 1980 Act as set out in column (4) of Schedule 7.

(2) From the date on which the undertaker notifies the Secretary of State that the new highways described in Schedule 7 have been completed as evidenced by issue of the provisional certificate in accordance with paragraph 6 of Part 2 and paragraph 6 of Part 3 of Schedule 14 (protective provisions) or are open for through traffic, whichever is the earliest—

- (a) the body set out in column (5) of Schedule 7 is the highway authority for those highways; and
- (b) the new highways identified as special roads in column (3) of Schedule 7 are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

Speed limits

16.—(1) The orders referred to in columns (1) and (2) of Part 1 of Schedule 8 (existing orders) are revoked or varied as set out in column (3) of Part 1 of Schedule 8 upon the event listed in column (4) occurring.

(2) Upon the event listed in column (3) of Part 2 of Schedule 8 (highways subject to 40 mph speed limit) no person is to drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of highway identified in column (2) of Part 2 of Schedule 8.

(3) Upon the event listed in column (3) of Part 3 of Schedule 8 (derestricted highways) the lengths of highway specified in column (2) of Part 3 of Schedule 8 shall cease to be restricted highways for the purpose of section 81 of the 1984 Act.

(4) Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation, or maintenance of the authorised development, impose a temporary speed limit either at all times or at times, on days or during such periods, and on such highways as may be specified by the undertaker.

(5) The undertaker must not exercise the powers in paragraph (4) unless it has given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority.

(6) The speed limits imposed by this Order are deemed to have been imposed by an order under the 1984 Act and—

- (a) have the same effect; and
- (b) may be varied by the relevant traffic authority in the same manner,

as any other speed limit imposed by an order under that Act.

(7) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011^(a) when used in accordance with regulation 3(5) of those Regulations.

Traffic regulation

17.—(1) Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation, or maintenance of the authorised development—

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

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

(2) The undertaker shall not exercise the powers in paragraph (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and
- (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority's receipt of notice of the undertaker's intention under sub-paragraph (a).

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

- (a) have effect as if duly made by, as the case may be—
 - (i) the relevant traffic authority as a traffic regulation order under the 1984 Act; or
 - (ii) the local highway authority as an order under section 32 of the 1984 Act^(b); and
- (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement).

(4) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (3) at any time.

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

(a) S.I. 2011/935.

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

(6) If the relevant traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (3) that is accompanied by all relevant information the relevant traffic authority shall be deemed to have given consent.

Clearways and no waiting

18.—(1) Subject to paragraphs (3) and (4), following the event specified in column (3) of Part 1 of Schedule 9 (clearways), no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait on any part of a carriageway specified in columns (1) and (2) of Part 1 of Schedule 9, other than a lay-by.

(2) Subject to paragraphs (3) and (5), following the event specified in column (3) of Part 2 of Schedule 9 (no waiting at any time), no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait at any time on any day on the sides of the carriageway specified in columns (1) and (2) of that Part of that Schedule or its adjacent verge.

(3) Nothing in paragraphs (1) and (2) applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of the carriageway or verge, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the carriageway or verge;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the carriageway or verge of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A to the Communications Act 2003(a); or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

(i) for police, ambulance, fire and rescue authority or traffic officer purposes;

(ii) in the service of a local authority, National Highways, a safety camera partnership or the Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(c); or

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person's control.

(4) Nothing in paragraph (1) applies to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispersed.

(5) Nothing in paragraph (2) applies—

(a) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary—

(i) to enable a person to board or alight from the vehicle;

(ii) to enable goods to be loaded on to or unloaded from the vehicle; or

(a) 2003 c. 21.

(b) 1991 c. 56.

(c) 2000 c. 26.

- (iii) to enable goods to be sold from the vehicle provided such goods are immediately delivered at, or taken into, premises adjacent to the vehicle from which the sale is effected;
- (b) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary to enable that vehicle, if it cannot conveniently be used for such purpose without waiting on such verge, to be used in connection with any building operation or demolition, the removal of any obstruction or potential obstruction to traffic, the maintenance, improvement or reconstruction of such verge or of a carriageway immediately adjacent to such verge or the erection, laying, placing, maintenance, testing, alteration, repair or removal of any structure, works or apparatus in, on, under or over that verge or carriageway;
- (c) to a vehicle waiting on any verge specified in paragraph (2) while any gate or other barrier at the entrance to premises to which the vehicle requires access or from which it has emerged is opened or closed.

(6) Paragraphs (1) to (5) have effect as if made by a traffic regulation order under the 1984 Act and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

Agreements with highway authorities

19.—(1) A relevant highway authority and the undertaker may enter into agreements related to the authorised development with respect to—

- (a) the construction, and/or maintenance of any new highway, including any structure carrying the highway over the existing railway and any railway authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any highway under the powers conferred by this Order;
- (c) the maintenance of landscaping within a highway constructed as part of the highway works;
- (d) the maintenance of highway related assets which fall outside of the extent of highway maintained by a relevant highway authority;
- (e) any stopping up, alteration or diversion of a highway as part of or to facilitate the authorised development;
- (f) the carrying out in the highway of any of the works referred to in article 8 (street works); or
- (g) the erection of signage in connection with the authorised development

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

- (a) make provision for the relevant highway authority to carry out any function under this Order which relates to the highway in question;
- (b) include an agreement between the undertaker and relevant highway authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

20.—(1) Subject to paragraphs (3), (4), (5) and (6) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

(4) No water may be discharged into a watercourse that flows into the highway drainage system without the consent of the relevant highway authority and such consent may be given subject to such terms and conditions as the relevant highway authority consider appropriate such consent not to be unreasonably withheld or delayed.

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

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

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

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

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

(8) All expressions excluding “watercourse” and “public sewer or drain”, which are used both in this article and in the Water Resources Act 1991 have the same meaning as in the Act.

(9) If a person who has received an application for consent under paragraph (3) or approval under paragraphs (4), (5) or (6)(a) fails to notify the undertaker of its decision within 42 days of receiving the application submitted with all relevant information, that person is deemed to have granted consent or given approval as the case may be.

Authority to survey and investigate the land

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

(a) survey or investigate the land;

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

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

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

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 28 days’ notice has been served on every owner, who is not the undertaker, and occupier of the land.

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

(a) must, if so required, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(a) 1991 c.56. Section 106 was amended by section 35(1) and (8) and section 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43) and, sections 36(2) and 99 of the Water Act 2003 (c. 37) (subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641) 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 which are not relevant to this Order.

- (4) No trial holes may be made under this article—
- (a) in land located within the highway boundary without the consent of the relevant highway authority; or
 - (b) in a private street without the consent of the relevant street authority;

but such consent must not be unreasonably withheld.

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

(6) If either a highway authority or a street authority which has received an application for consent under paragraph (4) that includes all relevant information fails to notify the undertaker of its decision within 42 days of receiving the application the authority is deemed to have granted the consent.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) As from the date on which a notice to treat and notice of entry is served under Part 1 of the 1965 Act or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all leases, licences, easements, rights, trusts, liberties, privileges, advantages, restrictions, covenants and incidents to which it was previously subject.

(3) This article is subject to article 24(2) (compulsory acquisition of rights), article 26 (time limit for exercise of authority to acquire land compulsorily), and article 32(9) (temporary use of land for carrying out the authorised development).

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

Compulsory acquisition of land – incorporation of the mineral code

23.—(1) 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”; and
- (c) for “undertaking” substitute “authorised development”.

Compulsory acquisition of rights

24.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 11 (land in which only new rights, etc. may be acquired), the undertaker’s powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of such restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of, and Schedule 2A (counter notice requiring purchase of land not in notice to treat) to, the 1965 Act (as substituted by Schedule 12 (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants)), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 12 has effect for the purpose of modifying the enactments referred to in that Schedule in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Power to override easements and other rights

25.—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether 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 use of the land arising by virtue of a contract.

(2) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(3) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking.

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provisions as to compensation for injurious affection) of the 1965 Act^(a); and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection 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.

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

(7) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

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

(a) 1965 c. 56. Section 10 was amended by article 5(1) and (2) of, and paragraphs 59 and 63 of Schedule 1 to, S.I. 2009/1307.

- (a) is liable to pay compensation; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(9) For the purposes of this article, “authorised activity” means—

- (a) the erection, construction, carrying out or maintenance of any building or works on land;
- (b) the erection, construction or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

Time limit for exercise of authority to acquire land compulsorily

26.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act (as modified by article 31 (modification of Part 1 of the 1965 Act); and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration) as applied by article 30 (application of the 1981 Act).

(2) The authority conferred by article 32 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession was taken before the end of that period.

Private rights

27.—(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) as from the date of the acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

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

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker within the Order limits which are required to be interfered with or breached for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation in accordance with the terms of section 152

(compensation where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 34 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of rights over land;
- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it;

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

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

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

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

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

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

Rights under or over streets

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

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

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

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

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

(5) Compensation is not payable under paragraph (4) to any person who is a statutory 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.

(6) Paragraph (1) does not apply to any street which is part of the strategic road network.

Application of the 1981 Act

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

- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act) for subsection (2) there is substituted—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order”.
- (4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “and this subsection” to the end.
- (5) Omit section 5A (time limit for general vesting declaration).
- (6) In section 5B (extension of time limit during challenge) for subsection (1) there is substituted—
- “(1) If an application is made under section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 30 of the Hinckley National Rail Freight Interchange Order 202X is to be extended by—
- (a) a period equivalent to the period beginning with the day the application is made and ending on the day it is withdrawn or finally determined, or
- (b) if shorter, one year”.
- (7) In section 6 (notices after execution of declaration) for subsection (1)(b) there is substituted—
- “(1)(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat) in subsection (1)(a), “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted.
- (9) In Schedule 2A (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2) and 14(2).
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 32 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Modification of Part 1 of the Compulsory Purchase Act 1965

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

- (2) In section 4A(1)(a) (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)” ; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 27 of the Hinckley National Rail Freight Interchange 202X”.
- (3) In section 22 (2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act substitute “article 27 of the Hinckley National Rail Freight Interchange Order 202X”.
- (4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) 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 article 32 (temporary use of land for carrying out the authorised development) or 33

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

(temporary use of land for maintain the authorised development) of the Hinckley National Rail Freight Interchange Order 202X”

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights or restrictive covenants only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct any permanent or temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access in connection with the authorised development;
- (e) construct or carry out any works (including mitigation works or operations) or use the land for the purpose of the authorised development.

(2) Not less than fourteen 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.

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

- (a) in the case of land specified in paragraph (1)(a)(i) above, after the end of the period of 1 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 [10]; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land or has otherwise acquired the land subject to temporary possession.

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

- (a) replace a building removed under this article;
- (b) remove or reposition any apparatus belonging to statutory undertakers or any necessary mitigation works; or
- (c) restore the land on which any permanent works have been constructed under paragraph (1)(c).

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

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

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

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

(9) Unless provided for in the book of reference and article 23 (compulsory acquisition of land) the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

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

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

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

Temporary use of land for maintaining the authorised development

32.—(1) Subject to paragraph (2) and Parts 2 and 3 of Schedule 14 (protective provisions), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

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

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

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

(3) Not less than twenty eight 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.

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

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

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

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

(8) 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 maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

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

Statutory undertakers

33.—(1) Subject to Schedule 14 (protective provisions), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers;
- (b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and at other like bodies within the Order limits; and
- (c) extinguish the rights of, remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order limits.

(2) In this article, a reference to statutory undertaker includes a reference to a public communications provider (as defined in article 36 (4) (recovery of costs of new connections)).

Apparatus and rights of statutory undertakers in stopped up streets

34.—(1) Where a street is stopped up under article 10 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 10 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 that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or land at the same depth as the existing

apparatus, then the amount payable to the statutory utility is to be reduced by a sum equivalent to those additional costs.

(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)), 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, is to be reduced by the amount which represents that benefit.

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

- (a) the allowable costs of the relocation works must 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 must be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

Recovery of costs of new connections

35.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (apparatus and rights of statutory undertakers in stopped up streets) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 34, 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 35 or Part 3 of the 1991 Act applies.

(4) In this article—

- (a) “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

No double recovery

36. 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.

Guarantees in respect of payment of compensation

37.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place—

- (a) a guarantee approved by the relevant planning authority in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose approved by the relevant planning authority.

(2) The provisions are—

- (a) article 22 (compulsory acquisition of land);
- (b) article 23 (compulsory acquisition of land – incorporation of the mineral code);
- (c) article 24 (compulsory acquisition of rights);
- (d) article 27 (private rights);
- (e) article 29 (rights under or over streets);
- (f) article 31 (temporary use of land for carrying out authorised development);
- (g) article 32 (temporary use of land for maintaining authorised development); and
- (h) article 33 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order must be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

PART 6

MISCELLANEOUS AND GENERAL

Operation and use of railways

38. The undertaker may operate and use the railway comprised in the authorised development and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of goods.

Operational land for the purposes of the 1990 Act

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

Charges

40. The undertaker may demand, take or recover or waive such charges for carrying goods on the railway comprised in the authorised development, and for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

Defence to proceedings in respect of statutory nuisance

41.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisance)(a) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be

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

prejudicial to health or a nuisance)(a) no order may be made, and no fine may be imposed, under section 82(2)(b) of that Act if—

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

(2) Section 61(9) of the Control of Pollution Act 1974, does not apply where the consent relates to the use of the premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Felling or lopping of trees and removal of hedgerows

42.—(1) Subject to paragraphs (4), (5) and (6) the undertaker may fell or lop any tree, shrub or hedgerow within 15 metres of any part of the authorised development (as identified within Schedule 13 (felling or lopping of trees and removal of hedgerows)), or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, shrub or 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; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person who suffers loss for any loss or damage arising from such activity.

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

(4) [The provisions of paragraph (1) do not apply without the agreement of the relevant planning authority to any tree or hedgerow identified to be retained in [the landscaping scheme] approved under requirement [].]

(5) The provisions of paragraph (1) do not apply without the agreement of the relevant highway authority to any tree or hedgerow within a highway.

(6) The undertaker may fell or lop or cut back any tree or shrub which is subject to a tree preservation order (as identified in Schedule 13) with the prior approval of the relevant planning authority, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(7) In carrying out any activity authorised by paragraph (6)—

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

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

(b) 1990 c. 43..

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

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

Protective provisions

43. Schedule 14 to this Order has effect.

Governance of requirements and governance of protective provisions relating to highway works

44.—(1) When in any requirement or in Parts 2 and 3 of Schedule 14 (protective provisions) approval or agreement is required of, or with, anybody in relation to the detail, carrying out or use of the authorised development (including for the avoidance of doubt the approval of details or plans under the requirements) such approval or agreement must not be given if it would permit development which would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations **(a)**.

(2) When any details, plans or other matters have been agreed or approved by the relevant planning authority under a requirement or the relevant highway authority under a requirement or Parts 2 and 3 of Schedule 14 then they may subsequently be amended by agreement with the relevant planning authority or relevant highway authority as the case may be provided that no amendments to those details, plans or other matters may be approved where such amendments would permit development outside the parameters of the authorised development referred to in article 4 (parameters of authorised development) or would give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA Regulations.

(3) Where a consent, agreement or approval is required or requested by the undertaker under a requirement then the procedure set out in Part 2 of Schedule 2 (procedure for approvals etc. under requirements) for obtaining such consent, agreement or approval, and appealing against the refusal or failure to approve or refuse such consent, agreement or approval, shall apply.

Disapplication, application and modification of legislative provisions

45.—(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 of the authorised development—

- (a) 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 authority) to the Water Resources Act 1991**(b)**;
- (b) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991**(c)** in relation to watercourses for which Leicestershire County Council is the drainage board concerned;
- (c) regulation 12 (requirement for an environmental permit) of the 2016 regulations**(d)** in respect of flood risk activity;
- (d) section 32 (variation of awards) of the Land Drainage Act 1991**(e)**;

(a) S.I. 2017/578 as amended by S.I. 2017/1012.

(b) 1991 c. 57. Paragraph 5 was amended by section 106 of the Natural Environmental and Rural Communities Act 2006, section 31 of, and paragraphs 40 and 49 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29), and sections 84 and 146(1) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6 was amended by section 105 of, and paragraph 6 of Schedule 15 to, the Environment Act 1995 (c. 25), sections 233(1), 224 and 321 of, and paragraphs 20 and 24 of Schedule 16 and Part 5(b) of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23). Paragraph 6A was inserted by section 103(3) of the Environment Act 1995 (c. 25).

(c) 1991 c. 59. Section 23 was amended by section 31 of, and paragraphs 25 and 32 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29).

(d) S.I. 2016/1154

(e) 1991 c. 59.

- (e) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(a); and
- (f) section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981(b).

(2) The provisions of the Neighbourhood Planning Act 2017(c) do not apply in so far as they relate to the temporary possession of land under articles 31 (temporary use of land for carrying out the authorised development) and 32 (temporary use of land for maintaining the authorised development) of this Order.

(3) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order shall be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the 2008 Act(d).

(4) Regulation 4 (requirement for consent) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007(e) does not apply to any advertisement erected in the location and in accordance with the parameters shown on the parameters plan.

(5) This Order shall not constitute a planning permission for the purpose of Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within article 5 of the 2010 Regulations (meaning of planning permission).

(6) Schedule 15 (miscellaneous controls) to this Order which makes provision applying/modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order has effect.

(7) Paragraphs (1) to (6) only apply in so far as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

Certification of plans and documents

46.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents identified in Schedule 16 (certification of plans and documents) for certification that they are true copies of the documents referred to in this Order.

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

Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

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

(a) 1991 c.59. Section 66 was amended by section 31 of, and paragraphs 25 and 38 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21).

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

(c) 2017 c. 20.

(d) 2008 c. 29. Sections 160 and 161 were amended by regulation 4(1) of, and paragraph 41 of Part 1 of Schedule 4 to, S.I. 2015/664. Section 161 was also amended by section 112(2) of, and paragraph 4 of Part 1 of Schedule 8 to, the Marine and Coastal Access Act 2009 (c. 23).

(e) S.I. 2007/783.

(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 that 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) in a form sufficiently permanent to be used for subsequent reference.

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

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date may 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—

“electronic transmission” means a communication transmitted—

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

“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

48.—(1) Subject to paragraph (2) except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order, other than a difference which falls to be determined by the tribunal must be referred to and settled by a

(a) 1978 c. 30.

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—

- (a) in the case of matters pertaining to land and the surveying of such land, the president of the Royal Institute of Chartered Surveyors;
- (b) in the case of matters of legal interpretation, the president of the Law Society; and
- (c) in the case of all other matters the president of the Institute of Civil Engineers.

(2) Paragraph (1) does not apply to any decisions of the Secretary of State made pursuant to the provisions of this Order.

Signed by the authority of the Secretary of State

Address
Date

Name
Position
Department

DRAFT

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

PART 1

NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT: STRATEGIC RAIL FREIGHT INTERCHANGE

In the County of Leicestershire and the District of Blaby and in the Borough of Hinckley and Bosworth—

A nationally significant infrastructure project as defined in sections 14 and 26 of the 2008 Act comprising:

<i>Work number</i>	<i>Description</i>
1	<p>Within the area described on the works plans as Work No. 1 —</p> <p>The construction of new railway lines from the rail freight terminal (Work No. 2) to connect with the existing Felixstowe to Nuneaton railway line, the general arrangement of which is shown on the railway plans including—</p> <ul style="list-style-type: none"> a) construction of a new railway track and associated rail infrastructure; b) formation of new railway embankments and all necessary earthworks and drainage; c) construction of railway improvements including: <ul style="list-style-type: none"> (i) the alteration of the existing railway infrastructure including points and signals; (ii) railway signage and warning lights. d) new arrival and departure rail tracks adjacent to the existing railway; e) the alteration of existing tracks, signalling and associated plant; f) works to accommodate the demolition of the Burbage Common Road bridge over Felixstowe to Nuneaton railway line; g) works to accommodate the construction of new vehicular, pedestrian and cycleway bridge to cross the Felixstowe to Nuneaton railway line and all necessary superstructures and substructures including footings, abutments and wingwalls to be provided as part of Works No. 7; h) a headshunt; i) work to stop up the lengths of footpaths V23/1 and U50/3 shown on the access and rights of way plans and work associated with the closure of the existing Barwell level crossing and Earl Shilton level crossing; j) works to accommodate a revised public right of way from Burbage Common Road underneath the rail corridor to be provided as part of Work No. 6; k) works to accommodate a new foul rising main within Burbage Common Road underneath the rail corridor to be provided as part of Works No. 18; l) the closure of existing private accesses shown on the access and rights of way plans; and m) the stopping up of the length of Burbage Common Road shown on the access and rights of way plans.

2	<p>Within the area of land described on the works plans as Work No. 2—</p> <p>The construction of a rail freight terminal to connect with the rail infrastructure described in Work No. 1, the general arrangement of which is shown on the railway plans including:</p> <ul style="list-style-type: none"> a) construction of an intermodal freight loading/unloading terminal including but not exclusively <ul style="list-style-type: none"> a. railway sidings to load/unload freight and cripple sidings; b. gantry cranes, crane rails, reach stackers and freight dock platforms; c. freight and container storage areas; b) earthworks to achieve a terminal plateau; c) railway infrastructure including gantry signals and signs; d) rail freight terminal refuelling and minor maintenance areas; e) terminal entrance and exit gateways, loading lanes, internal roads, gatehouses and parking areas; f) rail freight terminal administrative building including staff and visitor welfare facilities; g) works to accommodate the demolition of the Burbage Common Road bridge over Felixstowe to Nuneaton railway line; h) works to accommodate the construction of new vehicular, pedestrian and cycleway bridge to cross the Felixstowe to Nuneaton railway line and all necessary superstructures and substructures including footings, abutments and wingwalls to be provided as part of Works No. 7; i) storage and workshop buildings; j) security fencing and lighting; k) drainage; l) the stopping up of the lengths of footpaths U52/6 and U52/7 shown on the access and rights of way plans; m) the closure of the existing private accesses shown on the access and rights of way plans; and n) the stopping up of the length of Burbage Common Road shown on the access and rights of way plans.
3	<p>Within the area of land described as Work No. 3 on the works plans the construction of a new railway line to serve the warehousing to be constructed within Works No. 5 on land identified as zones B3, D1, D2, E1 and E2 on the railway plans.</p>
4	<p>Within the area of land described as Work No. 4 on the works plans the construction of on-site highway infrastructure including:</p> <ul style="list-style-type: none"> a) principal on-site private access roads and associated junctions; b) roundabout junctions; c) footways; d) cycle tracks and bridleways; e) footpaths; f) bus stop lay-bys, shelters and signage; g) street lighting; h) signage; i) demolition of existing buildings;

	<ul style="list-style-type: none"> j) works to accommodate a revised public right of way from Burbage Common Road to be provided as part of Works No. 6; k) the closure of existing private accesses shown on the access and rights of way plans; and l) the stopping up of the length of Burbage Common Road shown on the access and rights of way plans.
5	<p>Within the area of land described as Work No. 5 on the works plans the construction of rail served warehousing including:</p> <ul style="list-style-type: none"> a) construction of development plateaux; b) earthworks to provide development plateaux; c) demolition of existing buildings; d) warehouses and ancillary buildings; e) gatehouses; f) service yards and vehicle and cycle parking; g) on-plot drainage, swales, bunding, landscape and planting works; h) weighbridges; i) vehicle, cycle, equestrian and pedestrian access routes and signage; j) roof mounted photovoltaics; k) external plant; l) vehicle maintenance, washing and refuelling facilities and electric vehicle charging units; m) hardstandings; n) off-plot HGV parking and driver welfare facilities and HGV fuelling area; o) container storage; p) energy centre; q) ancillary buildings including estate management offices; r) works to accommodate a revised public right of way from Burbage Common Road to be provided as part of Works No. 6; s) the stopping up of the lengths of footpaths U35/2, U50/2, U50/3, U53/1, V29/6 and V29/7 shown on the access and rights of way plans; t) the closure of existing private accesses shown on the access and rights of way plans; and u) the stopping up of the length of Burbage Common Road shown on the access and rights of way plans.
6	<p>Within the area of land described as Work No. 6 on the works plans the provision of hard and soft landscape works including:</p> <ul style="list-style-type: none"> a) demolition of existing buildings; b) earthworks to create screening bunds; c) soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements; d) basins for surface water attenuation (including flood alleviation related drainage infrastructure); e) new and diverted footpaths, bridleways and cycle tracks; f) wildlife habitat creation and appropriate improvements to connectivity between areas of ecological interest; g) amenity open space; h) noise attenuation including acoustic fencing or landscape screening along the lengths indicated on the parameters plan;

	<ul style="list-style-type: none"> i) a revised public right of way from Burbage Common Road underneath the rail corridor (Works No. 1); j) the stopping up of the lengths of footpaths U35/2, U50/2, U52/6, U53/1, V29/6 and V29/7 shown on the access and rights of way plans; k) signage and totems located within the areas indicated on the parameters plan.
7	<p>Within the area of land described as Work No. 7 on the works plans the A47 link road the general arrangement of which is shown on the highway plans including:</p> <ul style="list-style-type: none"> a) connection into a new access arm onto junction 2 of the M69 motorway (Works No. 9); b) construction of a new three arm roundabout on the B4668 Leicester Road; c) roundabouts and other junctions; d) a new bridge over the Felixstowe to Nuneaton railway; e) works comprising the interface with Works No. 4; f) a new private access to Bridge Farm; g) the closure of existing private accesses shown on the access and rights of way plans; h) the stopping up of the lengths of footpaths U35/2, U50/2, U52/6, U52/7 and V29/7 shown on the access and rights of way plans; i) bus stops and laybys; j) street lighting; k) signage; l) footways and cycleways; and m) drainage and attenuation structures.

PART 2

ASSOCIATED DEVELOPMENT

In the Counties of Leicestershire and Warwickshire and in the District of Blaby, in the Borough of Hinckley and Bosworth, in the Borough of Rugby and in the District of Harborough—

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

<i>Work number</i>	<i>Description</i>
8	<p>Within the area of land described on the works plans as Work No. 8, works to junction 2 of the M69 motorway within the strategic road network the general arrangement of which is shown on the highway plans comprising:</p> <ul style="list-style-type: none"> a) construction of a new slip road for southbound traffic joining the M69 and construction of a new slip road for northbound traffic leaving the M69 and junction 2; b) construction of surface water attenuation basins; c) temporary construction laydown sites and stock piling areas for topsoil and subsoil material and construction of temporary haul roads; d) roadside landscape works and planting, to include structural tree planting and landscape bunds; e) associated earthworks as to enable slip road construction; f) signage;

	<ul style="list-style-type: none"> g) lighting; and h) diversion of existing services.
9	<p>Within the area of land described on the works plans as Work No. 9, works to junction 2 of the M69 motorway within the local highway authority network the general arrangement of which is shown on the highway plans comprising:</p> <ul style="list-style-type: none"> a) realignment of the B4669 Hinckley Road to the west of M69 junction 2 to include a dedicated left-turn slip road into the main site; b) realignment of the B4669 Hinckley Road to the east of M69 junction 2 to include a dedicated southbound merge slip road; c) widening and realignment of approaches to the junction; d) footways and cycleways; e) lighting; f) signage; g) temporary construction laydown sites and stock piling areas for topsoil and subsoil material and construction of temporary haul roads; and h) closure of existing private accesses and provision of new private accesses as shown on the access and rights of way plans.
10	<p>Within the area of land described on the works plans as Work No. 10—</p> <ul style="list-style-type: none"> a) the provision of improvements to the footpath along the B4669 Hinckley Road; b) a temporary construction compound; c) alterations to the junction at Hinckley Road and Stanton Lane; and d) signage.
11	<p>Within the area of land described on the works plans as Work No. 11 works to Hinckley Road in Stoney Stanton the general arrangement of which is shown on the highways plans including—</p> <ul style="list-style-type: none"> a) gateway feature at the entrance to Stoney Stanton; b) the provision of formal parking bays; c) conversion of the mini roundabout to a signalised junction; and d) signage.
12	<p>Within the area of land described on the works plans as Work No. 12 works to the B4669 Hinckley Road in Sapcote the general arrangement of which is shown on the highways plans including—</p> <ul style="list-style-type: none"> a) gateway feature at the entrance to Sapcote from the B4669 Leicester Road; b) kerb realignments; c) relocation of bus stop; and d) public realm scheme including seating and planting.
13	<p>Within the area of land described on the works plans as Work No. 13 works to the junction of the A47 Normandy Way with A47 Ashby Road the general arrangement of which is shown on the highways plans including—</p> <ul style="list-style-type: none"> a) lane widening; b) pedestrian crossing; and c) signage.
14	<p>Within the area of land described on the works plans as Work No. 14 works to the junction of the A47 Normandy Way with B4668 Leicester Road the general arrangement of which is shown on the highways plans including—</p> <ul style="list-style-type: none"> a) lane widening;

	<ul style="list-style-type: none"> b) extension of the flare; and c) signage
15	<p>Within the area of land described on the works plans as Work No. 15 works to the junction of the B4114 Coventry Road with Croft Road the general arrangement of which is shown on the highways plans including—</p> <ul style="list-style-type: none"> a) extension of the flare; and b) signage
16	<p>Within the area of land described on the works plans as Work No. 16 works to the Cross in Hand roundabout at the A5, A4303, Coal Pit Lane and B4027 Lutterworth Road the general arrangement of which is shown on the highways plans including—</p> <ul style="list-style-type: none"> a) lane widening; and b) signage
17	<p>Within the area of land described on the works plans as Work No. 17 works to the B4114 Coventry Road with the B518 Broughton Road the general arrangement of which is shown on the highways plans including—</p> <ul style="list-style-type: none"> a) additional lane; b) signalling; c) amended layout to the access to the existing public house; and d) signage
18	<p>Within the area of land described on the works plans as Work No. 18 the installation of a new foul rising main within Burbage Common Road.</p>
19	<p>Within the area of land described on the works plans as Work No. 19—</p> <ul style="list-style-type: none"> a) earthworks to create screening bunds and a bund to the north of the railway (Works No. 1); b) soft landscaping within and surrounding the development, integrating and enhancing green infrastructure and incorporating biodiversity enhancements; c) basins for surface water attenuation (including flood alleviation related drainage infrastructure); d) new and diverted footpaths, bridleways and cycle tracks; e) wildlife habitat creation and appropriate improvements to connectivity between areas of ecological interest; f) amenity open space; g) noise attenuation including acoustic fencing or landscape screening along the lengths indicated on the parameters plan; h) a new public right of way connecting to Burbage Common Road; i) connection into the existing ditch at Burbage Common; j) connection of a new bridleway into Burbage Common; k) the stopping up of the length of Burbage Common Road shown on the access and rights of way plans; and l) the provision of a new turning head.
20	<p>Within the area of land described on the works plan as Work No. 20 the closure of the Outwoods level crossing and the diversion of public footpath U8/1 comprising—</p> <p>EITHER</p>

	<p>The construction of a new footbridge over the Felixstowe to Nuneaton railway line to connect into existing footpath U52/3</p> <p>OR</p> <p>The diversion of public footpath U52/3 via a new route along the north of the Felixstowe to Nuneaton railway line to connect into Ambion Way and then to connect with public footpath U12/1–U11/2–U11/3</p> <p>as shown on the access and rights of way plans, including access and temporary construction compounds.</p>
21	<p>Within the area of land described on the works plans as Work No. 21 the closure of the Thorney Fields level crossing and the diversion of public footpath U17/2 along the route shown on the access and rights of way plans including temporary access and temporary construction compounds.</p>
22	<p>Within the area of land described on the works plans as Work No. 22 the closure of the Elmesthorpe level crossing and the diversion of public footpath T89/1 to the extent shown on the access and rights of way plans.</p>

Further works

The following further works provided that such works do not give rise to any materially new or materially different significant effects on the environment that have not been assessed in the environmental statement or in any updated environmental information supplied under the 2017 EIA regulations—

- (1) Within the area of land described on the works plans as Work Nos. 1 – 7 the provision of—
- (a) weighbridges;
 - (b) internal estate roads and maintenance accesses
 - (c) cycle parking facilities;
 - (d) electric vehicle charging points;
 - (e) site preparation works, site clearance and excavation;
 - (f) swales, landscaping, fencing, boundary treatments, bunds, earthworks and earthwork retaining structures;
 - (g) the provision of footways, cycle tracks, permissive cycle tracks, bridleways and footpath linkages;
 - (h) water supply works, foul drainage provision and storage, foul pumping stations, surface water management systems, drainage conveyance system, balancing ponds (surface and underground), attenuation and culverting;
 - (i) connections to mains services and provision of utilities infrastructure including primary and secondary electricity substations, catenary and pressure reducing stations;
 - (j) diversion of pipelines, sewers, utilities and services;
 - (k) demolition of existing buildings and surface structures;
 - (l) temporary concrete batching plants;
 - (m) temporary construction compounds including temporary buildings, welfare facilities, storage and parking areas;
 - (n) temporary stock piling areas for topsoil and subsoil material;
 - (o) temporary haul roads;
 - (p) temporary rail sidings;

- (q) public art;
- (r) lighting;
- (s) security fencing;
- (t) gatehouses, barriers and CCTV;
- (u) acoustic fencing;
- (v) the clearing of and making good to existing watercourses, works to alter the course of or otherwise interfere with a watercourse;
- (w) ducting;
- (x) removal of existing hedgerows and making good;
- (y) bunds, embankments, aprons, abutments, shafts, foundations, wing walls, cuttings, landscaping and boundary treatments, earthworks and earthwork retaining structures;
- (z) environmental mitigation;
- (aa) pavements, surface treatments, kerbs and channels;
- (bb) the provision of ramps, means of access, footpaths, bridleways, footways, cycle tracks and crossing facilities;
- (cc) works to alter or remove road furniture;
- (dd) refurbishment works to any existing bridge or gantry;
- (ee) traffic signs, traffic signals, surface course and carriageway markings;
- (ff) street lighting and electrical equipment;
- (gg) motorway communications and control equipment;
- (hh) retaining walls;
- (ii) diversion of sewers, pipelines, utilities and services;
- (jj) provision of utilities and services;
- (kk) temporary concrete batching plants;
- (ll) temporary construction compounds including temporary buildings, welfare facilities, storage and parking areas;
- (mm) temporary earthworks material stockpiles;
- (nn) regrading and adjustments to ground levels;
- (oo) works for the benefit or protection of land affected by the authorised development;
- (pp) works required for the strengthening, improvement, maintenance or reconstruction of any streets;
- (qq) enabling works:
 - (i) hazardous material removal;
 - (ii) archaeological and heritage investigations;
 - (iii) environmental approvals;
 - (iv) utilities isolations;
 - (v) security;
 - (vi) topographic surveys;
 - (vii) building and boundary control;
 - (viii) grid set-outs for earthworks e.g. retaining walls;
 - (ix) grid set-outs for access works e.g. ramps, hard-stand areas; and
 - (x) sustainability issues such as material reclamation, re-use and safe disposal of site materials, and the minimisation of land-fill and waste;
- (rr) temporary works:
 - (i) temporary traffic management plans;

- (ii) temporary traffic signal control;
- (iii) temporary earthworks, trenching, ducting;
- (iv) temporary statutory undertakers plant diversions;
- (v) temporary haul roads;
- (vi) temporary road construction;
- (vii) temporary signage and fencing;
- (viii) temporary drainage systems; and
- (ix) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 3

PART 1 GENERAL REQUIREMENTS

PART 2 RAIL REQUIREMENTS

PART 3 PROCEDURE FOR APPROVALS ETC UNDER REQUIREMENTS

Interpretation

[] In this Part of this Schedule—

“appeal documentation” means the application submitted to the discharging authority, any further information submitted under paragraph 44 and any notice of a decision to refuse;

“the appeal parties” means the discharging authority, the undertaker and any requirement consultee(s);

“discharging authority” means the authority from whom a consent, approval or agreement is required or requested by the undertaker under the requirement concerned;

“requirement consultee” mean anybody named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement; and

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

Applications made for certain approvals

[].—(1) Where an application has been made to a discharging authority for any consent, agreement or approval required or contemplated under the requirements in Part 1 of this Schedule the

(a) 1971 c. 80.

discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

- (2) For the purposes of sub-paragraph (1), the decision period is—
- (a) where no further information is requested under paragraph 44, 42 days from the day immediately following that on which the application is received by the discharging authority;
 - (b) where further information is requested under paragraph 44, 42 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 44; or
 - (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in paragraph (a) or (b).

Further information

[].—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary it must, within 10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the discharging authority does not give such notification as specified in sub-paragraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

Appeals

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

- (a) the discharging authority refuses an application for any consent, agreement or approval required or contemplated under the requirements or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period specified in paragraph [43] (applications for certain approvals);
- (c) on receipt of a request for further information under paragraph [44] (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the decision period as determined under paragraph [43] (applications for certain approvals);
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must within 7 working days provide copies of the appeal documentation to the discharging authority and the requirement consultees;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”)(a) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person's attention should be sent;
- (d) the discharging authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 working days of

(a) The appointment is made at the discretion of the Secretary of State, and such appointment may be made by the Planning Inspectorate on behalf of the Secretary of State.

the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the appeal parties must make any counter-submissions to the appointed person within 20 working days of receipt of written representations under paragraph (d).

(3) The appointed person must make a decision and notify it to the appeal parties, with reasons, within 20 working days of expiry of the 20 working day period referred to in sub paragraph (2)(e) or, if applicable, within 20 working days of the expiry of the 10 working day period referred to in sub-paragraph (6).

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

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

(6) Any further information required under sub-paragraph (5) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 working days of that date.

(7) On an appeal under this paragraph, the appointed person must—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(8) The appointed person must proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or other time limits set by the appointed person under this sub-paragraph.

(9) The appointed person must proceed to a decision even though no written representations have been made within the prescribed time limits, or any other time limit set in accordance with sub-paragraph (9).

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

(11) If an approval is given by the appointed person under this Part of this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the requirement as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the undertaker^(a).

(13) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance published by the Department for Communities and Local Government on 6th March 2014 or any circular or guidance which may from time to time replace it.

(a) The costs of the appointed person are calculated based on the applicable day rate for a Single Inspector as if he or she were appointed under s78/s79 of the PA2008. See the National Infrastructure Planning website for more information: <https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>

Fees

[]—(1) Where an application is made to the discharging authority for consent, agreement or approval in respect of a requirement, other than where the parties have agreed otherwise, the fee that would have been payable had the fee been determined under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a), is to be paid to that authority.

(2) Any fee paid under this Part of this Schedule must be refunded to the undertaker within 42 days of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph (1),

unless within that period the undertaker agrees, in writing, that the fee is to be returned by the discharging authority and credited in respect of a future application.

SCHEDULE 3

Article 8

STREETS SUBJECT TO STREET WORKS

(1) Area	(2) <i>Street within the Order limits subject to street works</i>
District of Blaby	M69
	B4669
	B581
	B4114
	Burbage Common Road
	Stanton Lane
	Church Street
	Stanton Road
Borough of Hinckley & Bosworth	Croft Road
	M69
	A47
	A447
	B4668
	B4667
District of Harborough	The Common
	A5
	A4303
Borough of Rugby	B581
	B4027
	Coal Pit Lane

SCHEDULE 4

Article 10

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

(a) S.I. 2012/2920, amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/2026, S.I. 2015/643, S.I. 2017/1314 and S.I. 2019/1154.

<i>(1) Area</i>	<i>(2) Street to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) Stage of the authorised development</i>
District of Blaby	Burbage Common Road	Through the main site along the route shown hatched red on access and rights of way plan (Document 2.3A) and (Document 2.3 C)	Commencement of any of works numbered 1 - 7
	Smithy Lane	At the entrance to the main site along the route shown hatched red on access and rights of way plan (Document 2.3D)	Commencement of any of works numbered 1 - 7

SCHEDULE 5
PUBLIC RIGHTS OF WAY

Article 12

PART 1

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

<i>(1) Area</i>	<i>(2) Public right of way to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) Substitute to be provided</i>	<i>(5) Stage of the authorised development by which time the stopping up must be completed</i>
District of Blaby	U17/2	The dashed green line between points 19 and 20 on the access and rights of way plan (Document 2.3B)	The footpaths shown dashed and dotted brown between points 19 and 20 on the access and rights of way plan (Document 2.3B)	Commencement of works number 21
	U8/1	The dashed green line between points 21 and point 22 on the access and rights of way plan (Document 2.3C)	The footpath shown dashed and dotted brown between points 21 and 22 or the footpath shown dashed and dotted brown between points 21 and 23 on the access and	Commencement of works number []

<i>(1) Area</i>	<i>(2) Public right of way to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) Substitute to be provided</i>	<i>(5) Stage of the authorised development by which time the stopping up must be completed</i>
			rights of way plan (Document 2.3C)	
	V29/7	The solid green line between point 15 and point 31 on the access and rights of way plan (Document 2.3D)	The bridleway shown with a solid yellow line between points 16 and 37 and points 14 and 18 on the access and rights of way plan (Document 2.3D)	Commencement of works number []
	V29/6	The solid green line between point 16 and point 31 on the access and rights of way plan (Document 2.3D)	The bridleway shown with a solid yellow line between points 16 and 37 and points 14 and 18 on the access and rights of way plan (Document 2.3D)	Commencement of works number []
	U52/9	The solid green line between point 2 and point 27 on the access and rights of way plan (Document 2.3A)	The bridleway shown with a solid yellow line between points 1 and 2 on the access and rights of way plan (Document 2.3A)	Commencement of works number []

PART 2

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

<i>(1) Area</i>	<i>(2) Public right of way to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) Stage of the authorised development</i>
District of Blaby	V23/1	The dashed green line between point 9 and point 11 on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	U50/3	The dashed green line between point 10 and point 12 on the access	Commencement of works number []

		and rights of way plan (Document 2.3A)	
	U52/6	The dashed green line between point 4 and point 32 on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	U52/7	The dashed green line between point 32 and point 3 on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	V35/2	The dashed green line between point 29 and point 32 on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	U50/2	The dashed green line between point 28 and point 29 on the access and rights of way plan (Document 2.3A and Document 2.3D)	Commencement of works number []
	U50/1	The dashed green line between point 7 and point 29 on the access and rights of way plan (Document 2.3D)	Commencement of works number []
	U53/1	The dashed green line between point 30 and point 31 on the access and rights of way plans (Document 2.3A and Document 2.3D)	Commencement of works number []
	T89/1	The dashed green line between points 24 and point 25 and point 26 on the access and rights of way plan (Document 2.3B)	Commencement of works number 22

PART 3

NEW PUBLIC RIGHTS OF WAY TO BE CREATED

<i>(1) Area</i>	<i>(2) Public right of way to be created</i>	<i>(3) Extent of new public right of way to be created</i>	<i>(4) Stage of the authorised development</i>
District of Blaby	Public bridleway	The bridleway shown with a solid yellow line between points 5 and 7 on the access and rights of	Commencement of works number []

		way plan (Document 2.3 C and Document 2.3D)	
	Public footpath	The footpath shown dashed brown between points 8 and 10 on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	Public footpath	The footpath shown dashed brown between points 33 and 34 on the access and rights of way plan (Document 2.3D)	Commencement of works number []
	Public footpath	The footpath shown dashed brown between points 35 and 36 on the access and rights of way plan (Document 2.3D)	Commencement of works number []
	Public bridleway	The bridleway shown with a solid yellow line between points 7 and 18 on the access and rights of way plan (Document 2.3D)	Commencement of works number []
	Public bridleway	The bridleway shown with a solid yellow line between points 16 and 13 on the access and rights of way plan (Document 2.3D)	Commencement of works number []
	Public footpath	Extension of U17/2 between points 9 and 20 shown dashed brown on the access and rights of way plan (Document 2.3B)	Commencement of works number []

PART 4

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

(1) Area	(2) <i>Public right of way to be temporarily closed</i>	(3) <i>Extent of public right of way to be temporarily closed</i>	(4) <i>Stage of the authorised development closure starts</i>	(5) <i>Stage of the authorised development closure ends</i>
District of Blaby	U50/1	The footpath shown dashed orange between points 6 and 7 on the access and rights of way plan (Document 2.3B)	Commencement of works number []	Conclusion of works number []

SCHEDULE 6

Article 13

PRIVATE MEANS OF ACCESS

PART 1

PRIVATE MEANS OF ACCESS TO BE REPLACED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of Access</i>	<i>(3)</i> <i>Replacement</i>	<i>(4)</i> <i>Stage of the authorised development</i>
Borough of Hinckley and Bosworth	The private means of access shown coloured purple and labelled A on the access and rights of way plan (Document 2.3A)	The private means of access shown coloured purple and labelled B on the access and rights of way plan (Document 2.3A)	Commencement of works number []
District of Blaby	The private means of access shown coloured purple and labelled Z on the access and rights of way plan (Document 2.3B)	The private means of access shown coloured hatched blue and labelled AA on the access and rights of way plan (Document 2.3D)	Commencement of works number []
	The private means of access shown coloured blue and labelled F on the access and rights of way plan (Document 2.3A)	The private means of access marked E and shown hatched green on the access and rights of way plan (Document 2.3A)	Commencement of works number []

PART 2

PRIVATE MEANS OF ACCESS TO BE CLOSED FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private Means of Access</i>	<i>(3)</i> <i>Stage of the authorised development</i>
District of Blaby	The private means of access shown coloured blue and labelled D on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled G on the access and rights of way plan (Document 2.3A)	Commencement of works number []

	The private means of access shown coloured blue and labelled H on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled I on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled J on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled K on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled L on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled M on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled N on the access and right of way plan (Document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled O on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	The private means of access show coloured blue and labelled P on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled Q on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled R on the access and rights of way plan (document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled S on the access and rights of way plan (Document 2.3A)	Commencement of works number []
	The private means of access shown coloured blue and labelled T on the access and rights of way plan (Document 2.3C)	Commencement of works number []

	The private means of access shown coloured blue and labelled U on the access and rights of way plan (Document 2.3C)	Commencement of works number []
	The private means of access shown coloured blue and labelled V on the access and rights of way plan (Document 2.3 B)	Commencement of works number []
	The private means of access shown coloured blue and labelled W on the access and rights of way plan (Document 2.3B)	Commencement of works number []
	The private means of access shown coloured blue and labelled AB on the access and rights of way plan (Document 2.3B)	Commencement of works number []

PART 3

NEW PRIVATE MEANS OF ACCESS CREATED

<i>(1) Area</i>	<i>(2) Private Means of Access</i>	<i>(3) Stage of the authorised development</i>
District of Blaby	The private means of access marked C and shown hatched green on the access and rights way plan (Document 2.3A)	Commencement of works number []
	The private means of access marked AC and shown hatched green on the access and rights way plan (Document 2.3B)	Commencement of works number []
	The private means of access marked X and shown hatched green on the access and rights way plan (Document 2.3B)	Commencement of works number []
	The private means of access shown coloured blue and labelled AD on the access and rights of way plan (Document 2.3D)	Commencement of works number []
	The private means of access shown coloured blue and labelled AE on the access and rights of way plan (Document 2.3D)	Commencement of works number []
	The private means of access shown coloured blue and labelled AF on the access and rights of way plan (Document 2.3D)	Commencement of works number []
	The private means of access shown coloured blue and labelled AG on the access and rights of way plan (Document 2.3D)	Commencement of works number []

SCHEDULE 7

Article [15]

CLASSIFICATION OF HIGHWAYS

PART 1

NEW HIGHWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of Highway</i>	<i>(3)</i> <i>Classification</i>	<i>(4)</i> <i>Classes of Traffic</i>	<i>(5)</i> <i>Relevant Highway Authority</i>
District of Blaby and Borough of Hinckley and Bosworth	The A47 link road shown with a solid redline between points marked 1 and 8 on the highway classification plans (Documents 2.5A and 2.5B)	Classified	All purpose	Leicestershire County Council
	M69 junction 2 roundabout shown with a solid redline between points 10 and 11 on the highway classification plan (Document 2.5C)	Classified	All purpose	Leicestershire County Council
	M69 junction 2 roundabout shown with a solid redline between points 12 and 13 on the highway classification plan (Document 2.5C)	Classified	All purpose	Leicestershire County Council
	M69 junction 2 shown with a solid blue line between points 9 and 10 on the highway classification plans (Document 2.5C)	Special Road	Class I and II	National Highways
	M69 junction 2 shown with a solid blue line between points 13 and 14 in the highway classification plans (Document 2.5C)	Special Road	Class I and II	National Highways

**SCHEDULE 8
SPEED LIMITS**

Article 16

**PART 1
EXISTING ORDERS**

(1) <i>Statutory Instrument / Order Title</i>	(2) <i>S.I. Number</i>	(3) <i>Changes</i>	(4) <i>Event</i>
The Leicestershire County Council (B4668 Leicester Road, Hinckley) (Imposition of 30mph, 40mph and 50mph Speed Limits) Order 2008	N/A	<p>In Schedule 3— For: B4668 Leicester Road, Hinckley From a point 7 metres south west of the southern boundary of the property Penryl in a south westerly direction to a point approximately 7 metres east of its junction with the access to Fairways Court for a distance of approximately 950 metres</p> <p>Substitute: B4668 Leicester Road, Hinckley From a point 35 metres south west of the roundabout junction between the B4668 and the A47 to M69 link road to a point approximately 17 metres east of its junction with the access to Fairways Court for a distance of approximately 580 metres.</p>	

**PART 2
HIGHWAYS SUBJECT TO 40 MPH SPEED LIMIT**

(1) <i>Location</i>	(2) <i>Description</i>	(3) <i>Event</i>
B4668	The B4668 as shown by a solid pink line on the speed limit plan between points D and A (Document 2.7A)	Commencement of works number []
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between points E and F (Document 2.7A)	Commencement of works number []

A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between points G and H (Document 2.7A and Document 2.7B)	Commencement of works number []
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between points R and X (Document 2.7A and Document 2.7B)	Commencement of works number []
A47 link road	The A47 link road as shown by a solid pink line on the speed limit plan between points J and P (Document 2.7B)	Commencement of works number []
Stanton Lane	Stanton Lane as shown by a solid pink line on the speed limit plan between points AD and AE (Document 2.7C)	Commencement of works number []

PART 3
DERESTRICTED HIGHWAYS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Event</i>
Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line between points X and Y (Documents 2.7B and 2.7C)	Commencement of works number []
Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line between points P and Q (Documents 2.7B and 2.7C)	Commencement of works number []
Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line between points Z and AA (Documents 2.7B and 2.7C)	Commencement of works number []
Roundabout J2 M69 and A47 link road	The junction 2 roundabout as shown by a solid blue line between points AB and AC (Documents 2.7B and 2.7C)	Commencement of works number []

SCHEDULE 9
TRAFFIC REGULATION

Article 18

PART 1
CLEARWAYS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Event</i>
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between points 1 and 2 of the traffic regulation plans (Documents 2.6A and 2.6B)	Commencement of works number []
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between	Commencement of works number []

	points 15 and 16 of the traffic regulation plan (Document 2.6B)	
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between points 8 and 9 of the traffic regulation plan (Document 2.6B)	Commencement of works number []
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between points 17 and 18 of the traffic regulation plan (Document 2.6B)	Commencement of works number []
A47 Link Road (rural clearway)	The A47 link road shown with a solid purple line between points 19 and 20 of the traffic regulation plan (Document 2.6B)	Commencement of works number []

PART 2

NO WAITING AT ANY TIME

(1) <i>Location</i>	(2) <i>Zone</i>	(4) <i>Event</i>
A47 link road (local highway)	The A47 link road shown with a solid blue line between points 2 and 15 of the traffic regulation plan (Document 2.6B)	Commencement of works number []
A47 link road (local highway)	The A47 link road shown by a solid blue line between points 8 and 2 of the traffic regulation plan (Document 2.6B)	Commencement of works number []

SCHEDULE 10

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Area</i>	(2) <i>Number of land shown on land plan</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Relevant part of the authorised development</i>

paragraph 5(5) of Schedule 12 to the Hinckley National Rail Freight Interchange Order 202X(a);

- (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 12 to the Hinckley National Rail Freight Interchange Order 202X) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purposes of excising 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)—

- (d) for “land is acquired or taken” substitute “a right over land is purchased”; and
- (e) for “acquired or taken from him” substitute “over which the right is exercisable”.

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act, and modified by article 33 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under article 23 (compulsory acquisition of land) applies to the compulsory acquisition of a right by the creation of a new right under article 26 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with 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 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
- (b) the land over which the right is or is to be exercisable.

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

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right 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 (persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

(a) []
(b) []

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

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 23 (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; and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on a specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act, as modified by article 33(2) (modification of Part 1 of the 1965 Act) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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

SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 32 (application of the 1981 Act) of the Hinckley Rail Freight Interchange Order 202X in respect of the land to which the notice to treat relates.

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

Counter-notice requiring purchase of land

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

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

-
- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), 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), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c. 22).
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—
 - (a) withdraw the notice to treat,
 - (b) accept the counter-notice, or
 - (c) refer the counter-notice to the Upper Tribunal.
6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).
7. If the acquiring authority 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 serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right 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,
 - (b) the use to be made of the right proposed to be acquired, and
 - (c) if the right is proposed to be acquired 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 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 authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.
 - (2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.
 - (3) Any dispute as to the compensation is to be determined by the Upper Tribunal.

SCHEDULE 13

Article 46

FELLING OR LOPPING OF TREES AND REMOVAL OF HEDGEROWS

PART 1

FELLING OR LOPPING OR CUTTING BACK OF TREES, SHRUBS OR HEDGEROWS WITHIN 15 METRES OF ANY PART OF THE AUTHORISED DEVELOPMENT

(1) <i>Item</i>	(2) <i>Important Hedgerow?</i>	(3) <i>Location</i>

PART 2

FELLING OR LOPPING OR CUTTING BACK OF ANY TREES OR SHRUBS SUBJECT TO A TREE PRESERVATION ORDER

(4) <i>Item</i>	(5) <i>Location</i>

SCHEDULE 14

Article 47

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. –

(1) The terms used in this Part of this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) below which will prevail; and

(2) In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” are to be construed accordingly;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of powers under section 8 (licences) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property;

“working days” means days other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by article 5 (authorisation of use), article 6 (maintenance of the authorised development), article 12 (public rights of way – creation, substitution and stopping up), article 13 (accesses), article 21 (authority to survey and investigate the land), article 398 (operation and use of railways), article 42 (felling or lopping of trees and

(a) 1993 c. 43. Section 8 was amended by section 216 of, and paragraphs 1 and 4 of Schedule 17 and Part 4 of Schedule 31 to, the Transport Act 2000 (c. 38), paragraphs 1 and 4 of Schedule 2 to the Railways and Transport Safety Act 2003 (c.20), paragraph 3 of Schedule 1, and Part 1 of Schedule 13, to the Railways Act 2005 (c.14) and S.I. 2015/1682.

(b) 2006 c. 46.

removal of hedgerows) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled in accordance with paragraph 22.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his or her disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his or her approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his or her reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he or she may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for

inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 7 (benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 49 (Certification of plans and documents) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

Dispute Resolution and Arbitration

22.—(1) Article 48 (arbitration) does not apply to this Part of this Schedule.

(2) All parties involved in settling any difference shall use reasonable endeavours to do so within 42 working days from the date of a dispute first being notified in writing by one party to the other.

(3) In the absence of the difference being settled within the period referred to in sub-paragraph (2) the difference shall be referred to and settled by a single arbitrator to be agreed between the parties except that, failing agreement between the parties of the arbitrator to be appointed, an arbitrator shall be appointed following the expiry of 14 working days from the expiry of the 42 day working days referred to in sub-paragraph (2) on the application of either party by —

- (a) in the case of matters relating to paragraph 11 of this Part of this Schedule, the president of the Institution of Engineering and Technology; and
- (b) in the case of matters of all other matters relating to this Part of this Schedule, the president of the Institute of Civil Engineers.

(4) All parties involved in settling any difference by arbitration will use reasonable endeavours to deal with such matters expeditiously and in accordance with the timetable set out in sub-paragraph (5) unless that timetable is varied in accordance with sub-paragraph (6)(b) to allow for the consents referred to in sub paragraph (6)(a) to be obtained.

(5) The timetable referred to in sub-paragraph (4) is:

- (a) the parties must make submissions to the arbitrator in writing, and copied to the other party, within 42 working days of the arbitrator's appointment;
- (b) any comment on the submissions made by either party must be submitted to the arbitrator within 42 working days of the receipt of the submission under (a);
- (c) a maximum of 42 working days extension to either or both of the periods referred to in (a) and (b) is to be allowed should a party request such an extension prior to the relevant period expiring unless the arbitrator is of the view that such an extension would be manifestly unreasonable or unnecessary; and
- (d) a decision must be issued within 42 working days of the receipt of the submissions under paragraph (b) or any extension to such period allowed under (c) subject to sub-paragraph (6).

(6) The parties recognise that:

- (a) Network Rail's compliance with the arbitration timetable referred to at sub-paragraph (5) will be subject to the obtaining by Network Rail of necessary clearance consents and other engineering, regulatory and stakeholder (internal and external) consents required under statute, by regulations or by NR governance procedures; and
- (b) the timetable set out in sub-paragraph (5) shall be varied by the arbitrator to accommodate the consents and procedures referred to in sub paragraph (6)(a).

(7) Network Rail must use reasonable endeavours to pursue any consents referred to in (6) expeditiously.

(8) The fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine, or in the absence of such determination, equally.

PART 2

FOR THE PROTECTION OF NATIONAL HIGHWAYS

Application

1. The provisions of this Part of this Schedule have effect, and apply to the strategic road network works, unless otherwise agreed in writing between the undertaker and National Highways.

Interpretation

2.—(1) The terms used in this Part of this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) below which will prevail; and

(2) In this Part of this Schedule—

“as built information” means one digital copy of the following information where applicable to the phase in question—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used;
- (c) product data sheets, technical specifications for all materials used;
- (d) as constructed information for any Utilities discovered or moved during the works;
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series [] of the Specification for Highway Works;
- (g) organisation and methods manuals for all products used in the construction of the strategic road network works;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during the construction phase of the project;
- (j) RSA 3 and exceptions agreed;
- (k) health and safety file; and
- (l) other such information as is necessary to enable National Highways to update all relevant databases and to ensure compliance with the National Highways Asset Data Management Manual as shall be in operation at the relevant time including CCTV surveys.

“the bond sum” means the sum equal to [%] of the cost of the carrying out of the phase of the strategic road network works concerned (to include all costs [excluding/including] the commuted sum) or such other sum agreed between the undertaker and National Highways;

“the cash surety” means the sum of £[] or such other sum agreed between the undertaker and National Highways;

“commuted sum” means such sum as shall be calculated for each phase as provided for in paragraph [] of this Part of this Schedule and to be used to fund the future cost of maintaining the strategic road network works;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the strategic road network works or any phase of the strategic road network works and approved by National Highways pursuant to paragraph [3(3)] of this Part of this Schedule;

“detailed design information” means drawings, specifications and calculations as appropriate for the following which shall all be in accordance with the general arrangements of the strategic road network works shown on the highway plans unless otherwise agreed between National Highways and the undertaker—

- (a) site clearance details;

- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting Road Restraint Risk Appraisal Process assessment (RRRAP);
- (d) drainage and ducting as required by Series 500 of the Specification for Highways Works, HD 43/04, IAN 147/12 and SD 15 Parts 1 – 6 inclusive;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) motorway communications as required by the Designs Manual for Roads and Bridges;
- (l) highway structures and any required structural approval in principle (AIP);
- (m) landscaping;
- (n) agreed departures from Designs Manual for Road Bridges standard;
- (o) a report of walking, cycling and horse riding carried out in accordance with the Design Manual for Roads and Bridges Standard HD42/17 or any successor document;
- (p) Stage 2 Road Safety Audit and exceptions agreed and in the event that any works are not commenced within five years of the date of the Stage 1 Road Safety Audit a further Stage 1 Road Safety Audit and exceptions agreed;
- (q) utilities diversions;
- (r) topographical survey;
- (s) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any successor document; and
- (t) health and safety information including any asbestos survey required by GD05/16 or any successor document,

where relevant to the phase concerned.

“dilapidation survey” means a survey of the condition of the roads, bridges and retaining walls which will be the subject of the physical works comprised in the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed pursuant to paragraphs [5(1)(b) to (d) and (5)] of this Part of this Schedule;

“the excess” means the amount by which National Highways estimates that the costs referred to in paragraph [5(1)(b) to (d)] of this Part of this Schedule will exceed the Estimated Costs pursuant to paragraph [5(5)(b)];

“nominated persons” means the undertakers representatives or the contractors representatives on site during the carrying out of the strategic road network works as notified to National Highways from time to time;

“phase” means that part of the strategic road network works which is to be carried out in separate phases in the areas identified as Works No. 8 on the works plans or such other phasing arrangements as shall be agreed with National Highways;

“programme of works” means a document setting out the sequence and timetabling of the phase of the strategic road network works in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard and the approved audit team will include a member of National Highways East Midlands Asset Delivery Road Safety Team;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard HD 19/15 or any successor document;

“strategic road network works” means those parts of the authorised development to be carried out in the areas identified as Works No. 8 on the works plan, the general arrangement of which is shown on the highways plans and any ancillary works thereto;

“utilities” means any pipes, wires, cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

Prior approvals and security

3.—(1) No work must commence on any phase of the strategic road network works until the detailed design information and a programme of works in respect of that phase has been submitted to and approved by National Highways.

(2) National Highways must nominate a person who will be a single point of contact on behalf of National Highways for consideration of the detailed design information and who shall co-ordinate the National Highways response to the details submitted.

(3) No works must commence on any phase of the strategic road network works other than by a contractor employed by the undertaker for that phase but first approved by National Highways.

(4) No work must commence on any phase of the strategic road network works until National Highways has agreed the bond sum for that phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph [9] of this Part of this Schedule or some other form of security acceptable to National Highways.

(5) No work must commence on any phase of the strategic road network works until Stage 1 and Stage 2 Road Safety Audits have been carried out in respect of that phase and all recommendations raised incorporated into an amended design approved by National Highways or any relevant exceptions approved by National Highways.

(6) No work must commence on any phase of the strategic road network works until the undertaker demonstrates to the satisfaction of National Highways that the Walking, Cycling and Horse Riding Assessment and Review process for that phase has been adhered to in accordance with the Design Manual for Roads and Bridges Standard HD 42/17 or any successor document.

(7) No work must commence on any phase of the strategic road network works until a scheme of traffic management has been submitted by the undertaker and approved by National Highways for that phase such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time.

(8) No work must commence on any phase of the strategic road network works until stakeholder liaison has taken place for that phase in accordance with a scheme for such liaison agreed between the undertaker and National Highways.

(9) No work must commence on any phase of the strategic road network works until National Highways has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for that phase in accordance with the Road Safety Audit Standard.

(10) No work must commence on any phase of the strategic road network works until the undertaker has agreed the commuted sum for that phase with National Highways to be calculated in accordance with paragraph [9] of this Part of this Schedule.

(11) No work must commence on any phase of the strategic road network works until a dilapidation survey for that phase has been carried out by the undertaker and has been submitted to and approved in writing by National Highways.

(12) No work must commence on any phase of the strategic road network works until the scope of all routine maintenance to be carried out by the undertaker during the construction of the phase concerned has been agreed in writing by National Highways such maintenance shall only include winter maintenance of the phase concerned where;

(a) access to carry out such maintenance by National Highways is not available by virtue of the works being carried out on that phase; and

- (b) any winter maintenance is needed immediately prior to the opening of any carriageway to traffic where that carriageway had been closed for the purposes of the carrying out of the phase concerned .

Carrying out of works

4.—(1) The undertaker must prior to commencement of each phase of the strategic road network works give National Highways 28 days' notice in writing of the date on which that phase will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' usual road space booking procedures prior to and during the carrying out of each phase of the strategic road network works and no strategic road network works for which a road space booking is required shall commence without a road space booking having first been secured such road space booking not to be unreasonably withheld or delayed.

(3) Each phase of the strategic road network works must be carried out to the satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and a programme of works approved pursuant to paragraph [3(1)] of this Part of this Schedule or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works) all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016(a) and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the general arrangement of strategic road network works as shown on the highway plans or a departure from such standards has been approved by National Highways;
- (c) such approvals or requirements of National Highways that are required by the provisions of paragraph [3] to be in place prior to the relevant phase of the strategic road network works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015(b) or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity shall have been previously notified to the undertaker by National Highways) to gain access to the strategic road network works for the purposes of inspection and supervision and the undertaker must provide to National Highways contact details of the nominated persons with whom National Highways should liaise during the carrying out of the strategic road network works.

(5) At any time during the carrying out of the strategic road network works the nominated persons must act upon any reasonable request made by National Highways in relation to the carrying out of the strategic road network works as soon as practicable following such request being made to the nominated persons save to the extent that the contents of such request are inconsistent with or fall outside the contractors obligations under its contract with the undertaker or the undertakers obligations in this Order.

(6) If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of any phase of the strategic road network works having been given notice of an alleged breach and an adequate opportunity to remedy it by National Highways then National Highways shall on giving to the undertaker 14 days' notice in writing to that effect be entitled to either—

(a) S.I. 2016/362
(b) S.I. 2015/51

- (i) carry out and complete that phase of the strategic road network works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or
- (ii) carry out such necessary works of reinstatement of the highway and other land and premises of National Highways,

and in either case the undertaker must within 28 days of receipt of the itemised costs pay to National Highways the costs so incurred by National Highways.

(7) If at any time the undertaker in carrying out the authorised development causes any damage or disruption to the strategic road network not hereby authorised then National Highways is to give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of National Highways, National Highways, on giving to the undertaker 7 days' notice in writing to that effect, is be entitled to carry out such necessary works as National Highways acting reasonably deem appropriate to remedy the damage or disruption and the undertaker must within 28 days of receipt of the itemised costs pay to National Highways the costs so incurred by National Highways.

(8) Nothing in this Part of this Schedule shall prevent National Highways from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public the cost to National Highways of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the authorised development. This provision applies to all areas of the authorised development including any area of traffic management deployed under the traffic management plan approved pursuant to paragraph [3(7)] of this Part of this Schedule to facilitate delivery of the authorised development.

(9) The undertaker, in carrying out each phase of the strategic road network works, must at its own expense divert or protect all utilities as may be necessary to enable the strategic road network works to be properly carried out and all agreed alterations to existing services must be carried out to the reasonable satisfaction of National Highways.

(10) During the construction of each phase of the strategic road network works the undertaker is responsible for all routine maintenance at its cost within that phase (including winter maintenance where required to be undertaken by the undertaker in accordance with paragraph [3(12)] of this Part of this Schedule). All routine maintenance must be carried out in accordance with the scope of routine maintenance operations agreed by National Highways pursuant to paragraph 3(12).

Payments

5.—(1) The undertaker must fund the whole of the cost of the strategic road network works and all costs incidental to the strategic road network works and must also pay to National Highways in respect of each phase of the strategic road network works a sum equal to the whole of any costs and expenses which National Highways incur including costs and expenses for using external staff and resources as well as costs and expenses of using in-house staff and resources in relation to the strategic road network works and arising out of them and their implementation including—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that phase;
- (b) costs in relation to agreeing the programme of works for that phase;
- (c) the carrying out of supervision of that phase; and
- (d) all administrative costs in relation to (a) and (b) above,

together comprising “the estimated costs”.

(2) The sums referred to in sub-paragraph (1) do not include any sums payable from the undertaker to the contractor but do include any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

(3) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by

National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the strategic road network works provided that this paragraph shall not apply to the making of any orders which duplicate orders contained in this Order.

- (4) The undertaker must make the payments of the estimated costs as follows—
- (a) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraphs (1)(a), (b) and (d) to National Highways prior to National Highways undertaking those tasks;
 - (b) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraph (1)(c) prior to commencing that phase;
 - (c) if at any time or times after the payment in respect of a phase referred to in sub-paragraphs (4)(a) and (b) has become payable and National Highways reasonably estimates that the costs in respect of that phase referred to in sub-paragraph (1) will exceed the estimated costs for that phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to National Highways within 28 days of the date of that notice a sum equal to the excess.

(5) Within 91 days of the issue of the handover certificate for each phase of the strategic road network works pursuant to paragraph [7] of this Part of this Schedule National Highways must give the undertaker a final account of the costs referred to in sub-paragraph (1) above and within 28 days from the expiry of the 91 day period—

- (a) if the account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs National Highways must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional certificate

6. As soon as—
- (a) each phase of the strategic road network works has been completed; and
 - (b) a Stage 3 Road Safety Audit for that phase has been carried out and any resulting recommendations complied with and any exceptions agreed,

National Highways must forthwith issue a provisional certificate of completion in respect of that phase such certificate not to be unreasonably withheld or delayed.

Handover certificate and defects period

- 7.—(1) As soon as, in respect of a phase—
- (a) the undertaker has carried out a dilapidation survey of the area previously surveyed pursuant to paragraph [3(11)] of this Part of this Schedule and completed any remedial works necessary to bring that area into as good a condition as when it was originally surveyed, such works to be first agreed with National Highways;
 - (b) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense together with any ancillary equipment that will become the responsibility of the highway authority; and
 - (c) the as built information has been provided to National Highways,

National Highways must forthwith issue a handover certificate in respect of that phase such certificate not to be unreasonably withheld or delayed.

(2) The undertaker must at its own expense remedy any defects in any phase of the strategic road network works as are reasonably required to be remedied by National Highways during a period of 12 months from the date of the handover certificate in respect of that phase. All identified defects are to be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways consider to be serious defects or faults, within 14 days of receiving notification of the same or if a road space booking is required at the time when the road space is available whichever is the later ; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same or if a road space booking is required at the time when the road space is available whichever is the later.

(3) Following the issue of the handover certificate in respect of a phase National Highways shall be responsible for the strategic road network works within that phase which shall thereafter be maintained by and at the expense of National Highways.

(4) The undertaker must submit Stage 4 Road Safety Audits for each phase as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such.

Final certificate

8. National Highways must issue the final certificate in respect of each phase at the expiration of the 12 month period in respect of that phase referred to in paragraph [7(2)] of this Part of this Schedule or if later on the date on which any defects or damage arising from defects during that period have been made good to the reasonable satisfaction of National Highways such certificate not to be unreasonably withheld or delayed.

Security

9.—(1) Subject to paragraph 3(4) of this Part of this Schedule the undertaker must provide security for the carrying out of the strategic road network works as follows—

- (a) prior to the commencement of each phase the [strategic road network works within that phase must be secured by a bond from a bondsman first approved by National Highways drafted substantially as detailed in Form 1 contained in paragraph [17] of this Part of this Schedule or such other form that may be agreed between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that phase under the provisions of this Part of this Schedule provided that the maximum liability of the bond shall not exceed the bond sum relating to that phase; and
- (b) prior to the commencement of the strategic road network works the undertaker must provide the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph [5] of this Part of this Schedule or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker (which shall for the avoidance of doubt be a single cash surety for the entirety of the strategic road network works).

(2) Each bond sum and the cash surety (the latter in respect of the final phase only) shall be progressively reduced as follows—

- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor, National Highways must, in writing, authorise the reduction of the bond sum by such proportion of the bond sum as amounts to 80% of

those payments provided that an evaluation of the strategic road network works completed and remaining has been carried out by the undertaker and audited and agreed by National Highways to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the Contractors. National Highways shall only be required to provide the said authorisation should it be satisfied that the monies remaining secured by the bond sum shall be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the strategic road network works plus an additional 20%;

- (b) within 20 working days of completion of each phase of the strategic road network works (as evidenced by the issuing of the provisional certificate in respect of that phase pursuant to paragraph [6(1)] of this Part of this Schedule) National Highways must in writing release the bond provider from its obligations in respect of 80% of the bond sum relating to that phase (“the revised bond sum”) save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date in which case National Highways will retain a sufficient sum to meet all necessary costs; and
- (c) within 20 working days of the issue of the final certificate for each phase of the strategic road network works referred to in paragraph [8] of this Part of this Schedule, National Highways must, in writing, release the bond provider from its obligations in respect of the revised bond sum relating to that phase and (in respect of the final phase) release the remainder of the cash surety to the undertaker save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date in which case National Highways will retain a sufficient sum to meet all necessary costs.

Commuted sums

10. The undertaker must pay to National Highways the commuted sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 within 28 days of the date that each phase of the strategic road network works becomes maintainable by National Highways pursuant to paragraph [7(3)] of this Part of this Schedule.

Insurance

11. The undertaker must prior to commencement of the strategic road network works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the strategic road network works or any part thereof by the undertaker.

Indemnification

12.—(1) The undertaker must in relation to the carrying out of the strategic road network works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify National Highways from and against all costs expenses damages losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design and carrying out of the strategic road network works provided that—

- (a) the foregoing indemnity shall not extend to any costs expenses liabilities and damages caused by or arising 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;
- (b) National Highways must notify the undertaker immediately upon receipt of any claim; and
- (c) National Highways must following the acceptance of any claim notify the quantum thereof to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to National Highways the amount specified as the quantum of such claim.

(2) The undertaker must notify National Highways of the intended date of opening of each phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify National Highways of the actual date that each phase is open to public traffic on each occasion within 14 days of that occurrence.

Warranties

13. The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant such warranties to be provided to National Highways before that phase commences.

Land transfer

14.—(1) Following the issuing of the final certificates for all the strategic road network works, National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the then extent of highway land which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the strategic road network works.

(2) If the undertaker receives a notice under sub-paragraph (1), the undertaker must co-operate in a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways which includes the undertaker being responsible for the reasonable legal costs incurred by National Highways in connection with such transfer.

Approvals

15.—(1) Any approvals, certificates, consents or agreements required or sought from or with National Highways pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing.

(2) If National Highways fail to notify the undertaker of its decision in respect of any approval, consent or agreement pursuant to the provisions of this Part of this Schedule within 28 days of the specified day, the undertaker may serve upon National Highways written notice requiring National Highways to give its decision within a further 28 days beginning on the date upon which National Highways received written notice from the undertaker. Subject to sub-paragraph (3), if by the expiry of the further 28 days National Highways has failed to notify the undertaker of its decision, then National Highways is deemed to have given the relevant approval certificate, consent or agreement.

(3) Any further notice given by the undertaker to National Highways under sub-paragraph (2) must include a written statement that the provisions of sub-paragraph (2) apply to the relevant approval, certificate, consent or agreement.

(4) In this paragraph “specified day” means—

- (a) the day on which particulars of the matter are received by National Highways under the provisions of this Part of this Schedule; or
- (b) the day on which the undertaker provides National Highways with any further particulars of the matter that have been reasonably requested by National Highways within 28 days of the date in sub-paragraph (2)(a)

whichever is the later.

Expert determination

16.—(1) Article 48 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph (5).

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the

absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

17. Form 1, as referred to in paragraph [9]—

Form 1 **Bond – National Highways**

BY THIS BOND [] [(Company Regn No)] whose registered office is situate at [] (“**the undertaker**”) and [] [(Company Regn No)] whose registered office is situate at [] (“**the Surety**”) are jointly and severally bound to [] of [] (“**the []**”) this [] day of [] 202[] in the sum of [] pounds (£[Surety Sum]) to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as The Hinckley National Rail Freight Interchange Order 202[X] (“**the DCO**”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to National Highways such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 2 of Schedule 14 to the DCO on the undertaker's part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by Natoinal Highways thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by National Highways under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of National Highways shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph [9] of Part 2 of Schedule [14] of the DCO.

[Attestation]

PART 3

FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY

Application

1. The provisions of this Part of this Schedule have effect, and apply unless otherwise agreed in writing between the undertaker and the local highway authority.

Interpretation

2.—(1) The terms used in this Part of this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) which shall prevail; and

(2) In this Part of this Schedule—

“as built information” means one digital copy of the following information where applicable to the phase in question—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of suppliers and materials used, test results and CCTV surveys;
- (c) product data sheets, technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) [plan of temporary signage indicating new road layouts;]
- (h) organisation and methods manuals for all products used in the construction of the county highway works;
- (i) as constructed programme;
- (j) test results and records required by the Detailed Design Information and during the construction phase of the project;
- (k) RSA3 and exceptions agreed; and
- (l) health and safety file;

“the bond sum” means the sum equal to []% of all the costs of the carrying out of the phase of the county highway works concerned and []% of the commuted sum relating to that phase or such other sum agreed between the undertaker and the local highway authority;

“commuted sum” means such sum as shall be calculated for each phase as provided for in paragraph [9(2)] of this Part of this Schedule and to be used to fund the future cost of maintenance of the county highway works.

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the county highway works or any phase of the county highway works and approved by the local highway authority pursuant to paragraph 3(2) below;

“county highway works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 9 – 17 on the works plans the general arrangement of which is shown on the highway plans and any ancillary works thereto;

“detailed design information” means drawings, specifications and other information which must be in accordance with the general arrangements of the county highway works shown on the highway plans unless otherwise agreed between the local highway authority and the undertaker—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;

- (c) road restraints systems (vehicle and pedestrian) and supporting Road Restraint Risk Appraisal Process assessment (RRRAP);
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures;
- (l) [Stage 2 Road Safety Audit and exceptions;]
- (m) landscaping;
- (n) utilities diversions;
- (o) [topographical survey;
- (p) identification of any land to be dedicated as highway; and
- (q) pre- construction health and safety information]

where relevant to the phase concerned.

“estimated costs” means the estimated costs in respect of each phase agreed pursuant to paragraphs [5(1) and (5)] of this Part of this Schedule;

“the excess” means the amount by which the local highway authority estimates that the costs referred to in paragraph [5(1)] will exceed the estimated costs pursuant to paragraph [5(5)(b)];

“local highway authority” means:

- (a) in respect of Works Nos. 9 – 15 and 17, Leicestershire County Council; and
- (b) in respect of Work No. 16, Leicestershire County Council and Warwickshire County Council or such of them who assumes responsibility for that work as highway authority pursuant section 8 of the 1980 Act or by agreement;

“nominated persons” means the undertakers representatives or the contractors representatives on site during the carrying out of the county highway works as notified to the local highway authority from time to time;

“phase” means that part of the county highway works which is to be carried out in separate phases in the areas identified as separate works numbers on the works plans or such other phasing arrangements as shall be agreed with the local highway authority;

“programme of works” means a document setting out the sequence and timetabling of the phase in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard GG 119 or any successor document;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

Prior approvals and security

3.—(1) No work must commence on any phase of the county highway works until the detailed design information and a programme of works in respect of that phase has been submitted to and approved by the local highway authority.

(2) No works must commence on any phase of the county highway works other than by a contractor employed by the undertaker for that phase but first approved by the local highway authority.

(3) No work must commence on any phase of the county highway works until the local highway authority has agreed the bond sum for that phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph [8] of this Part of this Schedule or some other form of security acceptable to the local highway authority.

(4) No work must commence on any phase of the county highway works until a Stage 2 Road Safety Audit has been carried out in respect of that phase and all issues raised incorporated into an amended design approved by the local highway authority or any relevant exceptions approved by the local highway authority.

(5) No work must commence on any phase of the county highway works until a scheme of traffic management provisions have been agreed with the local highway authority.

(6) No work must commence on any phase of the county highway works until the local highway authority has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for that phase in accordance with the Road Safety Audit Standard.

(7) No works must commence on any phase of the county highway works until the undertaker has agreed the commuted sum for that phase with the local highway authority to be calculated in accordance with paragraph [9(2)] of this Part of this Schedule.

(8) No works must commence on any phase of the county highway works until the undertaker has provided confirmation of ownership to the local highway authority for any land which is to be dedicated as highway following completion of the county highway works.

Carrying out of works

4.—(1) The undertaker must prior to commencement of each phase of the county highway works give the local highway authority 14 days' notice in writing of the date on which that phase will start unless otherwise agreed with the local highway authority.

(2) The undertaker must give the local highway authority 14 days' notice of the road space booking required for the carrying out of each phase of the county highway works.

(3) Each phase of the county highway works must be carried out to the satisfaction of the local highway authority in accordance with—

- (a) the relevant detailed design information and a programme of works approved pursuant to paragraph [3(1)] of this Part of this Schedule or as subsequently varied by agreement between the undertaker and the local highway authority;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works), the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the highway plans or a departure from such standards has been approved by the local highway authority;
- (c) such approvals or requirements of the local authority that are required by the provisions of paragraph [3] of this Part of this Schedule to be in place prior to the relevant phase of the county highway works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker as client shall ensure that all client duties (as defined in those regulations) are undertaken to the satisfaction of the local highway authority.

(4) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously notified to the undertaker by the local highway authority) to gain access to the land upon which the county highway works are being carried out for the purposes of inspection and supervision and the undertaker must

provide to the local highway authority contact details of the nominated persons with whom the local highway authority should liaise during the carrying out of the county highway works.

(5) At any time during the carrying out of the county highway works the nominated persons must act upon any reasonable request made by the local highway authority in relation to the carrying out of the county highway works as soon as practicable following such request being made to the nominated persons or the undertakers obligations in this Order.

(6) If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of any phase of the county highway works having been given notice of an alleged breach and an adequate opportunity to remedy it by the local highway authority then the local highway authority shall on giving to the undertaker 14 days' notice in writing to that effect be entitled to either—

- (i) carry out and complete that phase of the county highway works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or
- (ii) carry out such necessary works of reinstatement of the highways and other land and premises of the local highway authority'

and in either case the undertaker must within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(7) If at any time the undertaker in carrying out any phase of the county highway works causes any damage or disruption to the local road network not hereby authorised then the local highway authority is to give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of the local highways authority then the local highway authority, on giving the undertaker 7 days' notice in writing to that effect, is entitled to carry out such necessary works deemed appropriate to remedy the damage or disruption, and the undertaker shall within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(8) Nothing in this Part of this Schedule shall prevent the local highway authority from carrying out any work or taking such action as deemed appropriate, without prior notice to the undertaker, in the event of an emergency or danger to the public the cost to the local highway authority of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the county highway works.

(9) The undertaker in carrying out each phase of the county highway works must at its own expense divert or protect all utilities as may be necessary to enable the county highway works to be properly carried out and all agreed alterations to existing services must be carried out to the reasonable satisfaction of the local highway authority.

(10) The undertaker must notify the local highway authority of the intended date of opening of each phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify the local highway authority of the actual date that each phase is open to public traffic on each occasion within 14 days of that occurrence.

Payments

5.—(1) The undertaker must fund the whole of the cost of the county highway works and all costs incidental to the county highway works and must also pay to the local highway authority in respect of each phase of the county highway works a sum equal to the whole of any costs and expenses which the local highway authority incur including costs and expenses for using external staff and resources as well as costs and expenses of using in house staff and resources in relation to the county highway works and arising out of them and their implementation including—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that phase;
- (b) costs in relation to agreeing the programme of works for that phase;
- (c) the carrying out of the inspection of that phase; and

(d) all administrative costs in relation to (a) and (b) and (c) above, together comprising “the estimated costs”).

(2) The undertaker must pay to the local highway authority upon demand and prior to such costs being incurred the total costs that the local highway authority believe will be properly and necessarily incurred by the local highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the county highway works provided that this paragraph shall not apply to the making of any orders which duplicate orders contained in this Order.

(3) The undertaker and the local highway authority must agree a schedule of the estimated costs to be incurred pursuant to sub-paragraph (1) above in respect of each phase prior to the commencement of that phase.

(4) The undertaker must make the payments referred to in sub-paragraph (1) as follows—

- (a) the undertaker must pay a sum equal to the agreed estimated costs to the local highway authority prior to the local highway authority undertaking those tasks in respect of any phase of the county highway works;
- (b) if at any time or times after the payment in respect of a phase referred to in paragraph [(5)(4)(a)] of this Part of this Schedule has become payable the local highway authority reasonably estimates that the costs in respect of that phase referred to in paragraph (1) above will exceed the estimated costs for that phase it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to the county highway Authority within 28 days of the date of that notice a sum equal to the excess.

(5) Within 91 days of the issue of the final certificate for each phase of the county highway works pursuant to paragraph [7] of this Part of this Schedule the local highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the expiry of the 91 day period—

- (a) if the account shows a further sum as due to the local highway authority the undertaker must pay to the local highway authority the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs the local highway authority must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the party to whom it was due interest at 1% above the rate payable in respect of compensation under Section 32 (rate of interest after entry on land) of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional certificate and defects and maintenance period

6.—(1) As soon as each phase of the county highway works has been completed and—

- (a) a Stage 3 Road Safety Audit for that phase has been carried out;
- (b) any resulting recommendations have been complied with and any exceptions agreed;
- (c) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by the local highway authority upon the issue of the final certificate referred to in paragraph [7] of this Part of this Schedule;
- (d) the undertaker providing confirmation that any additional land which is to be dedicated as highway maintainable at public expense is so dedicated; and
- (e) the as built information has been provided to the local highway authority,

the local highway authority must immediately issue a provisional certificate of completion in respect of that phase of the county highway works.

(2) The undertaker must at its own expense remedy any and all defects arising out of defective design materials or workmanship or of any other nature whatsoever in that phase of the county

highway works as reasonably required to be remedied by the local highway authority and identified by the local highway authority during a period of 12 months from the date of the provisional certificate in respect of that phase.

(3) The undertaker must submit Stage 4 Road Safety Audits for each phase of the county highway works as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such audits.

Final certificate

7.—(1) The undertaker must apply to the local highway authority for the issue of the final certificate in respect of each phase at the expiration of the 12 month period in respect of that phase referred to in paragraph [6(2)] of this Part of this Schedule or if later on the date on which any defects or damage arising during that period which are the responsibility of the undertaker under the provisions of paragraph [6] of this Part of this Schedule have been made good to the reasonable satisfaction of the local highway authority.

(4) If the provisions of sub-paragraph (1) are satisfied the local highway authority must issue a final certificate for the phase of the county highway works concerned, such certificate not to be unreasonably withheld or delayed.

Security

8.—(1) Subject to paragraph [3(3)] of this Part of this Schedule the undertaker must provide security for the carrying out of the county highway works as follows—

- (a) prior to the commencement of each phase the county highway works within that phase will be secured by a bond from a bondsman first approved by the local highway authority drafted substantially as detailed in Form 2 contained at paragraph [15] of this Part of this Schedule, or such other form that may be agreed between the undertaker and the local highway authority to indemnify the local highway authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that phase of the county highway works under the provisions of this Part of this Schedule provided that the maximum liability of the bond shall not exceed the bond sum relating to that phase.
- (2) Each bond sum shall be progressively reduced as follows—
 - (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor the local highway authority must in writing authorise the reduction of the bond sum by such proportion of the bond sum as amounts to 80% of those payments provided that an evaluation of the county highway works completed and remaining has been carried out by the undertaker and audited and agreed by the local highway authority to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the contractors. The local highway authority will only be required to provide the said authorisation should it be satisfied that the monies remaining secured by the bond sum will be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the county highway works plus an additional 10%;
 - (b) within 20 working days of completion of each phase of the county highway works (as evidenced by the issuing of the provisional certificate in respect of that phase pursuant to paragraph [6(1)] of this Part of this Schedule) the local highway authority must in writing release the bond provider from its obligations in respect of 80% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date; and
 - (c) within 20 working days of the issue of the final certificate for each phase of the county highway works referred to in paragraph [7] of this Part of this Schedule the local highway authority must in writing release the bond provider from all its obligations in respect of the

bond relating to that phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date.

Commuted sums

9.—(1) Within 28 days following the issue of the final certificate in respect of any phase the undertaker must pay to the local highway authority any commuted sums payable in respect of that phase calculated as provided for in sub-paragraph (2).

(2) The rates to be applied in calculating the commuted sums payable must be calculated in accordance with Leicestershire County Council's commuted sum calculator or as otherwise agreed between the undertaker and the local highway authority prior to commencement of work on any phase.

Insurance

10. The undertaker must prior to commencement of the county highway works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (Ten million pounds) for any one claim against any legal liability for damage loss or injury to any property or any person arising out of or in connection with the execution of the county highway works or any part thereof by the undertaker.

Indemnification

11.—(1) The undertaker must in relation to the carrying out of the county highway works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify the local highway authority from and against all costs expenses damages losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design and carrying out of the county highway works; provided that—

- (a) the foregoing indemnity shall not extend to any costs expenses liabilities and damages caused by or arising out of the neglect or default of the local highway authority or its officers servants agents or contractors or any person or body for whom it is responsible;
- (b) the local highway authority must notify the undertaker upon receipt of any claim; and
- (c) the local highway authority must following the acceptance of any claim notify the quantum thereof to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the local highway authority the amount specified as the quantum of such claim.

Warranties

12. The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant such warranties to be provided to the local highway authority before that phase commences.

Approvals

13.—(1) Any approvals, certificates, consents or agreements required or sought from or with the local highway authority pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approvals, certificates, consents or agreements shall be deemed to have been given if it is neither given nor refused within 42 days of the specified day.

(2) In this paragraph “specified day” means—

- (a) the day on which particulars of the matter are submitted to the local highway authority under the provisions of this Schedule; or

- (b) the day on which the undertaker provides the local highway authority with any further particulars of the matter that have been reasonably requested by the local highway authority or within 28 days of the date in sub-paragraph (a),

whichever is the later.

Expert Determination

14.—(1) Article 48 (arbitration) does not apply to this Part 3 of Schedule [14] except in respect of sub-paragraph (5).

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission; and
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

15. Form 2 as referred to in paragraph [8] of this Part of this Schedule—

Form 2
Bond – Local Highway Authority

BY THIS BOND [] [(Company Regn No)] whose registered office is situate at [] (“**the undertaker**”) and [] [(Company Regn No)] whose registered office is situate at [] (“**the Surety**”) are jointly and severally bound to [] of [] (“the []”) this [] day of [] 202[] in the sum of [] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as The Hinckley National Rail Freight Interchange Order 202[X] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to the local highway authority such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 3 of Schedule 14 of the DCO on the undertaker’s part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by the local highway authority thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by the local highway authority under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of the local highway authority shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 8 of Part 3 of Schedule [14] of the DCO.

[Attestation]

PART 4

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

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

Interpretation

2. In this Part of this Schedule—

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

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

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“Cadent” means Cadent Gas Limited (Company Number 10080864) whose registered office is situate at Ashbrook Court, Prologis Park, Central Boulevard, Coventry CV7 8EP and any successor in title or assign including any successor to their license as a gas transporter under Part 1 of the Gas Act 1986(a);

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

“functions” includes powers and duties;

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

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

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

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise; and/or
- (b) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

On Street Apparatus

3.—(1) Except for paragraphs 4 (apparatus of Cadent in stopped up streets), 6 (removal of apparatus) and 7 (facilities and rights for alternative apparatus) (in so far as paragraph 3(2) below applies), 8 (retained apparatus: protection), 9 (expenses) and 10 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Schedule do not apply to apparatus in respect

(a) 1986 c. 44

of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 6 and 7 of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within adopted public highway.

Apparatus of Cadent in stopped up streets

4.—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 10 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to the Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph shall affect any right of the undertaker or Cadent to require removal of the Apparatus under paragraph 6.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article [11] (temporary stopping up of streets), Cadent will be at liberty at all times to take all necessary access across any such stopped up street and/or 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 stopping up or diversion was in that street.

(3) The protective provisions in this Part of this Schedule apply and take precedence over article [37] of this Order which do not apply to Cadent.

Acquisition of land

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

(2) As a condition of agreement between the parties in paragraph 5(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by Cadent under paragraph 8 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 5(1).

Removal of apparatus

6.—(1) If, in the exercise of the agreement reached in accordance with paragraph 5 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed,

that apparatus must not be removed under this Part of this Schedule and any right of Cadent 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 Cadent in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Cadent to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, with the undertakers assistance if required by Cadent, save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of any such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to 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

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under paragraph 7(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter will be referred to arbitration in accordance with paragraph 14 of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

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

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

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

(3) The undertaker must not commence any works to which sub-paragraph (1) applies until Cadent has given written approval of the plan so submitted.

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraph (1) applies, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Cadent for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If Cadent in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation

requirements for third parties T/SP/SSW22” and HSE’s “HS(~G)47 Avoiding Danger from underground services”.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9.

Expenses

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

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

(2) There will be deducted from any sum payable under sub-paragraph (1) or article 37 (apparatus and rights of statutory undertakers in stopped up streets) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (a) 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 [53] (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

Indemnity

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

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

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

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 10.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

11. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to Cadent on the date on which this Order is made.

Co-operation

12.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 6(2) Cadent makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent’s undertaking and Cadent shall use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

13. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article [53] (arbitration).

Notices

15. The plan and scheme submitted to Cadent by the undertaker pursuant to paragraph 8(1) must be sent to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PART 5

FOR THE PROTECTION OF SEVERN TRENT WATER LIMITED

1. For the protection of Severn Trent Water, the following provisions shall, unless otherwise agreed in writing between the Undertaker and Severn Trent Water, have effect.

2. In this Part of this Schedule—

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Severn Trent for the purposes of water supply and sewerage and—

(a) any drain or works vested in Severn Trent Water under The Water Industry Act 1991(a);

(a) 1991 c. 56

- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(a) of The Water Industry Act 1991 or an agreement to adopt made under section 104(b) of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works;

“alternative apparatus” means alternative apparatus adequate to enable Severn Trent to fulfil its statutory functions in no less efficient a manner than previously;

“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 sections, drawings, specifications and method statements;

“Severn Trent” means Severn Trent Water Limited (company number 02366686) registered at Severn Trent Centre, 2 St John’s Street, Coventry, CV1 2LZ and any successor in function;

“standard protection strips” means the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus; 2.25 metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres, 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres.

3. The undertaker shall not interfere with, build over or within 6 metres of any apparatus within the Order Land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with Severn Trent, such agreement not to be unreasonably withheld or delayed.

4. The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting Regulations 2010 or other legislations and any other associated consents are obtained, and any approval or agreement required from Severn Trent on alternative outfall locations as a result of such re-location are approved, such approvals from Severn Trent not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Severn Trent has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Severn Trent for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

5. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Severn Trent has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

6. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Severn Trent to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Severn Trent, create a new right to use, keep, inspect, renew

(a) Section 102(4) was amended by sections 56 and 96(1)(c) to (e) of, paragraphs 2 and 90 of Schedule 7 to, the Water Act 2014 (c. 21).

(b) Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37), section 42(3) of the Flood and Water Management Act 2010 (c. 29) and sections 11 and 56 of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014 (c. 21).

and maintain the apparatus that is reasonably convenient for Severn Trent such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article [53].

7. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable Severn Trent to maintain or use the apparatus no less effectively than was possible before such obstruction.

8. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the company, notification of the location of such assets will immediately be given to Severn Trent and afforded the same protection of other Severn Trent assets.

9. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 6 and 8 above 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 Severn Trent, or there is any interruption in any service provided, or in the supply of any goods, by Severn Trent, the undertaker shall —

- (a) bear and pay the cost reasonably incurred by Severn Trent in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Severn Trent for any other expenses, loss, damages, penalty or costs incurred by Severn Trent,

by reason or in consequence of any such damage or interruption.

PART 6

FOR THE PROTECTION OF ELECTRICITY UNDERTAKERS

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

2. In this Part of this Schedule—

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;

“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 any licence holder within the meaning of Part 1 of the Electricity Act 1989 for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

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

(a) 1989 c. 29.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article [10] (permanent stopping up), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 6 or the power of the undertaker to carry out works under paragraph 8.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article [11] (temporary stopping up), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

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

Removal of apparatus

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 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 an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article [53] (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 [53], and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that

work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

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 are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article [53] (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 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

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

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

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 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.

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

Expenses and costs

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article [53] (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 sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 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 interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

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

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

Cooperation

11. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 6(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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

PART 7

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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(a);

“conduit system” has the same meaning as in Part 1 of Schedule 3 of the Digital Economy Act 2017(b);

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

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

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

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

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

3. The exercise of the powers conferred by article [36] (statutory undertakers) is subject to Part 10 of Schedule 3A to the 2003 Act.

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

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

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

(a) 2003 c. 21.

(b) 2017 c. 30.

(c) See section 106 of the Communications Act 2003 (c. 21). Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

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

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

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

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article [53] (arbitration).

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

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

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

PART 8

FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and WPD.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously;

“alternative rights” means all necessary legal easements, consents or permissions required by WPD to permit a diversion of apparatus or to authorise the construction of alternative apparatus;

“apparatus” means any conduit overhead electric lines cables ducts pipes or other apparatus equipment belonging to or maintained by WPD for the purposes of electricity transmission and its distribution, and includes any structure in which apparatus is or will 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” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus; and

“WPD” means Western Power Distribution Limited (West Midlands) Plc (Company Registration Number 03600574) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB.

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

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

5.—(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 over which access to any apparatus is enjoyed or requires that WPD's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land or gain access to it must not be extinguished without the prior consent of WPD until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary all to the reasonable satisfaction of WPD.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order WPD reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (6), afford to WPD the necessary facilities and rights for the construction of alternative apparatus in other land owned or controlled by the undertaker and subsequently for the maintenance of that apparatus.

(3) If, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker must use reasonable endeavours to obtain alternative facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) Should the undertaker not be able to obtain the alternative rights required under sub-paragraph 3 then the undertaker and WPD must use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights.

(5) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (3) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph (4), WPD must on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(6) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 10 of this Part of this Schedule.

(7) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 10 of this Part of this Schedule, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(8) Regardless of anything in sub-paragraph (7), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(9) Nothing in sub-paragraph (8) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 10 of this Part of this Schedule.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in the land for which the alternative apparatus is to be substituted.

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

7.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work, the undertaker must submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3).

(2) Subject to sub paragraph 3 the undertaker must not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the submitted plan, and identified any reasonable requirements it has in relation to the carrying out of the works, such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 60 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it is deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph (1) must be executed in accordance with the plan, section and description approved under sub-paragraph (3) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by WPD, and WPD is entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker must comply with WPD’s “Avoidance of Danger from Electricity Overhead Lines and Underground Cables” (2014), the Energy Network Association’s “A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines” (undated), the Health and Safety Executive’s GS6 “Avoiding Danger from Overhead Power Lines” and the Health and Safety Executive’s “HSG47 Avoiding Danger from Underground Services (3rd edition, 2014) as the same may be replaced from time to time.

(6) If in consequence of the works proposed by the undertaker, WPD reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement in accordance with sub-paragraph (2), the provisions of this paragraph apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2) of this Part of this Schedule.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable, submit a plan, section and description of those works to WPD as soon as reasonably practicable subsequently and comply with sub-paragraph (4) in so far as is reasonably practicable in the circumstances.

8. The undertaker must repay to WPD the reasonable expenses incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new connection arising as a result of the powers conferred upon the undertaker pursuant to this Order.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD, or there is any interruption in any service provided, or in the supply of any goods by, WPD, the undertaker is to—

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

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

(3) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Expert determination

10.—(1) Subject to sub-paragraph (7), article 47 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;

- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 47.

SCHEDULE 15

Article 49

MISCELLANEOUS CONTROLS

Public general legislation

Introduction

1. This Schedule applies, modifies and excludes statutory provisions which relate to matters for which provision may be made in this Order.

Highways Act 1980

2.—(1) Section 141 of the 1980 Act(a) (restriction on planting trees etc. in or near carriageway) shall not apply to any tree or shrub planted in the course of the authorised development before completion of construction.

(2) Section 167 of the 1980 Act(b) (powers relating to retaining walls near streets) shall not apply in relation to—

- (a) the erection of a wall in the course of the authorised development before completion of construction, or
- (b) a wall on land on which works are being carried out, or are to be carried out, in pursuance of the authorised development before completion of construction.

New Roads and Street Works Act 1991

3.—(1) The powers conferred by section 56(1) and (1A) of the 1991 Act(c) (powers to give directions as to the timing of proposed and subsisting street works) shall not apply in relation to the authorised development.

(2) Section 56A of the 1991 Act(d) (power to give directions as to placing of apparatus) shall not apply in relation to the placing of apparatus in the course of the authorised development.

(3) No restriction under section 58(1) of the 1991 Act(e) (power to impose restriction on execution of street works in the twelve months following completion of substantial road works) shall have effect in relation to the authorised development.

(4) Section 61(1) of the 1991 Act (under which the consent of the street authority is required for the placing of apparatus in a protected street) shall not apply to the placing of apparatus in the course of the authorised development.

(5) Section 62(2) of the 1991 Act (power following designation of a protected street to require removal or repositioning of apparatus already placed in the street) shall not apply in relation to apparatus placed in the course of the authorised development.

(a) 1980 c. 66. Section 141 was amended by sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).
(b) 1980 c. 66. Section 167 was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48).
(c) 1991 c. 22. Section 56(1) and (1A) were amended by section 43 of the Traffic Management Act 2004 (c. 18).
(d) 1991 c. 22. Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).
(e) 1991 c. 22. Section 58(1) was amended by section 51(1), (2) of the Traffic Management Act 2004 (c. 18).

(6) Section 62(4) of the 1991 Act (power when designation as protected street commences or ceases to give directions with respect to works in progress) shall not apply in relation to the authorised development.

(7) Section 63(1) of the 1991 Act (under which Schedule 4 to that Act has effect for requiring the settlement of a plan and section of street works to be executed in a street designated by the street authority as having special engineering difficulties) shall not apply in relation to the authorised development.

(8) The powers conferred by section 73A(1) and 78A(1) of the 1991 Act(a) (requirements for undertaker to re-surface street) may not be exercised in relation to the authorised development.

(9) Sections 74 and 74A of the 1991 Act(b) (charge for occupation of the highway and charge determined by reference to duration of works) shall not apply in relation to the authorised development.

(10) Schedule 3A to the 1991 Act (restriction on works following substantial street works) shall not apply where a notice under section 54 (advance notice of certain works) or 55 (notice of starting date of works) of that Act(c) is given in respect of the authorised development.

(11) No notice under paragraph 2(1)(d) of that Schedule (power by notice to require notification of works which an undertaker proposes to carry out in a part of a highway to which a proposed restriction applies) shall have effect to require the notification of works proposed to be carried out in the course of the authorised development.

(12) No directions under paragraph 3 of that Schedule (directions as to the date on which undertakers may begin to execute proposed works) may be issued to the undertaker.

(13) Paragraph 3(4) of that Schedule (under which it is an offence for an undertaker to execute street works before the completion of certain other street works) shall not apply in relation to the execution of works in the course of the authorised development.

(14) Paragraph 5(1) of that Schedule (effect of direction under paragraph 4 restricting further works) shall not apply in relation to the execution of works in the course of the authorised development.

Local Government (Miscellaneous Provisions) Act 1976

4. Section 42 of The Local Government (Miscellaneous Provisions) Act 1976(d) (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) shall not apply to the extent that it would make provisions of this Order authorising the authorised development subject to other provisions.

SCHEDULE 16

Article 46

CERTIFICATION OF PLANS AND DOCUMENTS

1. Documents for certification that they are true copies of the documents referred to in this Order—

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- (a) 1991 c. 22. Section 73A was inserted by section 55(1) of the Traffic Management Act 2004 (c. 18). Section 78A was inserted by section 57(1) of the Traffic Management Act 2004 (c. 18).
 - (b) 1991 c. 22. Section 74 was amended by sections 256 and 274 of, and Part V(2) of Schedule 31 to, the Transport Act 2000 (c. 38), section 40(4) and section 52(5) of the Traffic Management Act 2004 (c. 18), and section 1(6) of, and paragraphs 113 and 119 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7). Section 74A was inserted by section 255(1) of the Transport Act 2000 (c. 38) and was amended by section 1(6) of, and paragraphs 113 and 120 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and section 40(4) of the Traffic Management Act 2004 (c. 18).
 - (c) 1991 c. 22. Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004 (c. 18). Section 54 was amended by section 40(1) and (2) and section 49(1) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18). Section 55 was amended by section 40(1) and (2), section 49(2) and section 51(1) and (9) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (d) 1976 c. 57. Section 42 was amended by section 6(2) of, and the Schedule to, the Ports (Finance) Act 1985 (c. 30), and section 15 of the Food and Environment Protection Act 1985 (c. 48).

<i>Document/Plan</i>	<i>Document Number</i>	<i>Document date/Plan number with revision number</i>

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Tritax Symmetry (Hinckley) Limited (“the undertaker”) to construct, operate and maintain, the new Hinckley National Rail Freight Interchange together with associated development. The undertaker is authorised by the Order to acquire compulsorily land and rights over land. The Order also authorises the making of alterations to the highway network, stopping up and diversion of public rights of way and the discharge of water.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 46 (certification of plans and documents) of this Order may be inspected free of charge at the offices of Blaby District Council at Council Offices, Desford Road, Narborough, Leicestershire, LE19 2EP and at the offices of Hinckley and Bosworth Borough Council at Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR.

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