The Cambridge South East Transport Order

Transport And Works Act 1992

Transport And Works (Applications And Objections Procedure) (England And Wales) Rules 2006

Order

Document Reference	CSET-02-00
Revision Number	00
Applicant	Cambridgeshire County Council
Date	January 2025

S T A T U T O R Y I N S T R U M E N T S

202[X] No. [X]

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Cambridge South East Transport Order 202[X]

Made - - - - ***

Coming into force ***

CONTENTS

PART 1
PRELIMINARY

1. Citation and commencement 5
2. Interpretation 5
3. Disapplication of legislative provisions 7
4. Application of the 1991 Act 8

PART 2
WORKS PROVISIONS
PRINCIPAL POWERS

5. Power to construct and maintain works 9
6. Power to deviate 10

PART 3
STREETS

7. Power to alter layout, etc., of streets 11
8. Power to keep apparatus in streets 12
9. Power to execute street works 12
10. Rights of way over emergency and maintenance access tracks 13
11. Construction of new and stopping up of existing streets, means of access etc. 13
12. Temporary stopping up of streets 14
13. Access and access to works 15
14. Construction and maintenance of new, altered or diverted streets 15
15. Agreements with street authorities 16
16. Level crossings 16
17. Use of private roads for construction and operation 17

PART 4
SUPPLEMENTAL POWERS

18. Discharge of water 17
19. Power to survey and investigate land, etc. 18
20. Planning permission and supplementary powers 19
21. Restriction on apparatus 20
22. Obstruction of construction of authorised works 20

PART 5
ACQUISITION AND POSSESSION OF LAND
Powers of Acquisition

23. Power to acquire land 20
24. Application of Part 1 of the 1965 Act 20
25. Application of the 1981 Act 21
26. Power to acquire new rights and imposition of restrictive covenants 22
27. Rights under or over streets 23

PART 6
TEMPORARY POSSESSION OF LAND

28. Temporary use of land for construction of works 23
29. Temporary use of land for maintenance of works 25
30. Temporary use of land for access 25

PART 7
COMPENSATION

31. Disregard of certain interests and improvements 26
32. Set off for enhancement in value of retained land 26

PART 8
SUPPLEMENTARY

33. Extinguishment or suspension of private rights 27
34. Power to acquire subsoil or airspace only 28
35. Time limit for exercise of powers of acquisition 28

PART 9
OPERATION OF THE GUIDED BUSWAY SYSTEM

36. Power to operate and use guided busway system 28
37. Power to charge fares 29
38. Maintenance of approved works, etc. 29
39. Removal of obstructions 29
40. Traffic signs 30
41. Restrictions on waiting 31
42. Vehicle Movements 33
43. Traffic regulation 33
44. Speed limits 35

45. Power to lop trees overhanging the guided busway system 35
46. Trespass on the guided busway system 35
47. Power to make byelaws 36
48. Power to contract for police services 37
49. Powers of disposal, agreements for operation, etc. 37
50. Application of landlord and tenant law 38
51. Registration of guided busway services and substitute road services 38

PART 10

MISCELLANEOUS AND GENERAL

52. Defence to proceedings in respect of statutory nuisance 39
53. Modification of agreements 39
54. Statutory undertakers, etc. 39
55. Protection of interests 39
56. Removal of human remains 40
57. Certification of plans, etc. 41
58. Service of notices 41
59. No double recovery 42
60. Arbitration 42

SCHEDULES

SCHEDULE 1 — SCHEDULED WORKS 43
SCHEDULE 2 — ACQUISITION OF CERTAIN LANDS FOR ANCILLARY WORKS 44
SCHEDULE 3 — STREETS SUBJECT TO ALTERATION OF LAYOUT 45
SCHEDULE 4 — STREETS AND MEANS OF ACCESS TO BE STOPPED UP AND THE PROVISION OF NEW AND IMPROVED STREETS AND SUBSTITUTES 47
PART 1 — NEW AND IMPROVED STREETS 47
PART 2 — STREETS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED 49
PART 3 — STREETS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED 49
PART 4 — MEANS OF ACCESS TO BE CLOSED FOR WHICH A SUBSTITUTE IS TO BE PROVIDED 49
PART 5 — NEW MEANS OF ACCESS 50
SCHEDULE 5 — HIGHWAYS TO BE CROSSED ON THE LEVEL 50
SCHEDULE 6 — LAND IN WHICH ONLY NEW RIGHTS, ETC. MAY BE ACQUIRED 51
SCHEDULE 7 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS 53
SCHEDULE 8 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN 57
SCHEDULE 9 — TRAFFIC REGULATION 58
PART 1 — NO WAITING 58

PART 2 — STRAIGHT AHEAD ONLY 59
PART 3 — SPEED LIMITS 60
PART 4 — PROHIBITION OF DRIVING EXCEPT FOR GUIDED TRANSPORT VEHICLES 61
SCHEDULE 10 — MODIFICATION OF EXISTING AGREEMENTS RELATING TO LAND 61
SCHEDULE 11 — PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC. 63
SCHEDULE 12 — PROTECTIVE PROVISIONS 65
PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS 65
PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS 70
PART 3 — FOR THE PROTECTION OF THE OPERATOR OF THE GRANTA BACKBONE NETWORK 71
PART 4 — FOR THE PROTECTION OF CADENT GAS LIMITED 73
PART 5 — FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED 81
PART 6 — FOR THE PROTECTION OF SOUTH STAFFORDSHIRE WATER PLC 86
PART 7 — FOR THE PROTECTION OF THE ENVIRONMENT AGENCY 91
PART 8 — FOR THE PROTECTION OF THE LEAD LOCAL FLOOD AUTHORITY 95
PART 9 — FOR THE PROTECTION OF HOBSON'S CONDUIT TRUST 97
PART 10 — FOR THE PROTECTION OF RAILWAY INTERESTS 100
PART 11 — FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER 108

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(**a**) for an order under sections 1, 3 and 5 of the Transport and Works Act 1992(**b**) ("the 1992 Act").

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act(**c**).

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State's determination was published in the London Gazette on [ ].

The Secretary of State, in exercise of the powers conferred by sections 1, 3 and 5 of, and paragraphs 1 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act, makes the following Order:—

(**a**) S.I. 2006/1466 as amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755, S.I. 2014/469, S.I. 2015/377, S.I. 2015/627, S.I. 2015/1682, S.I. 2017/979, S.I. 2017/1070 and S.I. 2019/211.
(**b**) 1992 c.42; section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c.29). Section 5 was amended by S.I. 2012/1659.
(**c**) There are amendments to section 11 which are not relevant to this Order.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Cambridge South East Transport Order 202[X] and comes into force on [ ].

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 1992 Act" means the Transport and Works Act 1992(**h**);

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

"the 2004 Act" means the Traffic Management Act 2004(**j**);

"the 2016 Regulations" means the Environmental Permitting (England and Wales) Regulations 2016(**k**);

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

"authorised guided busway" means any guided busway authorised by this Order as part of a scheduled work;

"authorised works" means the scheduled works and any other works authorised by this Order;

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

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

"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;

"cycle track" means a way constituting a highway, being a way over which the public have one or more of the following, but no other, rights of way—

(a) a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988); and

(b) a right of way on foot;

(**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**) 1992 c. 42.
(**i**) 2003 c. 21.
(**j**) 2004 c. 18.
(**k**) S.I. 2016/1154.
(**l**) 2017 c. 20.

"deposited plans" means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order, being the section drawings, engineering drawings, the rights of way and traffic regulations plans and the works and land plans;

"deposited sections" means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;

"electronic transmission" means a communication transmitted—

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

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

and in this definition "electronic communications network" has the same meaning as in section 32(1)(**a**) (meaning of electronic communications networks and services) of the 2003 Act;

"emergency and maintenance access track" means a way provided for facilitating access to the authorised guided busway for maintenance purposes and for use in situations of emergency or service perturbation;

"engineering drawings" means the engineering drawings of permanent and temporary structures illustrating the lateral sections and the proposed structures for the authorised works included in the deposited plans;

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

"guided busway" means a way provided for the use of vehicles which are constructed or adapted to carry more than 8 passengers for hire or reward and uses one or more of the modes prescribed in article 2(g), (h), (i) or (j) of the Transport and Works (Guided Transport Modes) Order 1992(**b**);

"guided busway premises" means any premises of the undertaker used for, or in connection with, the operation or maintenance of the guided busway system, including any building, parking area and park and ride site;

"guided busway system" means the authorised guided busway and any apparatus or facilities used for its operation and other associated authorised works as a system, or part of a system, of transport for the carriage of passengers and includes any guided transport vehicle;

"guided transport vehicle" means any vehicle lawfully using the guided busway system;

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

"the limits of deviation" means the limits of deviation for the scheduled works shown on the works and land plans;

"limits of land to be acquired or used" means the limits of land to be acquired or used shown on the works and land plans;

"local planning authority" means Cambridge City Council for land within the administrative area of Cambridge City Council or South Cambridgeshire District Council for land within the administrative area of South Cambridgeshire City Council;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace and "maintenance" is to be construed accordingly;

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

"the Order limits" means the limits of deviation and the limits of land to be acquired or used and shown on the works and land plans;

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

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

(**b**) S.I. 1992/3231as amended by The Transport and Works (Guided Transport Modes) (Amendment) Order 2022 (S.I. 2022 No.1380).

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

"parking place" has the same meaning as in section 32 of the 1984 Act;

"the Rangeford S106 Agreements" means the agreements referred to in column (3) of Schedule 11, together with any subsequent agreement amending or varying those agreements;

"restricted byway" has the same meaning as in the 1980 Act;

"the rights of way and traffic regulations plans" means the rights of way & traffic regulations plans included in the deposited plans;

"the scheduled works" means the works specified in Schedule 1 (scheduled works), or any part of them;

"the section drawings" means the section drawings included in the deposited plans;

"statutory undertaker" means—

(a) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and

(b) any public communications provider within the meaning of section 151(1) (interpretation of Chapter 1) of the 2003 Act;

"street" has the meaning given in section 48 (streets, street works and undertakers) of the 1991 Act 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;

"the traffic authority" has the same meaning as in section 121A(b) (traffic authorities) of the 1984 Act(**a**);

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

"the undertaker" means Cambridgeshire County Council;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer or drain; and

"the works and land plans" means the Works and Land Plan including Longitudinal Sections included in the deposited plans, including longitudinal sections for the scheduled works.

(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 over its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or otherwise comprised in the guided busway system.

(3) References in this Order to numbered plots are references to plot numbers on the deposited plans.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

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

(6) All distances, directions, lengths, points and areas stated in the description of the scheduled works or in any description of powers or lands are approximate and distances between points on a scheduled work are taken to be measured along the scheduled work.

Disapplication of legislative provisions

3.—(1) The 2017 Act does not apply in so far as it relates to the temporary occupation of land under article 28 (temporary use of land for construction of works), article 29 (temporary use of land for maintenance of works) and article 30 (temporary use of land for access) of this Order.

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

(**a**) 1984 c.27 amended by the New Roads and Street Works Act 1991 c. 22 Sch 8 (II) para. 70.

(a) regulation 12(1)(a) (requirement for an environmental permit) of the 2016 Regulations(**a**) in relation to the carrying out of a relevant flood risk activity;

(b) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(**b**);

(c) section 32 (variation of awards) of the Land Drainage Act 1991(**c**); and

(d) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of the Land Drainage Act 1991, which require consent or approval for the carrying out of the works.

(3) In paragraph (2)(a) "flood risk activity"(**d**) and "water discharge activity"(**e**) have the meaning given in the 2016 Regulations.

Application of the 1991 Act

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

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

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings over footways and verges).

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

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

(a) section 56 (power to give directions as to timing of street works);

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

(c) section 58 (restriction on works following substantial road works);

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

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

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

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

(a) section 54 (advance notice of certain works), subject to paragraph (6);

(b) section 55 (notice of starting date of works), subject to paragraph (6);

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

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

(**a**) S.I. 2016/1154.
(**b**) 1991 c. 59.
(**c**) 1991 c. 59.
(**d**) This term is defined in paragraph 3 of Part 1 of Schedule 25 to the Regulations.
(**e**) This term is defined in paragraph 3 of Schedule 21 to the Regulations.

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

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

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

(h) section 75 (inspection fees);

(i) section 76 (liability for cost of temporary traffic regulation); and

(j) section 77 (liability for cost of use of alternative route),

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

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

(7) Nothing in article 14 (construction and maintenance of new, altered or diverted streets)—

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

(b) has effect in relation to street works to which the provisions of Part 3 of the 1991 Act apply.

(8) To such extent as is reasonably necessary for protecting the guided busway system on any street and their operation and use the undertaker has the same powers as respects reinstatement as a street authority has under section 72 of the 1991 Act.

(9) The guided busway system is to be treated as a tramway for the purposes of Part 3 of the 1991 Act and accordingly the provisions of that Part (relating to tramway undertakings and tramways) as modified by this article apply to the guided busway system.

(10) In its application to the guided busway system section 93(3) of the 1991 Act (works affecting level crossings or tramways) also permits the undertaker to make reasonable requirements—

(a) for allowing it facilities to monitor the execution of the works; and

(b) for the protection of the guided busway system.

PART 2

WORKS PROVISIONS

PRINCIPAL POWERS

Power to construct and maintain works

5.—(1) The undertaker may construct and maintain the scheduled works.

(2) Subject to article 6 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land plans and in accordance with the levels shown on the section drawings.

(3) The undertaker may on the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) carry out and maintain any works specified in relation to that land in column (3) of that Schedule together with all works as may be necessary or expedient in connection with those works.

(4) The undertaker may on the land specified in columns (1) and (2) of Schedule 6 (land in which only new rights, etc. may be acquired) carry out and maintain any works specified in relation to that land in column (3) of that Schedule together with all works as may be necessary or expedient in connection with those works.

(5) Subject to paragraph (8), the undertaker may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

(a) stops, platforms, junctions and stopping places;

(b) parking and park and ride facilities;

(c) buildings and other works required for, or in connection with, the control, management or maintenance of the guided busway system or the control or management of any vehicular and pedestrian traffic on or in the guided busway system;

(d) embankments, cuttings, abutments, retaining walls, wing walls and culverts;

(e) works required for the strengthening, improvement, maintenance or reconstruction of any street;

(f) connections to streets, including ramps, paths, steps and tracks;

(g) works for the strengthening, alteration or demolition of any building or structure;

(h) works to install or alter apparatus for utilities or operators of communications networks, including ducts, cables, pipes, drains, inspection chambers, junction pits and accesses;

(i) works to install or alter the position of any street furniture or apparatus, including mains, sewers, drains, attenuation tanks, pipes, cables and lights;

(j) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;

(k) landscaping, attenuation, detention and infiltration ponds, filter drains, swales, bunds, noise barriers, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works;

(l) hoardings and fencing, footways, footpaths, bridleways and cycle tracks; and

(m) facilities and works for the benefit or protection of land or premises affected by the authorised works.

(6) Subject to paragraph (8), the undertaker may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised works, other than works that would interfere with a navigable watercourse.

(7) The undertaker may remove any works constructed by it under this Order which have been constructed as temporary works or which it no longer requires.

(8) Paragraphs (5) and (6) only authorise the carrying out or maintenance of works—

(a) on land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) to this Order for the purpose specified in relation to that land in column (3) of that Schedule; or

(b) on land specified in columns (1) and (2) of Schedule 6 (land in which only new rights etc. may be acquired) for the purposes specified in column (3) of that Schedule;

(c) on land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; or

(d) within the boundaries of any street within the Order limits along which the guided busway system is shown on the works and land plans, or which has a junction with such a street.

(9) The undertaker may, within the Order limits carry out and maintain landscaping, ecological mitigation works and other works to mitigate any adverse effects of the construction, maintenance and operation of the authorised works (other than works authorised by this paragraph).

Power to deviate

6.—(1) In constructing or maintaining any of the scheduled works, the undertaker may—

(a) deviate laterally from the lines or situations shown on the works and land plans within the limits of deviation for that work; and

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

(i) to any extent not exceeding 1 metre upwards; and

(ii) to any extent not exceeding 1 metre downwards.

(2) The undertaker may construct and maintain any emergency and maintenance track comprised in a scheduled work at a different level to the authorised guided busway which it adjoins.

(3) The undertaker may, in constructing and maintaining any part of the authorised guided busway, provide within the limits of deviation such gaps in or changes to the mode of guidance adopted and such number of ways, cross-overs, lay-bys, bus parking areas and traffic control measures as may be necessary or expedient.

(4) Without limitation on the scope of paragraph (1) in constructing and maintaining the scheduled works the undertaker may, for those works shown on the works and land plans by way of a centreline, extend beyond the points of commencement and termination by up to 3 metres from the points of commencement and termination shown for that scheduled work.

(5) The undertaker may, in constructing and maintaining those new streets described in Part 1 of Schedule 4 (streets and means of access to be stopped up and the provision of new and improved streets and substitutes) for which limits of deviation are shown on the rights of way and traffic regulations plans deviate laterally to the extent of the limits of deviation shown on those plans.

(6) The undertaker may, in constructing and maintaining streets to be stopped up for which a substitute is to be provided described in Part 2 of Schedule 4 (streets to be stopped up for which a substitute is to be provided) deviate laterally from the routes shown on the rights of way and traffic regulations plans to the extent of the limits of deviation shown on those plans.

PART 3

STREETS

Power to alter layout, etc., of streets

7.—(1) The undertaker may for the purposes of the authorised works alter the layout of, or carry out any ancillary works in, any streets specified in column (1) of Schedule 3 (streets subject to alteration of layout) or in column (2) of Part 1 of Schedule 4 (streets to be stopped up and the provision of new and improved streets and substitutes) and column (3) of Part 2 of Schedule 4 (streets to be stopped up and the provision of new and improved streets and substitutes) in the manner specified in relation to that street in column (2) of Schedule 3 and column (2) of Part 1 and column (3) of Part 2 of Schedule 4.

(2) Without limitation on the scope of the specific powers conferred by article 5 (power to construct and maintain works) or paragraph (1) but subject to paragraph (3), the undertaker may, for the purpose of constructing, maintaining or using the guided busway system, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, the undertaker may—

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

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

(c) replace or alter the surface or surface treatment of the street;

(d) reduce the width of the carriageway of the street including by forming a reserved area in the street as a stopping place for guided transport vehicles or by carrying out other works for that purpose;

(e) carry out works for the provision or alteration of parking places, loading bays, bus stop clearways, footways, cycle tracks and bus laybys;

(f) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999 and which are carried out in compliance with those regulations(**a**);

(g) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than guided transport vehicles from passing along the guided busway system; and

(h) make and maintain crossovers or passing places.

(3) Where the undertaker is not also the street authority for the street in question, the powers conferred by paragraph (1) must not be exercised without the consent of the street authority (where that authority is a public authority), but such consent must not be unreasonably withheld.

(4) If within 28 days of receiving an application for consent under paragraph (3) a street authority fails to notify the undertaker of its decision that street authority is deemed to have granted consent.

(5) When making an application for consent under paragraph (3), the undertaker must notify the street authority of the effect of paragraph (4).

Power to keep apparatus in streets

8.—(1) The undertaker may, for the purposes of or in connection with the construction, maintenance and use of the guided busway system, place and maintain in any street in which the guided busway system is constructed or which has a junction with such a street any work, equipment or apparatus including, without limitation on the scope of that power, foundations, platforms, road islands, substations and any electrical or other apparatus.

(2) Where the undertaker is not also the street authority for the street in question, the powers conferred by this article must not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street in which the construction of the guided busway system is shown on the works and land plans without the consent of the street authority (where that authority is a public authority), but such consent must not be unreasonably withheld.

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

(4) In this article—

(a) "apparatus" has the same meaning as in Part 3 of the 1991 Act; and

(b) the reference to any work, equipment or apparatus in a street includes a reference to any work, equipment or apparatus under, over, along or upon the street.

(5) When making an application for consent under paragraph (2), the undertaker must notify the street authority of the effect of paragraph (3).

Power to execute street works

9.—(1) The undertaker may, for the purpose of exercising the powers conferred by article 8 (power to keep apparatus in streets) or any other provision of this Order, enter upon any street in which the guided busway system is constructed or which has a junction with such a street and may execute any works required for or incidental to the exercise of those powers including, without limitation on the scope of that power:

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

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

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

(d) place and keep apparatus in or under the street;

(**a**) S.I. 1999/1026.

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

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

(g) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a) to (f).

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

(3) This article is subject to paragraph 3 of Schedule 11 (provisions relating to statutory undertakers, etc.).

(4) Where the undertaker is not also the street authority for the street in question the powers conferred by this article must not be exercised without the consent of the street authority (where that authority is a public authority), which consent must not be unreasonably withheld.

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

(6) When making an application for consent under paragraph (4), the undertaker must notify the street authority of the effect of paragraph (5).

Rights of way over emergency and maintenance access tracks

10.—(1) Any public right of way over the bridleways specified in column (2) of Part 1 of Schedule 4 (streets and means of access to be stopped up and the provision of new and improved streets and substitutes) that is on an emergency and maintenance access track forming part of the authorised works shall be subject to any use—

(a) for the purposes of the authorised guided busway where the relevant public rights of way follow the emergency and maintenance access track that is provided for the purposes of the guided busway system; or

(b) in accordance with such rights as may be granted or reserved by the undertaker to facilitate access to neighbouring land.

(2) The undertaker may, in constructing and maintaining the bridleways to which paragraph (1) applies deviate laterally from the routes shown on the rights of way plans within the extent of the limits of deviation shown on the works and land plans.

(3) The alignment and width of the bridleways referred to in paragraph (2) must be agreed with the highway authority prior to the relevant bridleway first opening to the public.

Construction of new and stopping up of existing streets, means of access etc.

11.—(1) The undertaker may in connection with the authorised works construct the new streets specified in column (2) of Part 1 and column (3) of Part 2 of Schedule 4 (streets and means of access to be stopped up and the provision of new and improved streets and substitutes) by reference to the letters and numbers shown on the rights of way and traffic regulations plans.

(2) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the streets specified in column (1) of Part 2 and column (1) of Part 3 of Schedule 4 to the extent specified, by reference to the letters and numbers shown on the rights of way and traffic regulations plans, in column (2) of Part 2 and column (2) of Part 3 of that Schedule.

(3) No street specified in column (1) of Part 2 of Schedule 4 (being a street and means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

(a) the new street to be substituted for it, which is specified in relation to it in column (3) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or

(b) a temporary alternative route for the passage of such traffic as previously used the street to be stopped up is first provided and then maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points of the street to be stopped up, until the completion and opening of the new street in accordance with sub-paragraph (a).

(4) No street specified in column (1) of Part 3 of Schedule 4 (being a street and means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless one of the conditions specified in paragraph (5) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(5) The conditions referred to in paragraph (4) are that—

(a) the undertaker is in possession of the land;

(b) there is no right of access to the land from the street concerned;

(c) there is reasonably convenient access to the land otherwise than from the street concerned; or

(d) the owners and occupiers of the land have agreed to the stopping up.

(6) The undertaker may in connection with the authorised works stop up or alter an existing means of access specified in columns (1) and (2) of Part 4 of Schedule 4 (being a means of access to be closed for which a substitute is to be provided) save that no means of access is to be closed under this paragraph unless—

(a) the new means of access to be substituted for it, which is specified in column (3) of that Part of that Schedule, has been completed and is open for use; or

(b) a temporary alternative for the means of access to be closed is first provided and then maintained by the undertaker, until the completion and opening of the new means of access in accordance with sub-paragraph (a).

(7) The undertaker may in connection with the authorised works stop up the existing means of access at the location specified in columns (1) and (2) of Part 3 of Schedule 4.

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

(a) all rights of way over or along it are extinguished; and

(b) the undertaker may appropriate and use for the purposes of its guided busway system so much of the site of the street or means of access as is bounded on both sides by land owned or appropriated by the undertaker.

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

(10) This article is subject to paragraph 2 of Schedule 11 (provisions relating to statutory undertakers, etc.).

Temporary stopping up of streets

12.—(1) The undertaker may, during and for the purposes of the execution of the authorised works, temporarily stop up, alter or divert any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

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

(3) The undertaker must provide at all times reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article, and which is within the Order limits, if there would otherwise be no such access.

(4) The undertaker must not exercise the powers conferred by this article in relation to any street for which it is not the street authority without the consent of the street authority (where that

authority is a public authority), which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) If within 28 days of receiving an application for consent under paragraph (4) a street authority fails to notify the undertaker of its decision, that street authority is deemed to have granted consent.

(6) When making an application for consent under paragraph (4), the undertaker must notify the street authority of the effect of paragraph (5).

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

Access and access to works

13.—(1) In addition to the powers contained in article 11(6) (construction of new and stopping up of existing streets, means of access etc.) the undertaker may, for the purposes of the construction, operation or maintenance of the authorised works:

(a) form and lay out such means of access, or improve such existing means of access in the locations specified in columns (1) and (2) of Part 5 of Schedule 4 (streets and means of access to be stopped up and the provision of new and improved streets and substitutes); and

(b) subject to Paragraph (2) form and lay out such other means of access or improve existing means of access at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised works.

(2) Where the undertaker is not also the highway authority for the street in question the powers conferred by paragraph (1)(b) must not be exercised without the consent of the highway authority, which consent must not be unreasonably withheld.

Construction and maintenance of new, altered or diverted streets

14.—(1) Subject to paragraph (6) any street to be constructed under this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed between the undertaker and the street authority, must be maintained by and at the expense of the undertaker for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

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

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over the guided busway system or carrying the guided busway system over a street and except as provided in those paragraphs the undertaker is not liable to maintain the surface of any street in, on, under or over which the scheduled works are constructed, or the immediate approaches to any such street, unless otherwise agreed with the street authority.

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

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

(a) the character of the street, including its use for the guided busway system, and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

(6) Paragraph (1) does not apply to any authorised guided busway.

Agreements with street authorities

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

(a) the construction of any new street (including any structure carrying the street over or under the guided busway system) under the powers conferred by this Order;

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

(c) the maintenance of any street along or across which the guided busway system is operating, or of the structure of any bridge or tunnel carrying a street over or under the guided busway system;

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

(e) the execution in the street of any of the works referred to in article 9 (power to execute street works).

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

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

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

Level crossings

16.—(1) The undertaker may construct the authorised guided busway so as to enable vehicles upon it to cross on the level any highway, street or road crossing the line of the authorised guided busway including those specified in Schedule 5 (highways to be crossed on the level) to this Order.

(2) Any traffic sign placed under the powers conferred by article 40 (traffic signs) on or near a highway or other road to which the public has access is to be treated for the purposes of section 64(4) of the 1984 Act as having been placed as provided by that Act.

(3) The highway authority and the undertaker may enter into agreements with respect to the construction and maintenance of any new level crossing of the authorised guided busway; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(4) Without prejudice to the generality of article 6 (power to deviate) the undertaker may in the exercise of the powers of this article alter the level of any highway specified in schedule 5 (highways to be crossed on the level) to this Order.

(5) The undertaker may provide, maintain and operate at or near any level crossing such barriers or other protective equipment as the Secretary of State may in writing approve.

(6) In this article—

"barrier" includes gate;

"level crossing" means the place at which the authorised guided busway crosses a highway or other road on the level under the powers conferred by this article; and

"protective equipment" includes lights, traffic signs (within the meaning of section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

Use of private roads for construction and operation

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

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

18.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works 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 exercise of the power under paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**a**).

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

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

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

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

(5) The undertaker must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

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

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

(**b**) S.I. 2016/1154, to which there are amendments not relevant to these regulations.

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

(9) When making an application for consent or for approval under paragraphs (3) or (4), the undertaker must notify the recipient of the effect of paragraph (8).

(10) In this article—

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

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

Power to survey and investigate land, etc.

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

(a) survey or investigate the land;

(b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land 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;

(d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and

(e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

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

(3) Notice given in accordance with paragraph (2) must include—

(a) a statement of the recipient's rights under paragraph (12); and

(b) a copy of any warrant issued under paragraph (6).

(4) If the undertaker obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to all those to whom it gave that notice.

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

(a) must, if so required, before or after entering the land produce written evidence of that person's authority to do so, including any warrant issued under paragraph (6);

(b) may not use force unless a justice of the peace has issued a warrant under paragraph (6) authorising the person to do so;

(c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial hole;

(d) may only enter and survey at a reasonable time; and

(e) must, if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it as secure against trespassers as when the person entered.

(6) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

(a) that another person has prevented or is likely to prevent the exercise of that power; and

---

(**a**) 1991 c. 57.

(b) that it is reasonable to use force in the exercise of that power.

(7) The force that may be authorised by a warrant is limited to that which is reasonably necessary.

(8) A warrant authorising the person to use force must specify the number of occasions on which the undertaker can rely on the warrant when entering and surveying or valuing land.

(9) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(10) Any evidence in proceedings for a warrant under this article must be given on oath.

(11) No trial holes are to be made under this article—

(a) in a carriageway or footway without the consent of the highway authority; or

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

but such consent must not be unreasonably withheld.

(12) The undertaker must pay compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Planning permission and supplementary powers

20.—(1) Planning permission which is deemed by a direction under section 90(2A)(**a**) (development with government authorisation) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of that Act.

(2) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(**b**) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975(**c**), or as incorporated in any tree preservation order) any direction under section 90(2A) (development with government authorisation) of the 1990 Act deeming planning permission to be granted in relation to the authorised works is to be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(3) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999(**d**) as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the authorised works is not to be treated as an outline planning permission.

(4) In relation to the application of article 3(1) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation) (England) Regulations 2012(**e**), as incorporated in any tree preservation order or as having effect by virtue of regulation 7 of those Regulations or Section 193 of the Planning Act 2008(**f**) any direction under section 90(2A) (development with government authorisation) of the 1990 Act deeming planning permission to be granted in relation to the authorised works is to be treated as deeming permission to have been granted on application under regulation 17(1)(a) of those Regulations.

(5) The undertaker is deemed to be a road transport undertaking for the purposes of section 262(1) (meaning of "statutory undertakers") of the 1990 Act.

(**a**) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act (c.42).
(**b**) S.I.1969/17.
(**c**) S.I. 1975/148.
(**d**) S.I. 1999/1892.
(**e**) S.I. 2012/605.
(**f**) 2008 c. 29.

Restriction on apparatus

21. For the purposes of section 61 of the 1991 Act (protected streets) any authorised guided busway including any emergency and maintenance access track or other facility provided in connection with it is deemed to have been designated by the street authority as a protected street.

Obstruction of construction of authorised works

22. Any person who, without reasonable excuse—

(a) obstructs another person acting under the authority of the undertaker in setting out the lines of the scheduled works, or in constructing any of the authorised works; or

(b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 of the standard scale.

PART 5

ACQUISITION AND POSSESSION OF LAND

Powers of Acquisition

Power to acquire land

23.—(1) The undertaker may acquire compulsorily—

(a) so much of the land shown on the works and land plans as lying within the Order limits as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works; and

(b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary work) (being land shown on the works and land plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule

and may use any land so acquired for those purposes or for any other purposes that are ancillary to the construction, maintenance, use and operation of the guided busway system.

(2) This article is subject to article 26 (power to acquire new rights and imposition of restrictive covenants), article 28 (temporary use of land for construction of works), article 34 (power to acquire subsoil or airspace only) and article 35 (time limit for exercise of powers of acquisition).

Application of Part 1 of the 1965 Act

24.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(**a**) applies; and

(b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect subject to the following modifications.

(3) Omit section 4 (time limit for giving notice to treat).

(4) In section 4A(1)(**b**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase

(**a**) 1981 c. 67.

order), the three year period mentioned in section 4", substitute "section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 35 (time limit for exercise of powers of acquisition) of the Cambridge South East Transport Order 202[ ].

(5) In section 11(**a**) (powers of entry) in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for "3 months" substitute "1 month".

(6) In section 11A(**b**) (powers of entry: further notices of entry)—

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

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

(7) In section 22(2) (interests omitted from purchase), for "section 4 of this Act" substitute "article 35 (time limit for exercise of powers of acquisition) of the Cambridge South East Transport Order 202[ ]".

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

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

"(2) but see article 34 (power to acquire subsoil or airspace only) of The Cambridge South East Transport Order 202[ ], which excludes the acquisition of subsoil or airspace only from this Schedule"; and

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 28 (temporary use of land for construction of works) and 29 (temporary use of land for maintenance of works) of The Cambridge South East Transport Order 202[ ]."

Application of the 1981 Act

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

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

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

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

(5) In section 5B (extension of time limit during challenge)(**f**) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 5A" substitute "section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 35 (time limit for exercise of powers of acquisition) of The Cambridge South East Transport Order 202[ ]".

(**b**) 1965 c. 56 as amended by S202(1) of the Housing and Planning Act 2016 (c. 22) and S185(2)(b) of the Levelling-up and Regeneration Act 2023 (c. 55).
(**a**) Subsection 11(1B) was inserted by S186(2)(b) of the Housing and Planning Act 2016 (c. 22).
(**b**) Subsection 11A was inserted by S186(3) of the Housing and Planning Act 2016 (c. 22).
(**c**) Schedule 2A was inserted by paragraph 3 of Schedule 17, to the Housing and Planning Act 2016 (c. 22).
(**d**) 1981 c. 67.
(**e**) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
(**f**) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(6) In section 6 (notices after execution of declaration)(**a**), in subsection (1)(b), for "section 15 of, or paragraph 6 of Schedule 1 to the Acquisition of Land Act 1981" substitute "section 14A of the Transport and Works Act 1992".

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

(8) In Schedule A1(5)(**c**) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

> "(2) but see article 34 (power to acquire subsoil or airspace only) of The Cambridge South East Transport Order 202[ ], which excludes the acquisition of subsoil or airspace only from this Schedule."

(9) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 23 (Power to acquire land) by article 24 (application of Part 1 of the 1965 Act).

Power to acquire new rights and imposition of restrictive covenants

26.—(1) Subject to paragraph (3), the undertaker may acquire compulsorily such easements, rights or impose restrictive covenants over any land which it is authorised to acquire under article 23 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights or covenants already in existence.

(2) In the case of the land specified in columns (1) and (2) of Schedule 6 (land in which only new rights, etc. may be acquired) the undertaker's powers of compulsory acquisition under article 23(1) (power to acquire land) are limited to the compulsory acquisition of such new rights and the imposition of restrictive or other covenants over land as may be required for the purposes specified in relation to that land in column (3) of that Schedule.

(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights, or imposition of restrictive covenants) where the undertaker acquires a right over land or the benefit of a restrictive or other covenant under paragraph (1) or paragraph (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right or over land by the creation of a new right or the imposition of restrictive or other covenant under these articles.

(5) In any case where the acquisition of new rights or the benefit of a restrictive or other covenants under paragraph (1) or (2) is required for the purpose of diverting, accessing, 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.

(7) In paragraphs (5) and (6) "statutory undertaker" means—

(a) any person who is a statutory undertaker for the purposes of the 1990 Act; and

---

(**a**) Section 6 was amended by section 4 of, and paragraph 52 (2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11 and by paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(**b**) Section 7 was substituted by Section 199(20) of paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(**c**) Schedule A1 was inserted by section 199(2) of, and paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(b) any public communications provider within the meaning of section 151(1) of the 2003 Act.

Rights under or over streets

27.—(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 works and may use the subsoil and air space for those purposes or any other purpose ancillary to the guided busway system.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

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

(4) 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 on to the street.

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker, to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies, in respect of measures of which the allowable costs are to be borne in accordance with that section.

PART 6

TEMPORARY POSSESSION OF LAND

Temporary use of land for construction of works

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

(a) enter upon and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 8 (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 authorised works specified in column (4) of that Schedule; and

(ii) subject to paragraph (11) any other land within the Order limits in respect of which no notice of entry has been served under section 11 (powers of entry)(**a**) of the 1965 Act (other than in connection with the acquisition of rights only) or no declaration has been made under section 4 (execution of declaration)(**b**) of the 1981 Act;

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

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

(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and paragraph 64 of Schedule 1 to S.I. 2009/130.

(**b**) Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

(d) construct any permanent works specified in relation to that land in column (3) of Schedule 8; or

(e) construct any mitigation works on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

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

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 8; or

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

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but the undertaker is not required to:

(a) replace a building removed under this article;

(b) restore any land on which any works have been constructed under paragraph (1)(d) or (1)(e); or

(c) remove any ground strengthening works which have been placed in that land to facilitate construction of the authorised works.

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

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

(7) Without affecting article 59 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

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

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

(a) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 34 (power to acquire subsoil or airspace only).

(10) Section 13(**a**) (refusal to give permission to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24 (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(a)(ii)does not authorise the undertaker to take temporary possession of any land which it is not authorised to acquire under article 23 (power to acquire land) or article 26 (power to acquire new rights and imposition of restrictive covenants).

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

Temporary use of land for maintenance of works

29.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the undertaker may—

(a) enter upon and take temporary possession of any land within the Order limits reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; and

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

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

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

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

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the purpose for which the undertaker intends to take possession of the land including the particulars of the part of the authorised works for which possession is to be taken.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works 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 powers conferred by this article.

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

(8) Without affecting article 59 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1) (application of Part 1 of the 1965 Act).

(11) In this article, "the maintenance period", in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for public use.

Temporary use of land for access

30.—(1) The undertaker may use any land specified in Schedule 8 (land of which temporary possession may be taken) for the passage of persons or vehicles (with or without materials, plant and machinery) for the purpose of or in connection with the construction of the authorised works.

(2) The power under paragraph (1) is exercisable on giving at least 7 days' notice (or, where access is urgently required, such notice as is reasonably practicable) to the owners and occupiers of the land.

(3) But paragraph (2) does not require notice to be given in relation to land where notice under that paragraph has already been given in relation to that land.

(4) The undertaker must pay compensation to the owners and occupiers of the land to which paragraph (1) applies for any loss or damage arising from the exercise of the power conferred by that paragraph.

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

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 24 (application of Part 1 of the 1965 Act).

PART 7

COMPENSATION

Disregard of certain interests and improvements

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

(a) any interest in land; or

(b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land, if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

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

Set off for enhancement in value of retained land

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 26 (power to acquire new rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

(a) any increase in the value of the land over which the new rights are required; and

(b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity, which will accrue to that person by reason of the construction of the authorised works.

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

PART 8

SUPPLEMENTARY

Extinguishment or suspension of private rights

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

(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is sooner.

(2) Subject to the provisions of this article, all private rights over land owned by the undertaker which is within the Order limits and is required for the purposes of this Order, are extinguished on the appropriation of the land for any of those purposes by the undertaker.

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

(a) as from the date of the acquisition of the right or the imposition 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,

whichever is the sooner.

(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 in so far as their continuance would be inconsistent with the exercise of the right or the burden of the covenant and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(6) This article does not apply in relation to any right to which section 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 11 applies.

(7) Paragraphs (1), (2), (3) and (4) have effect subject to—

(a) any notice given by the undertaker before the completion of the acquisition of the land, the undertaker's appropriation of it, the undertaker's entry onto it or the undertaker's taking temporary possession of it, as the case may be, that any or all of those paragraphs do not apply to any right of way specified in the notice; and

(b) any agreement made (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) 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) which is made with a person in or to whom the right of way is vested or belongs 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) In this article "acquisition of the land by the undertaker" includes the acquisition of a lease in the relevant land by the undertaker.

Power to acquire subsoil or airspace only

34.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph 23(1)(a) or 23(1)(b) of article 23 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 24 (application of Part 1 of the 1965 Act));

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

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

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

Time limit for exercise of powers of acquisition

35.—(1) After the end of the period of 5 years beginning with 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 applied to the acquisition of land by article 24 (application of Part 1 of the 1965 Act); and

(b) no declaration is to be executed under section 4 of the 1981 Act, as applied to this Order by article 25 (application of the 1981 Act).

(2) The powers conferred by article 28 (temporary use of land for construction of works) will cease at the end of the period mentioned in paragraph (1), save that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 9

OPERATION OF THE GUIDED BUSWAY SYSTEM

Power to operate and use guided busway system

36.—(1) The undertaker may operate and use the guided busway system and any apparatus or facilities used for the operation of the authorised guided busways and the other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods (which in this Order is referred to as the "guided busway system").

(2) Subject to paragraph (3) and article 45 (powers of disposal, agreements for operation, etc.), the undertaker shall have, for the purpose of operating the guided busway system, the exclusive right to use the authorised guided busway and any apparatus or facilities used for operation of the guided busway system and to permit others to do so on such terms as it considers appropriate.

(**a**) Section 153(4A) was inserted by section 200(1) and (2) of the Housing and Planning Act 2016. There are other amendments to section 153 which are not relevant to this Order.

(3) Nothing in this article restricts the exercise of any public right of way over any part of a street in which the authorised works are situated in pursuance or cross over except to the extent that the exercise of the right is constrained by the presence of the authorised works.

Power to charge fares

37.—(1) The undertaker may demand, take and recover or waive such charges for carrying passengers or goods on the guided busway system, or for any other services or facilities provided in connection with the guided busway system, as it thinks fit.

(2) The undertaker may enter into and carry into effect agreements with other persons providing public passenger transport services with regard to the issue of tickets and the making of through ticketing arrangements or for the purpose of generally coordinating the provision of those services with the operation of the guided busway system.

(3) In this article, "public passenger transport service" has the meaning given by section 63(10)(a) of the Transport Act 1985(**a**).

Maintenance of approved works, etc.

38.—(1) Where pursuant to regulations(**b**) made under section 41 of the 1992 Act (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the authorised guided busway, such works, plant and equipment must not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the authorised guided busway.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, the undertaker shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Proceedings may only be instituted in England and Wales in respect of an offence under this article by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

Removal of obstructions

39.—(1) If any obstruction is caused to guided transport vehicles by a vehicle waiting, loading, unloading or breaking down on any part of the guided busway system, the person in charge of the vehicle must immediately remove it; and if that person fails to do so the undertaker may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

(a) any person by whom the vehicle was put or left so as to become an obstruction to guided transport vehicles using the guided busway system; or

(b) any person who was the owner of the vehicle at that time unless that person shows that, at that time, the person was not concerned in or aware of the vehicle being so put or left.

(2) If any obstruction is caused to guided transport vehicles by a load falling on the guided busway system from a vehicle, the person in charge of the vehicle must remove the load immediately from the guided busway system; and if that person fails to do so, the undertaker may take all reasonable steps to remove the load and may recover the expenses reasonably incurred in doing so from—

(a) any person who was in charge of the vehicle at the time when the load fell from it; or

(b) any person who was the owner of the vehicle at that time unless that person shows that, at that time, the person was not concerned in, or aware of, the vehicle being in the place at which the load fell from it.

(**a**) 1985 c. 67.
(**b**) See Railways and Other Guided Transport Systems (Safety) Regulations 2006/599.

(3) For the purposes of this article the owner of a vehicle is taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of the vehicle at any time, it will be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicles Excise and Registration Act 1994(**a**).

(4) A person who, wilfully and without lawful excuse—

(a) interferes with or removes the guided busway system or any part of them or the works connected with them;

(b) places or throws materials or objects of any kind on any part of the guided busway system; or

(c) does anything which obstructs any guided transport vehicle using the guided busway system, whether or not such obstruction endangers the lives of any person in that vehicle,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Traffic signs

40.—(1) The undertaker may, for the purposes of, or in connection with the construction or operation of the guided busway system, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) (general provisions as to traffic signs)(**b**) of the 1984 Act or of a character authorised by the Secretary of State on any street in which the guided busway system is to operate or which gives access to such a street, or on any street in connection with any instrument made under article 41 (traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) Where the undertaker is not the traffic authority it—

(a) must consult with the traffic authority as to the placing of signs; and

(b) unless the traffic authority is unwilling to do so and subject to any directions given under section 65 (powers and duties of traffic authorities as to placing of traffic signs) of the 1984 Act, must enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs includes a power to give directions to the undertaker as to traffic signs under this article; and accordingly, the powers conferred by paragraph (1) are exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on any street in which the guided busway system are operating or which gives access to such a street must consult with the undertaker as to the placing of any traffic sign which would affect the operation of the guided busway system.

(5) Guided transport vehicles are taken to be public service vehicles for the purposes of section 122(2)(c) (exercise of functions by strategic highways companies or local authorities) of the 1984 Act.

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

(**a**) 1994 c. 22.

(**b**) As amended by section 153 of the Local Government and Housing Act 1989 (c. 42), section 168(1) of, and paragraph 48 of Part 2 of Schedule 8 to, the 1991 Act, section 48 of, and paragraph 29 of Schedule 4 to, the Road Traffic Act 1991 (c. 40), and section 1(6) of, and paragraphs 70 and 82(1) to (3) of Part 2 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

Restrictions on waiting

41.—(1) Except as provided in paragraphs (2) to (4), on and after such a day as the undertaker may determine, no person is to cause or permit any vehicle to wait at any time on those parts of the roads described in column (1) of Part 1 (no waiting) of Schedule 9 (Traffic Regulation) as are described in column (2) of that Part and identified on the rights of way and traffic regulations plans, except upon the direction of, or with the permission of, a police officer in uniform or a civil enforcement officer.

(2) Nothing in paragraph (1) applies—

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

(i) the removal of any obstruction to traffic;

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

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

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

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

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

(iii) in the service of a local authority Civil Protection Unit;

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

(v) by a universal service provider for the purposes of providing a universal postal service as the Postal Services (Universal Postal Service) Order 2012(**c**); or

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

(i) required by law to stop;

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

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

(3) Nothing in paragraph (1) applies in relation to a vehicle waiting—

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

(b) while any gate or other barrier at the entrance to premises to or from which the vehicle requires access, or from which it has emerged, is opened or closed, if it is not reasonably practicable for the vehicle to wait otherwise;

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

(d) where a disabled person's badge and a parking disc are displayed in the relevant position, and the driver or the person in charge of the vehicle has marked the time at which the period of waiting began, for a period not exceeding three hours (not being a period separated by an interval of less than one hour from a previous period of waiting by the same vehicle in the same road) but only if that vehicle has been or is about to be driven or used by the person to whom the badge has been issued or, as the case may be, used for the carrying of a disabled person as a passenger (except where the prohibition of waiting does not relate to "no waiting except taxis, ambulances or police vehicles");

(**a**) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c.30).
(**b**) 1991 c. 56.
(**c**) S.I. 2012/936, amended by S.I. 2013/3108 and S.I. 2015/643.

(e) where the traffic authority for the road has given permission by means of a dispensation issued under paragraph (4) to be displayed in the front or nearside of the vehicle and which includes information to enable the driver to be contacted in an emergency, provided the vehicle is not causing an obstruction by doing so, and that the vehicle can be moved if the driver is requested to do so by a uniformed constable or a civil enforcement officer;

(f) where the vehicle is being used in connection with essential work at adjacent premises for the purpose of undertaking emergency glazing repair to those premises; or

(g) where the vehicle is being loaded or unloaded while it is in actual use in connection with—

(i) the removal of furniture from one office or dwelling to another, or

(ii) the removal of furniture from such premises to a depository or to such premises from a depository,

if it is not practicable to use the vehicle for such purpose in any other road.

(4) Upon written application on a form issued by and obtainable from the traffic authority any person duly authorised by the traffic authority may issue a dispensation to exempt that vehicle from a prohibition of waiting on any part of the roads described in paragraph (1).

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

(6) In this article—

"civil enforcement officer" means an individual employed as a civil enforcement officer under section 76 (civil enforcement officers) of the 2004 Act;

"disabled person's badge" and "parking disc" have the same meaning as in the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000(**a**);

"in the relevant position"—

(a) in respect of a disabled persons badge or parking ticket, means—

(i) the badge or parking ticket is exhibited on the dashboard or facia of the vehicle so that the front of the badge or parking ticket is clearly legible from the outside of the vehicle; or

(ii) where the vehicle is not fitted with a dashboard or facia, the badge or parking ticket is exhibited in a conspicuous position on the vehicle,

so that the front of the badge or parking ticket is clearly legible from the outside of the vehicle;

(b) in respect of a parking disc, means—

(i) the disc is exhibited on the dashboard or facia of the vehicle; or

(ii) where the vehicle does not have a dashboard or facia, the disc is exhibited in a conspicuous position on the front near side of the vehicle, so that when marked to show the quarter hour period during which a period of waiting began, that period is clearly legible from the outside of the vehicle; and

"traffic officer" means an individual designated under section 2 (designation of traffic officers) of the 2004 Act.

(7) Paragraphs (1) to (7) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(**a**) S.I. 2000/683. See regulations 3(1) and 8(5).

Vehicle Movements

42.—(1) Except as provided in paragraph (2) and (4), on and after such a day as the undertaker may determine, on reaching the point identified in column (1) Part 2 (straight ahead only) of Schedule 9 (Traffic Regulation) and identified on the rights of way and traffic regulations plans, no person is to cause or permit any vehicle to proceed on any part of the lengths of road described in column (2) of that Part otherwise than straight ahead, except upon the direction of, or with the permission of, a police officer in uniform.

(2) Except as provided in paragraphs (3) and (4), on and after such a day as the undertaker may determine, no person is to cause or permit any vehicle to proceed on any part of the lengths of road described in columns (1) and (2) of Part 4 (prohibition of driving except for guided transport vehicles) of Schedule 9 (Traffic Regulation) and identified on the rights of way and traffic regulations plans unless that vehicle is a guided transport vehicle, except upon the direction of, or with the permission of, a police officer in uniform.

(3) Nothing in paragraphs (1) and (2) applies to render it unlawful to cause or permit a vehicle to proceed on any of the lengths of roads described in those paragraphs, for so long as may be necessary to enable that vehicle to be used in connection with—

(a) the removal of any obstruction to traffic;

(b) the maintenance, improvement, reconstruction or operation of the road in question;

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

(d) any building operation or demolition.

(4) Nothing in paragraphs (1) and (2) applies in relation to a vehicle where the traffic authority for the road has given permission by means of a dispensation issued under paragraph (5) in relation to that vehicle which is displayed in the front or nearside of the vehicle.

(5) Upon written application on a form issued by and obtainable from the traffic authority any person duly authorised by the traffic authority may issue a dispensation to exempt that vehicle from the prescribed vehicle movements and restrictions on vehicle movements referred to in paragraph (1) to (2) on any of the roads described in those paragraphs.

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

Traffic regulation

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

(2) Without limitation on the scope of the specific powers conferred by articles 41 (restrictions on waiting) and 42 (vehicle movements) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, in so far as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance or operation of the guided busway system—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

(c) authorise the use as a parking place of any road;

(d) make provision as to the direction or priority of vehicular traffic on any road; and

(e) permit or prohibit vehicular access to any road,

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

(3) The powers in paragraph (1) may be exercised at any time prior to the expiry of 12 months from the opening of the guided busway system for public use but subject to paragraph (5) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

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

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

(a) given not less than—

(i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of its intention to do so in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

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

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

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

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

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)(**b**).

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

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

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

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

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

(12) Any application to which this article applies must include a statement that the provisions of paragraph (11) apply to that application.

(**a**) Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51).
(**b**) 2004 c. 18, to which there are amendments not relevant to this part of the Order.

Speed limits

44.—(1) On such date as the undertaker may determine (following consultation with the traffic authority), for the roads specified in the table in Part 3 (speed limits) of Schedule 9 (traffic regulation), no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that table along the lengths of road identified in the corresponding row of column (2) of that table.

(2) On such date as the undertaker may determine (following consultation with the traffic authority), for the roads specified in the tables in Part 3 (speed limits) of Schedule 9 (traffic regulation), where the words "Removal of restricted road status" appear in column (3) of that table, those lengths of road will cease to be restricted roads as if, on that date, a direction had been made under section 82(2)(a) (what roads are restricted roads) of the 1984 Act.

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

(4) The application of paragraphs (1) to (3) may be varied or revoked by any instrument under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

Power to lop trees overhanging the guided busway system

45.—(1) The undertaker may fell or lop any tree or shrub near any part of the guided busway system, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the guided busway system or any apparatus used for the purposes of the guided busway system; or

(b) from constituting a danger to passengers or other persons using the guided busway system.

(2) In exercising the powers conferred by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

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

Trespass on the guided busway system

46.—(1) Any person who—

(a) trespasses on any part of the guided busway system which are not situated in a street; or

(b) trespasses on any land of the undertaker in dangerous proximity to the guided busway system or to any electrical or other apparatus used for or in connection with the operation of the guided busway system,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person is to be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass upon the guided busway system was clearly exhibited and maintained at the stop on the guided busway system nearest the place where the offence is alleged to have been committed.

(**a**) S.I. 2011/935.

Power to make byelaws

47.—(1) The undertaker may make byelaws regulating—

(a) the use and operation of, and travel on, the guided busway system;

(b) the maintenance of safety and order on the guided busway system, on any street along which the guided busway system are to operate and on guided busway system premises or other facilities provided in connection with the guided busway systems, where necessary to ensure the safe operation and use of the guided busway system; and

(c) the conduct of all persons, including employees of the undertaker, while on guided busway premises, or which could affect the safe operation and use of the guided busway system.

(2) Without limitation on the scope of paragraph (1), byelaws made under this article may make provision—

(a) with respect to tickets issued for travel on the guided busway system (in whatever form), the payment of fares and charges and the evasion of payment of fares and charges;

(b) with respect to interference with, or obstruction of, the operation of the guided busway system or other facilities provided in connection with the guided busway system;

(c) with respect to access to, and the carriage, use or consumption of anything on, guided busway premises;

(d) with respect to the prevention of nuisances on guided busway premises;

(e) for the safe custody and re-delivery or disposal of any property accidentally left on guided busway premises and for fixing the charges made in respect of any such property; and

(f) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the guided busway system or on guided busway premises.

(3) Byelaws made under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Without affecting the taking of proceedings for an offence included in byelaws by virtue of paragraph (3), if the contravention of, or failure to comply with, any byelaw made under this article is attended with danger or annoyance to the public, or hindrance to the undertaker in the operation of the guided busway system, the undertaker may immediately take action to obviate or remove the danger, annoyance or hindrance.

(5) Byelaws made under this article do not come into operation until they have been confirmed by the Secretary of State.

(6) At least 28 days before applying for any byelaws to be confirmed under this article, the undertaker must publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the times during which a copy of the byelaws will be open to public inspection; and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(7) For at least 24 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws must—

(a) be kept at the principal office of the undertaker and must be open to public inspection without payment at all reasonable hours , and

(b) be made available on the undertaker's website (if any).

(8) The undertaker must, at the request of any person, supply that person with a copy of any such byelaws on payment of such reasonable sum as the undertaker may determine.

(9) The Secretary of State may confirm with or without modification, or may refuse to confirm, any of the byelaws submitted under this article for confirmation and, as regards any byelaws so confirmed, may fix a date on which the byelaws are to come into operation; and if no date is so

fixed the byelaws come into operation after the expiry of 28 days after the date on which they were confirmed.

(10) The Secretary of State may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as the Secretary of State may consider appropriate for the purposes of defraying any administrative expenses incurred in connection with the confirmation of those byelaws.

(11) A copy of any byelaws when confirmed must be printed and deposited at the principal office of the undertaker and must be open to public inspection without payment at all reasonable hours, and the undertaker must, at the request of any person, supply that person with a copy of any such byelaws on payment of such reasonable sum as the undertaker determines.

(12) The production of a printed copy of any byelaws made under this article on which is endorsed a certificate purporting to be signed by a person duly authorised by the undertaker stating—

(a) that the byelaws were made by the undertaker;

(b) that the copy is a true copy of the byelaws;

(c) that on a specified date the byelaws were confirmed by the Secretary of State; and

(d) the date when the byelaws came into operation,

is rebuttable evidence of the facts stated in the certificate.

Power to contract for police services

48.—(1) The undertaker may enter into any agreement with a police authority and its chief officer for the police force maintained by that authority to provide policing services for or in connection with the guided busway system, including at any guided busway premises.

(2) Any such agreement may provide for—

(a) the undertaker to make such payment or other consideration for those policing services as the parties may agree; and

(b) such incidental and ancillary matters as the parties consider appropriate.

(3) In this article—

"chief officer" means a chief officer of police within the meaning of the Police Act 1996(**a**) or the Chief Constable of the British Transport Police Force; and

"police authority" means a police authority within the meaning of that Act or the British Transport Police Authority within the meaning of the Railways and Transport Safety Act 2003(**b**).

Powers of disposal, agreements for operation, etc.

49.—(1) The undertaker may, with the consent of the Secretary of State, enter into agreements—

(a) to transfer, charge or otherwise dispose of to another person ("the transferee") any interest of the undertaker in the authorised works or the undertaker's right to construct, maintain, use or operate the authorised works; or

(b) to grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any interest of the undertaker in the authorised works or the undertaker's right to construct, maintain, use or operate the authorised works,

(c) that are connected with or consequential on any agreement entered into under sub-paragraph (a) or (b).

(2) Any agreement referred to in paragraph (1) may provide—

(**a**) 1996 c. 16.
(**b**) 2003 c. 20.

(a) for any matters that are connected with the matters referred to in that paragraph or are consequential on them;

(b) for the financing or defraying of, or the making of contributions by the undertaker or by any other person towards, the cost of constructing, maintaining, using or operating the authorised works; and

(c) for the transferee, the lessee or any other person to exercise, enjoy or be responsible for any related functions of the undertaker, including its functions comprised in this Order, either exclusively or concurrently with the undertaker or any other person.

(3) Where an agreement has been made under paragraph (1), references in this Order to the undertaker include references to the transferee, the lessee or any other person who may exercise, enjoy or be responsible for any related functions of the undertaker under that agreement.

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

(5) The undertaker may provide to any person in any agreement made under paragraph (1), or in connection with or in consequence of any such agreement, or otherwise in connection with the design, construction, financing, maintenance, use or operation of the authorised works, such guarantees, indemnities or other forms of security as it considers to be necessary or appropriate.

(6) In this article—

"functions" means statutory and other powers, duties, rights, interests and obligations; and

references to the authorised works include references to any land held in connection with the authorised works.

Application of landlord and tenant law

50.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the guided busway system or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the guided busway system, or any part of them,

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

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

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

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

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

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

Registration of guided busway services and substitute road services

51.—(1) The undertaker may provide, or secure the provision by other persons of, services for the carriage of passengers by road ("substitute services") where services on the authorised guided busway has been curtailed, discontinued or temporarily interrupted.

(2) The route, frequency and stopping places of any substitute service need not correspond with the route of the interrupted, curtailed or discontinued service.

(3) Section 6 (registration of local services) of the Transport Act 1985 does not apply to any substitute services.

(4) For the purposes of the application of Part 1 of the Transport Act 1985, but subject to paragraphs (1) to (3), the authorised guided busway is a road within the meaning of section 137(1) of that Act(**a**).

PART 10

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

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

(a) that the nuisance relates to premises used by the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974(**c**); or

(b) that the nuisance is a consequence of the operation or maintenance of the guided busway system and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974—

(a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and

(b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article do not affect any rule of common law having similar effect.

Modification of agreements

53. The provisions of Schedule 11 will from the day on which this Order comes in to effect modify the Rangeford S106 Agreements.

Statutory undertakers, etc.

54. The provisions of Schedule 11 (provisions relating to statutory undertakers etc.) have effect.

Protection of interests

55. The provisions of Schedule 12 (protective provisions) have effect.

(**a**) 1985 c. 67, to which there are amendments to this provision, but none are relevant to this Order.
(**b**) 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and section 107 of, and paragraph 6(b)(vi) of Schedule 17 to, the Environment Act 1995 (c. 25). There are other amendments section 82 which are not relevant to this Order.
(**c**) 1974 c. 40. to which there are amendments to this provision, but not are relevant to this Order.

Removal of human remains

56.—(1) In this article, "the specified land" means the land within the Order limits.

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

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

(a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the authorised works; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

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

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

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

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

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (12).

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

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

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph is given to the undertaker in respect of any remains in the specified land;

(b) notice under paragraph (5) is given within the period of 56 days and no application is made under paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days;

(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which a notice under paragraph (5) relates cannot be identified,

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

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any

reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

(a) That the remains were interred more than 100 years prior to the day on which this Order comes in to force; and

(b) That no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

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

(a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar-General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the local planning authority.

(13) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions that may be given by the Secretary of State.

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

(15) Section 25 of the Burial Act 1857(**a**) (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

(16) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(**b**) does not apply to the authorised works.

Certification of plans, etc.

57. The undertaker must, as soon as practicable after the making of this Order, submit copies of the book of reference and the deposited plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference and the deposited plans referred to in this Order; and a 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

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

(a) by post; or

(b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

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

(3) For the purposes of section 7 of the Interpretation Act 1978(**c**) 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**) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1) and amended by section 96(1) of, and paragraph 1 of Schedule 3 to, the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (No. 3).
(**b**) S.I. 1950/792.
(**c**) 1978 c. 30.

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

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

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

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

(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 any 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 transmission given by a person may be revoked by that person in accordance with paragraph (8).

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

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

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

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

No double recovery

59. 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.

Arbitration

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

Signed by authority of the Secretary of State for Transport

Head of the Transport and Works Act Orders Unit

Date

Department for Transport

SCHEDULES

SCHEDULE 1

Articles 2(1) and 5

SCHEDULED WORKS

In the City of Cambridge—

Work No. 1 – two-way guided busway of 70 metres in length, across the gyratory junction of Francis Crick Avenue and Addenbrooke's Road together works to the existing gyratory junction and its approaches.

Work No. 2 – two-way guided busway of 200 metres in length, commencing at southern side of the gyratory junction of Francis Crick Avenue and Addenbrooke's Road, running south-west and terminating at the City of Cambridge and South Cambridgeshire District boundary at a point 64.5 metres south of the bridge carrying Addenbrooke's Road over the London to Cambridge railway line. The work includes provision of new private means of access, embankments, retaining structures south of Addenbrookes Road, landscaping and works to alter the alignment of the cycle way south of Addenbrookes Road. Work No. 2 includes an adjoining emergency and maintenance track at its southern end.

In the district of South Cambridgeshire—

Work No. 3 – two-way guided busway of 1212 metres in length, together with an adjoining emergency and maintenance track, commencing at the City of Cambridge and South Cambridgeshire District boundary, at a point 64.5 metres south of the bridge carrying Addenbrooke's Road over the London to Cambridge railway line, running south then south-east and terminating at a junction with Granham's Road, Great Shelford. The work includes bridging over the Hobson's Brook and embanked bridge approaches together with new connections to existing private means of access. The work also includes provision of new private means of access, embankments, landscaping, ecology ponds and works to alter the alignment of the cycle way known as the DNA Path.

Work No. 4 – two-way guided busway of 691 metres in length, partly in cutting, together with an adjoining emergency and maintenance track, commencing at a junction with Granham's Road, running south-east and terminating at a junction with Hinton Way, Great Shelford.

Work No. 5 – two-way guided busway of 1180 metres in length, partly in cutting, and part on an embankment, together with an adjoining emergency and maintenance track, commencing at a junction with Hinton Way, Great Shelford, running south-east and terminating at a junction with Haverhill Road, Stapleford. The work includes crossings, a new stop south of Hinton Way with associated car parking, access from Hinton Way, paths, cycle parking, shelters, information boards, landscaping, means of access to neighbouring land and noise attenuation bunds and barriers.

Work No. 6 – two-way guided busway of 1184 metres in length, together with an adjoining emergency and maintenance track, commencing at a junction with Haverhill Road, Stapleford, running south-east and terminating at a junction with work No. 7 north of the River Granta, north of Sawston. The work includes bunds, noise barriers, a new stop and associated car parking, paths, cycle parking, shelters, information boards, access from Haverhill Road and landscaping, south of Haverhill Road, Stapleford.

Work No. 7 – two-way guided busway of 1908 metres in length, commencing at a junction with work No. 7, north of the River Granta north of Sawston and terminating at Sawston Road, Sawston, including embankments, crossings, landscaping, bunds, noise barriers, swales and ecology ponds. The work includes a bridge to carry the guided busway over the River Granta, embanked bridge approaches and a new private means of access from Sawston Road.

Work No. 8 – two-way guided busway of 1053 metres in length, together with an adjoining emergency and maintenance track, and stops, commencing at a junction with Sawston Road, Sawston, running south east and terminating at a junction with High Street, Babraham. The work includes a new stop and associated car parking, drop off point, paths, cycle parking, shelters, information boards, access from Sawston Road and landscaping together with a means of access to adjoining land, south of Sawston Road, Sawston.

Work No. 9 – two-way guided busway of 1092 metres in length, together with an adjoining emergency and maintenance track, commencing at High Street Babraham, running east and terminating at a south of A1307 Cambridge Road and east of the A11 trunk road. The work includes a new bridge to carry the guided busway over the River Granta, embanked bridge approaches and a new crossing and approaches for accessing neighbouring land.

Work No. 10 – two-way busway of 268.9 metres in length, together with an adjoining emergency and maintenance track, commencing at an end on junction with Work No 9. The work also includes a new travel hub building and park and ride facilities including accesses, paths, utility protection works and car parks, together solar panels, cycle parking, shelters, information boards, and a new access road to connect the travel hub with the A1307 Cambridge Road, the improvement of footpath 12/4, ecology ponds, attenuation ponds and landscaping.

Work No. 11 – new access road, of 655 metres in length, to connect the travel hub and park and ride facilities with the A1307 Cambridge Road, together with the construction of a new roundabout on the A1307 Cambridge Road.

SCHEDULE 2

Articles 2(1), 5 and 23

ACQUISITION OF CERTAIN LANDS FOR ANCILLARY WORKS

(1) *Location*	*(2)* *Number of plot shown on the works and land plans*	*(3)* *Purposes for which land may be acquired*
In the district of South Cambridgeshire		
South of Addenbrooke's Road, Cambridge	039, sheet 2	Attenuation pond, associated drainage works, access track, landscaping, ecology pond and environmental mitigation
North of Granham's Road, Great Shelford	040, sheets 2 and 3	Access track, landscaping and environmental mitigation
North of Granham's Road, Great Shelford	041, sheet 2	Landscaping and environmental mitigation
North of Hinton Way, Great Shelford	048, sheet 4	Landscaping and environmental mitigation
North of Hinton Way, Great Shelford	051, sheet 4	New access to the highway from neighbouring land
North of Haverhill Road, Stapleford	059A, sheets 5 and 6	New access from neighbouring land
North of Haverhill Road, Stapleford	059B, sheets 6 and 7	New access from neighbouring land
South of Haverhill Road, Stapleford	064A, sheets 6 and 7	New access to the highway from neighbouring land
North of River Granta, north of Sawston	081, sheet 8	Landscaping, environmental mitigation
North of River Granta, north of Sawston	082, sheet 8	Landscaping, environmental mitigation, ecology pond, attenuation pond and access
South of River Granta, north	090, sheets 8 and 9	Landscaping, environmental

of Sawston		mitigation, flood compensation area, attenuation pond and access
South of River Granta, north of Sawston	094 and 095, sheet 9	Access to attenuation pond and works to bridleway
High Street, Babraham	124A	Improvements to highway
High Street, Babraham	124B	Improvements to highway, connection to new private means of access to neighbouring land
High Street, Babraham	127, 127A, 127B	Improvements to highway, new lay by and connection to private means of access to neighbouring land
High Street, Babraham	127C	Improvements to highway, new lay by and connection to private means of access to neighbouring land
High Street, Babraham	127D	Improvements to highway, new lay by
West of River Granta, south of Babraham	130, sheet 13	Landscaping, tree planting and earthworks
West of River Granta, south of Babraham	131, sheet 13	Landscaping, ecology pond, attenuation pond and access
East of River Granta, south of Babraham	135, sheets 13, 14 and 15	Landscaping, environmental mitigation, flood compensation area, ecology pond and access

SCHEDULE 3

Article 7

STREETS SUBJECT TO ALTERATION OF LAYOUT

(1) *Street subject to alteration of layout*	*(2)* *Description of alteration*
Addenbrooke's Road roundabout, and Addenbrooke's Road Cambridge	Realignment and improvement of the roundabout and Addenbrooke's Road between the points marked HA01.01 and HA01.02 on the rights of way and traffic regulations plans
Francis Crick Avenue, Cambridge	Realignment and improvement of Frances Crick Avenue private street where it meets the Addenbrooke's Road roundabout between the points marked HPS01.01 and HPS01.02 on the rights of way and traffic regulations plans
Dame Mary Archer Way, Cambridge	Realignment and improvement of Dame Mary Archer Way private street where it meets the Addenbrooke's Road roundabout between the points marked HPS01.03 and HPS01.04 on the rights of way and traffic regulations plans
Granham's Road, Great Shelford	Improvement of the highway between the points marked HA03.01 and HA03.02 on the rights of way and traffic regulations plans
Hinton Way, Great Shelford	Widening of the carriageway to include an improved access on the north side of the

	highway between the points marked HA04.01 and HA04.02 on the rights of way and traffic regulations plans
Hinton Way, Great Shelford and Stapleford	Widening of the highway to provide a pegasus crossing on both sides of the carriageway between the points marked HA04.03, HA04.04 HA04.05 and HA04.06 on the rights of way and traffic regulations plans
Hinton Way, Stapleford	Widening and improvement of the highway to include a on the north side of the carriageway between the points marked HA04.07 and HA04.08 on the rights of way and traffic regulations plans
Hinton Way, Stapleford	Widening and improvement of the highway to include a crossover on the south side of the carriageway between the points marked HA04.09 and HA04.10 on the rights of way and traffic regulations plans
Haverhill Road, Stapleford	Widening of the carriageway to provide a new and improved access on the east side of the highway between the points marked HA06.01 and HA06.02 on the rights of way and traffic regulations plans
Haverhill Road, Stapleford	Widening and improvement of the carriageway to incorporate right turning lane for Rangeford retirement village together with improvements to the northern footway and improvements to the southern margin for non-vehicular uses as between the points marked HA06.03, HA06.04, HA07.01 and HA07.0 on the rights of way and traffic regulations plans
Sawston Road, Babraham	Widening of the highway to include an improved footway on the southern side of Sawston Road between the points marked HA11.01, HA11.02, HA11.03 and HA11.04 on the rights of way and traffic regulations plans
High Street, Babraham and Pampisford	Widening of the highway to include an improved footway on both sides of the carriageway between the points marked HA12.01, HA12.02, HA12.03 and HA12.04 on the rights of way and traffic regulations plans
High Street, Babraham	Widening of the carriageway to provide a new and improved access on the west side of the highway between the points marked HA12.05 and HA12.06 on the rights of way and traffic regulations plans
A1307 Cambridge Road, Babraham	A new roundabout at the junction between A1307 Cambridge Road and A11 Travel Hub Link Road with realignment and associated improvements to the A1307 Cambridge Road between the points marked HA15.01, HA15.02, HA16.01 and HA16.02 on sheets 15 and 16 of the rights of way and traffic regulations plans

SCHEDULE 4

Articles 7, 10 and 11

STREETS AND MEANS OF ACCESS TO BE STOPPED UP AND THE PROVISION OF NEW AND IMPROVED STREETS AND SUBSTITUTES

PART 1

NEW AND IMPROVED STREETS

(1) *Area*	*(2)* *New and improved streets*
In the District of South Cambridgeshire	
Cambridge	Realignment and improvement of Addenbrooke's Road roundabout and improvement of Addenbrooke's Road between the points marked HA01.01 and HA01.02 on sheet 1 of the rights of way and traffic regulations plans
Cambridge	Realignment and improvement of Frances Crick Avenue including widening and improvements to footways and provision of a Toucan Crossing on Francis Crick Avenue between the points marked HPS01.01 and HPS01.02 on sheet 1 of the rights of way and traffic regulations plans
Cambridge	Realignment and improvement of Dame Mary Archer Way including widening and improvements to footways and provision of a Toucan Crossing between the points marked HPS01.03 and HPS01.04 on sheet 1 of the rights of way and traffic regulations plans
Great Shelford	New bridleway along the route of the emergency and maintenance access track comprised in Work No. 4 between Granham's Way Great Shelford and Hinton Way Stapleford between the points marked PD03.01 and PD04.01 on sheets 3 and 4 of the rights of way and traffic regulations plans
Stapleford	Improvement of Hinton Way to facilitate a new private means of access, between the points HA04.01 and HA04.02on sheet 4 of the rights of way and traffic regulations plans
Stapleford	Widening and improvement of Hinton Way Hinton Way between the points marked HA04.03, HA04.04,HA04.05, and HA04.06 shown on sheet 4 of the rights of way and traffic regulations plans
Stapleford	New footpath on the south side of Hinton Way between the points marked NP04.03 and NP04.04 on sheet 4 of the rights of way and traffic regulations plans
Stapleford	Improvement of Hinton Way to facilitate a new private means of access between the points marked HA04.07 and HA04.08 on sheet 4 of

	the rights of way and traffic regulations plans
Stapleford	Improvement of Hinton Way to facilitate a new private means of access between the points marked HA04.09 and HA04.10 on sheet 4 of the rights of way and traffic regulations plans
Stapleford	New bridleway along the route of the emergency and maintenance access track comprised in Work No. 5 between Hinton Way Stapleford and Haverhill Road Stapleford and shown between the points marked PD04.02 and PD06.01 on sheets 4, 5 and 6 of the rights of way and traffic regulations plans
Stapleford	Improvement of Haverhill Road to facilitate a new private means of access between the points marked HA06.01 and HA06.02 on sheet 6 of the rights of way and traffic regulations plans
Stapleford	Widening and improvement of Haverhill Road between the points marked HA06.03, HA06.04, HA07.01 and HA07.02, shown on sheet 7 of the rights of way and traffic regulations plans
Stapleford, Sawston and Babraham	New bridleway along the route of the emergency and maintenance access track comprised in Work Nos. 6 and 7 between Haverhill Road, Stapleford and Sawston Road, Sawston and shown between the points marked PD06.02 and PD11.01 on sheets 6, 7, 8, 9, 10 and 11 of the rights of way and traffic regulations plans
Sawston	Widening and improvement of highway, to include an improved footway on the southern side of Sawston Road and Babraham Road, between the points marked HA11.01, HA11.02, HA11.03 and HA11.04 on sheet 11 of the rights of way and traffic regulations plans
Babraham	New bridleway along the route of the emergency and maintenance access track comprised in Work No. 8 between Sawston Road, Sawston and High Street Babraham and shown between the points marked PD11.02 and PD12.01 on sheets 11 and 12 of the rights of way and traffic regulations plans
Babraham	Widening highway to include an improved footway on both sides of High Street, Babraham and service layby between the points marked HA12.01, HA12.02, HA12.03 and HA12.04 on sheet 12 of the rights of way and traffic regulations plans
Babraham	Improvement of High Street to facilitate a new private means of access between the points marked HA12.05 and HA12.06 on sheet 6 of the rights of way and traffic regulations plans
Babraham	A new roundabout at the junction between A1307 Cambridge Road and A11 Travel Hub Link Road with realignment and associated improvements to the A1307 Cambridge Road between the points marked HA15.01, HA15.02,

	HA16.01 and HA16.02 on sheets 15 and 16 of the rights of way and traffic regulations plans

PART 2

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

(1) *Street to be stopped up*	*(2)* *Extent of closure*	*(3)* *New Street to be provided*
Footpath 39/47, Cambridge	Between points PS01.01 and PS01.02 on the rights of way and traffic regulations plans	New footpath between PD01.01 and PD01.02 as shown on rights of way and traffic regulations plans
Bridleway 212/2, Stapleford	Between points PS08.01 and PS08.02 and shown on the rights of way and traffic regulations plans	New bridleway between PD08.01 and PD08.02 as shown on the rights of way and traffic regulations plans
Restricted byway 12/10, Babraham	Between points PS10.01 and PS10.02 and shown on the rights of way and traffic regulations plans	New restricted byway between points PD10.01 and PD10.02 and shown on the rights of way and traffic regulations plans
Footpath 12/9, Babraham	Between points PS11.01 and PS11.02 and shown on the rights of way and traffic regulations plans	New footpath between points PD11.03, PD11.04, PD11.05 and PD11.06 and shown on the rights of way and traffic regulations plans
Footpath 12/4, Babraham	Between points PS14.01 and PS14.02 and shown on the rights of way and traffic regulations plans	New footpath between points PD14.01 and PD14.02 and shown on the rights of way and traffic regulations plans

PART 3

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

(1) *Path or street to be stopped up*	*(2)* *Extent of stopping up*
Part of Addenbrooke's Road, Cambridge	Area shown in zebra hatching between points HS01.01, HS01.02, HS01.04 and HS01.03 as shown on the rights of way and traffic regulations plans

PART 4

MEANS OF ACCESS TO BE CLOSED FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) *Means of access affected*	*(2)* *Extent of closure*	*(3)* *New means of access to be*

		substituted
Private means of access south of Addenbrooke's Road, Cambridge	Between the point marked AS01.01 and AS.02.01 and shown on the rights of way and traffic regulations plans	Between AN01.01, AN01.02 and AN02.02 and shown on the rights of way and traffic regulations plans
Private means of access east of Hinton Way	Between the point marked AS04.01 and AS04.02 and shown on the rights of way and traffic regulations plans	Between point AN04.03 and AN05.01 as shown on the rights of way and traffic regulations plans
Private means of access east of Haverhill Road	Between the point marked AS07.01 and AS07.02 and shown on the rights of way and traffic regulations plans	New private means of access onto Haverhill Road at point AN06.01 on the rights of way and traffic regulations plans

PART 5

NEW MEANS OF ACCESS

(1) *Area*	*(2)* *New means of access*
In the Parish of Great Shelford	New private means of access for pedestrians only from point AN01.02 to point AN02.01
In the Parish of Great Shelford	New private means of access onto Granham's Road at point AN03.01 on the rights of way and traffic regulations plans
In the Parish of Great Shelford	New private means of access onto Hinton Way at point AN04.01 on the rights of way and traffic regulations plans
In the Parish of Great Shelford	New private means of access onto Hinton Way at point AN04.02 on the rights of way and traffic regulations plans
In the Parishes of Sawston and Babraham	New private means of access onto Sawston Road between point AN10.01 and AN11.01 shown on the rights of way and traffic regulations plans
In the Parish of Babraham	New private means of access onto Babraham Road at point at point AN11.02 on the rights of way and traffic regulations plans
In the Parish of Babraham	New private means of access onto High Street at point AN12.01 on the rights of way and traffic regulations plans

SCHEDULE 5

Article 16

HIGHWAYS TO BE CROSSED ON THE LEVEL

Granham's Road

Hinton Way

Haverhill Road

Sawston Road

High Street, Babraham

SCHEDULE 6

Article 26

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

(1) *Area*	*(2)* *Number of lands shown on the works and land plan*	*(3)* *Purpose for which rights may be acquired*
In the City of Cambridge		
Francis Crick Avenue, Cambridge Biomedical Campus	001, 002, 003, 004, 005, 006, 007, 008, sheet 1	To access, use and to pass and repass with or without vehicles including vehicles undertaking a public passenger transport service. To halt vehicles at designated stopping points for the purpose of undertaking a public passenger transport service and to collect and drop off passengers, employees and agents. To install, maintain, use operate, remove, renew and replace waiting shelters, lighting, information boards and displays, ticket issuing facilities, cameras and help points. To install, use operate, remove, renew and replace service media including electricity cables and communications cables connected with the operation of the public passenger transport service.
In the District of South Cambridgeshire		
Great Shelford	029, sheet 2	To access, use, maintain and to pass and repass with or without vehicles, plant or machinery for the purpose of providing access to neighbouring land for the benefit of that land.
Great Shelford	031, 032 and 036, sheet 2	To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, repair, cleanse, clear, retain, renew, replace and remove drainage pipes, head wall, apparatus and infrastructure and to drain surface water from neighbouring land in to the

		existing watercourse. Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain, clear, cleanse and repair pipes, apparatus, headwalls and infrastructure together with maintaining and removing vegetation from the existing watercourse. To erect, retain, maintain, use and remove temporary structures to carry haul roads over the existing watercourse. To erect, retain, maintain, use and remove temporary structures to carry diverted permissive cycle track over the existing watercourse, including use of the structure by the public on a temporary basis.
Sawston	092, sheet 9	To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, repair, retain, renew, relocate and replace electricity cables and associated poles and to remove existing overhead electricity cables and poles and including associated communications cables. Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair cables, and associated apparatus. Rights to lop or cut trees or hedges that may interfere with the ability to install, inspect, maintain, use, repair, retain, renew, relocate, replace and remove overhead electricity cables and poles. To include restrictive covenants for protecting the installed apparatus and to prevent the cables and

		infrastructure being made less accessible.
Pampisford	132, sheets 13 and 14	To access (with or without vehicles plant and machinery) and to install, inspect, maintain, use, repair, retain, renew, relocate, replace and remove overhead electricity cables and poles and including associated communications cables. Rights to pass and repass, with or without vehicles, plant or machinery for the purposes of access to inspect, maintain and repair cables, poles and associated apparatus. Rights to lop or cut trees or hedges that may interfere with the ability to install, inspect, maintain, use, repair, retain, renew, relocate, replace and remove overhead electricity cables and poles. To include restrictive covenants for protecting the installed apparatus and to prevent the cables and infrastructure being made less accessible.

SCHEDULE 7

Article 26

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

Compensation enactments

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

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

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

"(5A) If—

(a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by

paragraph 5(5) of Schedule 7 to the Cambridge South East Transport Order [XX] ("the 202* Order"));

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act(**a**) (as substituted by paragraph 5(7) of Schedule 7 to the 202* Order) to acquire an interest in the land; and

(c) the acquiring authority enter on and take possession of that land,

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

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**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(2)—

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

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

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act, as applied by article 29 (application of Part 1 of the 1965 Act) to the acquisition of land under article 23 (power to acquire land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 26(1) (power to acquire new rights and imposition of restrictive covenants)—

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

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

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

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

(a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For Section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the Special Act."

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

(a) section 9(4) (refusal to convey, failure to make title, etc.);

(b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);

(**a**) 1965 c. 22, Schedule 2A, paragraph 12 was inserted by the Housing and Planning Act 2016, Schedule 17(1), paragraph 3.
(**b**) 1973 c. 26.

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11(**a**) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 23 (power to acquire land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(**b**) (powers of entry: further notices of entry). 11B(**c**) (counter-notice requiring possession to be taken on specified date, 12(**d**) (unauthorised entry) and 13(**e**) (refusal to give possession to acquiring authority) 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 or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 26(4) (power to acquire new rights and imposition of restrictive covenants) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

1.—(1) This Schedule applies where an undertaker serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 25 (application of the 1981 Act) of The Cambridge South East Transport Order 202* in respect of the land to which the notice to treat relates.

(**a**) 1965 c. 56, Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections186(2)(a)(i) to (ii) of, and section 186(2)(b), as well as sections 187 to 188 of the Housing and Planning Act 2016 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) and amended by, paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).

(**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.

(2) But see article 33(2) (power to acquire of subsoil or airspace only) of The Cambridge South East Transport Order 202* which excludes the acquisition of subsoil or airspace only from this Schedule.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the tribunal.

6. The undertaker 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 undertaker decides to refer the counter-notice to the tribunal it must do so within the decision period.

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

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

Determination by the tribunal

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

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making the determination, the tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must

determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the tribunal determines that the undertaker 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 tribunal determines that the undertaker ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the tribunal makes it determination withdraw the notice to treat in relation to that land.

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

15. Any dispute as to the compensation is to be determined by the Upper Tribunal."

SCHEDULE 8

Article 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Location*	*(2)* *Number of plot shown on the works and land plans*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Authorised work*
In the District of South Cambridgeshire			
South of Addenbrooke's Road	027, sheet 1	Working space, creation of new access and tying in works	Work No. 3
South of Addenbrooke's Road	030, sheet 1	Construction compound and materials storage, haul road, temporary structures and approaches for crossing Hobsons Brook, temporary diversion of permissive cycle track	All works
North of Granham's Road, Great Shelford	042, sheet 3	Construction compound and materials storage	All works
Granham's Road, Great Shelford	044, sheet 3	Street works and access to works	Work Nos. 3 and 4
Granham's Road, Great Shelford	045, sheet 3	Street works and access to works	Work Nos. 3 and 4
Hinton Way, Stapleford	050, sheet 4	Street works and access to works	Work Nos. 4 and 5
Hinton Way, Stapleford	052, sheet 4	Street works and access to works	Work Nos. 4 and 5
Hinton Way, Stapleford	055, sheet 4	Street works and access to works	Work Nos. 4 and 5
South of Hinton Way, Stapleford	058, sheets 4 and 5	Construction compound and materials storage	All works
Haverhill Road, Stapleford	062, 063, 064, sheet 6	Street works and access to works	Work Nos. 5 and 6
Haverhill Road, Stapleford	070, sheet 7	Construction compound and materials storage	All works
Haverhill Road,	071, sheet 7	Construction compound	All works

Stapleford		and materials storage	
South of Haverhill Road, Stapleford	075, sheet 7	Construction compound and materials storage	All works
South of Haverhill Road, Stapleford	076, sheet 7	Construction compound and materials storage	All works
North of Sawston	080, sheet 8	Construction compound and materials storage	All works
North of Sawston	083, sheet 8	Working space and access for construction	Work No. 7
North of Sawston	084, sheet 8	Working space and access for construction, haul road and temporary bridge	All works
North of Sawston	087, sheet 8	Working space and access for construction	Work No. 7
North of Sawston	088, sheet 8	Working space and access for construction, haul road and temporary bridge	All works
North of Sawston	091 , sheet 8	Working space and access for construction, haul road and temporary bridge	All works
North of Sawston	093, sheet 9	Construction compound and materials storage	All works
East of Sawston	102, sheet 10	Construction compound and materials storage	All works
Sawston Road, Sawston	108, 109,110, 111, sheet 11	Street works and access to works	Work Nos. 7 and 8
Sawston Road, Sawston	112, 113, 114, 115, sheet 11	Street works and access to works	Work Nos. 7 and 8
South of Sawston Road, Sawston	123, sheets 11 and 12	Construction compound and materials storage	All works
South of Sawston Road, and east of High Street, Babraham	124, sheet 12	Construction compound and materials storage	All works
High Street, Babraham	126, sheet 12	Street works, and access to works	Work Nos. 8 and 9
East of High Street, Babraham	133, sheet 13	Working space and access for construction	Work No. 9
East of High Street, Babraham	134, sheets 13 and 14	Working space and access for construction, haul road and temporary bridge	All works

SCHEDULE 9

Article 41

TRAFFIC REGULATION

PART 1

NO WAITING

(1)	*(2)*
Road	*Extent as shown on the rights of way and traffic regulations plans*

Francis Crick Avenue (east side)	Between point WR01.01 and point WR01.02
Francis Crick Avenue (west side)	Between point WR01.03 and point WR01.04
Granham's Road (north side)	Between point WR03.01 and point WR03.02
Granham's Road (south side)	Between point WR03.03 and point WR03.04
Hinton Way (north side)	Between point WR04.01 and point WR04.02
Hinton Way (south side)	Between point WR04.03 and point WR04.04
Hinton Way Drop-off facility access road	Between point WR04.05 and point WR05.01
Hinton Way Drop-off facility access to disabled parking places	Between point WR04.07 and point WR04.08
Hinton Way Drop-off facility drop-off loop	Between point WR04.09 and point WR05.02
Haverhill Road (north side)	Between point WR06.01 and point WR07.01
Haverhill Road (south side)	Between point WR06.02 and point WR07.02
Haverhill Road Drop-off facility access road	Between point WR07.03 and point WR07.04
Sawston Road/Babraham Road (north side)	Between point WR11.01 and point WR11.02
Sawston Road/Babraham Road (south side)	Between point WR11.03 and point WR11.04
Sawston Road/Babraham Road Drop-off facility main access road	Between point WR11.05 and point WR11.06
Sawston Road/Babraham Road Drop-off facility access road to disabled parking spaces	Between point WR11.07 and point WR11.08
High Street (west side)	Between point WR12.01 and point WR12.02
High Street (east side)	Between point WR12.03 and point WR12.04

PART 2

STRAIGHT AHEAD ONLY

(1) *Reference Nos. on rights of way and traffic regulations plans*	*(2)* *Road*	*(3)* *Measure*
TR03.01	Granham's Road (southbound)	Vehicular traffic must proceed straight ahead
TR03.02	Granham's Road (northbound)	Vehicular traffic must proceed straight ahead
TR04.01	Hinton Way (southbound)	Vehicular traffic must proceed straight ahead
TR04.02	Hinton Way (northbound)	Vehicular traffic must proceed straight ahead
TR06.01	Haverhill Road (westbound)	Vehicular traffic must proceed straight ahead
TR06.02	Haverhill Road (eastbound)	Vehicular traffic must proceed straight ahead
TR11.01	Sawston Road (westbound)	Vehicular traffic must proceed straight ahead
TR11.02	Sawston Road (eastbound)	Vehicular traffic must proceed straight ahead
TR12.01	High Street (westbound)	Vehicular traffic must proceed straight ahead
TR12.02	High Street (eastbound)	Vehicular traffic must proceed straight ahead

PART 3

SPEED LIMITS

Note: where speed limits are indicated on the plans relating to this Part (the traffic regulation plans) but are not referenced in this schedule they indicate that national speed limits apply in accordance with either:

(a) the national speed limit set out in—

(i) section 86 (speed limits for particular classes of vehicles)(**a**) of and Schedule 6 (speed limits for particular classes of vehicles (**b**) to the 1984 Act; and

(ii) the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 as varied by the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 and continued indefinitely by Regulation 2 of the 70 Miles Per Hour, 60 Miles Per Hour and 50 Miles Per Hour (Temporary Speed Limit) (Continuation) Order 1978(**c**); or

(b) sections 81 (general speed limits for restricted roads) and 82(**d**) (what roads are restricted roads) of the 1984 Act (which make provision about speed limits on 'restricted roads' by reference to street lighting),

and are not subject to this Order. For details of the scheme lighting design, refer to the general arrangement plans.

(1) *Location*	*(2)* *Road name, number and length as shown on the rights of way and traffic regulations plans*	*(3)* *Speed Limit*
Trumpington, Cambridge	The whole of the realigned Addenbrooke's Roundabout from Point SL01.01 round to point SL01.01, a distance of 115 metres	20 miles per hour
Trumpington, Cambridge	Addenbrooke's Road from point SL01.02 at the realigned Addenbrooke's Roundabout to point SL01.03, a distance of 39 metres.	20 miles per hour
Parish of Great Shelford, South Cambridgeshire	Granham's Road from point SL03.01 to point SL03.02, a distance of 32 metres.	Removal of restricted road status
Parish of Great Shelford, South Cambridgeshire	Granham's Road from point SL03.02 to point SL03.03, a distance of 163 metres.	Removal of restricted road status 40 miles per hour
Parish of Great Shelford, South Cambridgeshire	Granham's Road from point SL03.03 to point SL03.04, a distance of 157 metres.	40 miles per hour
Parish of Stapleford, South Cambridgeshire	Haverhill Road from point SL06.01 to point SL06.02, a distance of 299 metres	40 miles per hour

(**a**) There are amendments to section 86 which are not relevant to this Order.
(**b**) There are amendments to Schedule 6 which are not relevant to this Order.
(**c**) S.I. 1978/1548. The 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 and the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 were not statutory instruments.
(**d**) There are amendments to sections 81 and 82 which are not relevant to this Order.

Parish of Stapleford, South Cambridgeshire	Haverhill Road from point SL06.02 to point SL06.03, a distance of 60 metres	30 miles per hour
Parish of Babraham, South Cambridgeshire	Sawston Road from point SL11.01 to point SL11.02, a distance of 303 metres	40 miles per hour
Parish of Babraham, South Cambridgeshire	Sawston Road and Babraham Road from point SL11.02 to point SL11.03, a distance of 23 metres	30 miles per hour
Parish of Babraham, South Cambridgeshire	High Street from point SL12.03 to point SL12.04, a distance of 38 metres	40 miles per hour
Parish of Babraham, South Cambridgeshire	High Street from point SL12.02 to point SL12.03, a distance of 204 metres	Removal of restricted road status 40 miles per hour
Parish of Babraham, South Cambridgeshire	High Street from point SL12.03 to point SL12.04, a distance of 22 metres	40 miles per hour

PART 4

PROHIBITION OF DRIVING EXCEPT FOR GUIDED TRANSPORT VEHICLES

(1) *Road*	*(2)* *Extent as shown on the rights of way and traffic regulations plans*
Road through the centre of Addenbrooke's Road Roundabout	Between point NE01.01 and point NE01.02

SCHEDULE 10

MODIFICATION OF EXISTING AGREEMENTS RELATING TO LAND

(1) *Plot no. on works and land plan*	*(2)* *Description of Land*	*(3)* *Description of existing agreements over land*	*(4)* *Description of modification provided for by this order*	*(5)* *Purpose for which modification is sought*
059	23008.71 square metres of agricultural land and retirement village lying to the south-east side of Hinton Way, Great Shelford, Cambridge	An agreement dated 15 December 2021 made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to land between Haverhill Road and Hinton Way, Stapleford,	The Original Agreement as varied by the First Deed of Variation shall be further varied as follows: Paragraph 2.1 of Part 1 of Schedule 2, shall be deleted and replaced with the	To extend the time before which open space required by the Original Agreement must be laid out within Plot 059 as shown on the works and land plan.

	Cambridge made between South Cambridgeshire District Council and David Ralph Chalk, Mark Russell Trafford and William Ralph Travers Chalk (the "Original Agreement") , as varied by an agreement made pursuant to Section 106A of the Town and Country Planning Act 1990 dated 11 May 2023 made between South Cambridgeshire District Council and Rangeford Stapleford Limited ("First Deed of Variation")	following paragraph 2.1: 2.1 the Owners shall not carry out any works to the NMOS Land (Phase 2) pursuant to the Planning Permission or transfer the NMOS Land (Phase 2) to an Approved Management Body until the earlier of: (a) the date that a TWA Order for the CSET Scheme has been made and the vesting or acquisition of the NMOS Land (Phase 2) by the Acquiring Authority has been completed; or (b) 31 December 2031 (subject to paragraph 2.2) 2.2 If as at 31 December 2031 the TWA Order is the subject of judicial review proceedings the date of 31 December 2032 mentioned at paragraph 2.1(b) above shall be extended until the earlier of: (a) the date that the judicial review proceedings are finally determined or

		withdrawn in circumstances where TWA Order is quashed; (b) 12 weeks following the date that proceedings are finally determined or withdrawn in circumstances where the TWA Order is upheld; (c) in any event 1 March 2033;

SCHEDULE 11

Articles 33 and 52

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) Sections 271 to 274(**a**) (power to extinguish rights of statutory undertakers etc, and power of statutory undertakers etc. to remove or re-site apparatus) of the 1990 Act apply in relation to any land acquired or appropriated by the undertaker under this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280(**b**) and 282(**c**), which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from 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.

(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that sub-paragraph, 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,

(**a**) Sections 272 to 274 were amended by paragraphs 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).
(**b**) 1990 c. 8, section 280 was amended by Schedule 17, paragraph 104(a) to 104(b) of the Communications Act 2003 and S.I. 2009/1307.
(**c**) 1990 c. 8, section 282 was amended by S.I. 2009/1307.

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.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which paragraph 2, or Part 3 of the 1991 Act, applies.

(6) In this paragraph—

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

"public utility undertakers" has the same meaning as in the 1980 Act(**a**).

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 11 (construction of new, and stopping up of existing, streets) any statutory utility whose apparatus is under, in, upon, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) The undertaker must give not less than 28 days' notice in writing of its intention to stop up any street under article 11 (construction of new, and stopping up of existing, streets, means of access etc.) to any statutory utility whose apparatus is under, in, upon, over, along or across that street.

(3) Where notice under sub-paragraph (2) has been given any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

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

(b) provide other apparatus in substitution for the existing apparatus and place it in that other position.

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

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

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

(5) If in the course of the execution of relocation works under sub-paragraph (3)—

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (4) is to be reduced by the amount of that excess.

(6) For the purposes of sub-paragraph (5)—

(**a**) This term is defined in Schedule 11, paragraph 13 of the Highways Act 1980 (c. 66).

(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.

(7) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (4) (and having regard, where relevant, to sub-paragraph (5)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(8) Sub-paragraphs (4) to (7) do not apply where the authorised works constitute major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(9) In this paragraph—

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

"relocation works" means work executed, or apparatus provided, under sub-paragraph (3); and

"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(6).

SCHEDULE 12

Article 54

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE 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—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**), belonging to or maintained by that utility undertaker;

(b) in that case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(**b**) for the purposes of gas supply;

(**a**) 1989 c. 29. The definition of "electrical plant" (in section 64) was amended by paragraph 38(3) of Schedule 6(II) to the Utilities Act 2000 (c. 27).

(c) in the case of water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(**a**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at future date) of that Act(**b**),

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

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

"plan" 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 the works to be executed; and

"utility undertaker" means—

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

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

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

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

for the area of the authorised works, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus

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

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 11 (construction of new, and stopping up of use of existing streets, means of access etc.), 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.

(**b**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by sections 3(2) and 76 of, and paragraph 4 of Schedule 6(I), and Schedule 8 to the Utilities Act 2000 (c. 27) words substituted by Regulation 18 of Part 5 to the Electricity and Gas (Internal Markets) Regulations 2011 S.I. 2011/2704.

(**a**) 1991 c. 56.

(**b**) 1991 c. 56, Section 102(4) was amended by section 96(1)(c), and parts added by Schedule 7, paragraph 90 of the Water Act 2003 (c. 37). Section 104 was amended by sections 96(4) and 101(23) of, part 3 of Schedule 9 to, the Water Act 2003, section 11(2)(a) of the Water Act 2014 (c. 21) and section 42(3) of the Flood and Water Management Act 2010 (c. 29).

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

Acquisition of land

5. Regardless of any provision in this Order or anything shown on the works and 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 (7).

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

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

(4) Any alternative apparatus to be constructed in land of 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 60 (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 60 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling

around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

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 59 (arbitration).

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

Retained apparatus

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under subparagraph (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) are to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (2) 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 7(2).

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

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

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, or involve embankment works within 10 metres of any electricity apparatus, the plan to be submitted to the utility undertaker under subparagraph (1) must be detailed, include a method statement and describe—

(a) the exact position of the works;

(b) the level at which they are proposed to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of all electricity apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 60 (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 must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

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

(5) An amount which apart from this sub-paragraph would be payable to 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 4 or 6(2) 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 utility 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 and, if such consent is withheld, has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

11. Where in consequence of the proposed construction of any part of the authorised works, 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 its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of 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 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

14. In this Part of this Schedule—

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

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

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 (electronic communications, networks and services) 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 (application of the electronic communications code) of the 2003 Act; and

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

(**a**) 2003 c. 21.
(**b**) 2003 c. 21, Schedule 3A, paragraph 7 was inserted by Schedule 1, paragraph 1 of the Digital Economy Act 2017 (c. 30).
(**c**) See section 106 of the Communications Act 2003 (c. 21).

"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.

15.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or its construction, or of any subsidence resulting from the authorised 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 the authorised works), or other property of an operator; or

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

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

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

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 60 (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 (street works in England and Wales) 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 works.

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

PART 3

FOR THE PROTECTION OF THE OPERATOR OF THE GRANTA BACKBONE NETWORK

16. For the protection of the operator of the Granta Backbone Network, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

17. In this Part of this Schedule—

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

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

"electronic communications apparatus" has the same meaning as in the electronic communications code;

(**a**) 2003 c. 21.
(**b**) 2003 c. 21, Schedule 3A, paragraph 7 was inserted by Schedule 1, paragraph 1 of the Digital Economy Act 2017 c. 30.

"the electronic communications code" has the same meaning as in Chapter 1 (electronic communications, networks and services) of Part 2 of the 2003 Act(**a**);

"GBN operator" means the Chancellor, Masters and Scholars of the University of Cambridge as the operator of the Granta Backbone Network;

"Granta Backbone Network" means—

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

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

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

"operator" means the operator of an electronic communications code network.

18. Subject to sub-paragraph (2), if as the result of the authorised works or its construction, or of any subsidence resulting from the authorised works—

(a) any damage is caused to any electronic communications apparatus belonging to the GBN operator (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 other property of the GBN operator; or

(b) there is any interruption in the supply of the service provided by the GBN operator, the undertaker must bear and pay the cost reasonably incurred by the GBN operator in making good such damage or restoring the supply and make reasonable compensation to the GBN 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 paragraph 18 imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the GBN operator, its officers, servants, contractors or agents.

19. The GBN operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

20. Any difference arising between the undertaker and the GBN operator under this Part of this Schedule must be referred to and settled by arbitration under article 60 (arbitration).

21. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and the GBN operator are regulated by the provisions of Part 3 (street works in England and Wales) 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 works.

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

(**a**) See section 106 of the Communications Act 2003 c. 21.

PART 4

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

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

Interpretation

24. In this Part of this Schedule—

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

"apparatus" any gas mains, pipes, pressure governors, ventilators, cathodic protections, (including transformed rectifiers and any associated groundbeds or cables), cables, marker posts, block valves, hydrogen above ground installations or other apparatus belonging to or maintained by Cadent for the purposes of Cadent's Undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent's Undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"Cadent" means Cadent Gas Limited (company number 10080864), whose registered office is at Pilot Way, Ansty, Coventry, CV7 9JU, and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Cadent's undertaking" means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 (licensing of public gas transporters)(**a**) of the Gas Act 1986 (as amended by the Gas Act 1995(**b**));

"commence" and "commencement" in relation to any part of the specified works referred to in the provisions of this Schedule means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) in respect of that part of the authorised works and includes any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground conditions, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

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

"functions" includes powers and duties;

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

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

(**a**) 1986 c.44. as amended by section 5 of the Gas Act 1995 c.45.
(**b**) 1995 c.45.

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

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

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

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

"rights" will include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

"specified works" means any of the authorised works or activities (including maintenance) undertaken in association with the authorised works which:

(a) must or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 28(1) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 28(1) or otherwise; or

(c) include any of the activities that are referred to in CD/SP/SSW/22 (Cadent's policies for safe working in the vicinity of Cadent's Assets) and any amendments or updates to this policy made after the date of this Order which have been notified in writing to the undertaker and a copy of any such policy shall be made available as soon as reasonably practicable.

On Street Apparatus

25.—(1) This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for:

(a) paragraphs 26 (apparatus of Cadent in stopped up streets), 30 (retained apparatus: protection), 31 (expenses) and 32 (indemnity); and

(b) where sub-paragraph (2) applies, paragraphs 28 (removal of apparatus) and 29 (facilities and rights for alternative apparatus).

(2) Paragraphs 26 and 28 of this Schedule must 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 the existing adopted public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) Paragraph 31 (expenses) does not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead –

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of the 1991 Act and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and Cadent in such proportions as may be prescribed by any such regulations.

Apparatus of Cadent in stopped up streets

26.—(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 11 (construction of new and

stopping up of existing streets, means of access etc.), if Cadent has any apparatus in the street or that is accessed via that street Cadent must be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or will procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 28.

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

Acquisition of land

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

(2) As a condition of agreement between the parties in sub-paragraph 28(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 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 shall be the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works or maintenance thereof.

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

(4) Any agreement or consent granted by Cadent under paragraph 28 or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph (1).

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

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 28 do not apply, the undertaker must, unless Cadent agrees otherwise:

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

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

Removal of apparatus

28.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 26, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 29(1)) below) the necessary facilities and rights:

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed as soon as reasonably practicable save that this obligation will not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

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

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph 29(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to

Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter may be referred to arbitration in accordance with paragraph 36 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

30.—(1) — Not less than 28 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

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

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

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

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

(b) Cadent must use reasonable endeavours to meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1) (or such longer period as may be agreed between the parties)and

(c) in relation to any work to which sub-paragraphs (1) or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing 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 (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

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

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement,

paragraphs 23 to 25 and 28 to 30 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 28(2).

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

(a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances and

(b) sub-paragraph (12) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with Cadent's policies for safe working in proximity to gas apparatus "CD/SP/SSW/22 (Cadent's policies for safe working in the vicinity of Cadent's Assets" 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 works (including such an event attributable to its maintenance) the undertaker must 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 31.

Expenses

31.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent within 28 days of receipt of an invoice or a costs schedule all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;

(i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 28(3) if it elects to do so; or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and

(g) any watching brief pursuant to sub-paragraph 30(6).

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 60 (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 or appropriate in the circumstances (including due to statutory or regulatory changes) 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 must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

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

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1)must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on 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

32.—(1) — Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised 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 must—

(a) bear and pay within 28 days of receipt of an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless

Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman-like manner or in a manner that does not accord with the approved plan.

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

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

Enactments and agreements

33. 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 will affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

34.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 28(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 30, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

35. If in consequence of the agreement reached in accordance with sub-paragraph 27(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

36. Save for differences or disputes arising under sub-paragraphs 27(1) and paragraph 30 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 60 (arbitration).

Notices

37. Notwithstanding article 58 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 30(1) must be sent to Cadent Gas Limited Plant Protection by e-mail to plantprotection@cadentgas.com copied by e-mail to landservices@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

Application

38. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

39. In this Part of this Schedule—

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

"alternative apparatus" means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

"Anglian Water" means Anglian Water Services Limited (Company number: 02366656);

"apparatus" means:

(a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of sewerage; and

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991(**b**); and

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(**c**) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain, or sewerage disposal works, at future date) of that Act; and

(d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and

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

and for the purpose of this definition, where words are defined by section 219 (general interpretation) of that Act, they shall be taken to have the same meaning

"functions" includes powers and duties;

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

"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.

On street apparatus

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

Apparatus in stopped up streets

41. Where any street is stopped up under article 11 (construction of new and stopping up of existing streets, means of access etc.) where Anglian Water has apparatus in the street or accessed

(**a**) 1991 c. 22.
(**b**) 1991 c. 56.
(**c**) 1991 c. 56. Added by Schedule 7, paragraph 90 of the Water Act 2014 c. 21.

by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must use reasonable endeavours to grant or procure the grant to Anglian Water legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 44 or the power of the undertaker to carry out works under paragraph 46.

42. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 12 (temporary stopping up of streets), Anglian Water 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

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

Removal of apparatus

44.—(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 Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until

(a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (7); and

(b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 45.

(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 Anglian Water 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 Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 60 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 60 (arbitration), and after the grant to Anglian Water 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 Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay and where reasonably practicable under the superintendence (subject to compliance with all health and safety legislation in relation to the work), if given, and to the reasonable satisfaction of Anglian Water.

(7) Notice under sub-paragraph (6) that Anglian Water desires the undertaker to execute any work, or part of any work, must be given within 14 days of agreement under sub-paragraph (4) or, in default of agreement, within 14 days of the date of settlement by arbitration under sub-paragraph (4).

(8) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(9) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use reasonable endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to:

(a) make network contingency arrangements; or

(b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

45.—(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 Anglian Water or in default of agreement settled by arbitration in accordance with article 60 (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 Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016(**a**) (as amended) or other such legislation.

Retained apparatus

46.—(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 (or any means of access to it) the removal of which has not been required by the

(**a**) S.I. 2016 No. 1154.

undertaker under paragraph 44(2), the undertaker must submit to Anglian Water 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 Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any reasonable requirements made by Anglian Water 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 Anglian Water 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 38 to 40 and 44 to 46 apply as if the removal of the apparatus had been required by the undertaker under paragraph 44(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 Anglian Water 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 and will keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its sewerage network and on end-users of the sewerage services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

(a) four metres where the diameter of the pipe is less than 250 millimetres;

(b) five metres where the diameter of the pipe is between 250 and 400 millimetres, and

(c) a distance to be agreed on a case by case basis and before the submission of the Plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres up to a maximum of 7.5 metres.

Expenses and costs

47.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water 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 this Part of this Schedule.

(2) There must be deducted from any sum payable under subparagraph (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 60 (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 Anglian Water by virtue of subparagraph (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 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 Anglian Water 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 can be shown to confer on Anglian Water a 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.

48.—(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 42 or 44(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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

(a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and

(b) make reasonable compensation to Anglian Water 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 Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

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

(4) Anglian Water must:

(a) give the undertaker reasonable notice of any such claim or demand;

(b) not admit any liability or make any offer to settle or any settlement or compromise, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) 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;

(c) take such steps as are within Anglian Water's control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands; and

(d) keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them.

Cooperation

49. Where in consequence of the proposed construction of any of the authorised works, the undertaker or Anglian Water requires the removal of apparatus under paragraph 44(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 45(2) the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

50. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

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

52. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

Arbitration

53. Any dispute arising between the undertaker and Anglian Water under this Part of this Schedule must, unless agreed otherwise in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 60 (arbitration).

PART 6

FOR THE PROTECTION OF SOUTH STAFFORDSHIRE WATER PLC

Application

54. For the protection of SSW the following provisions have effect unless otherwise agreed in writing between the undertaker and SSW.

55. The provisions of Part 1 of Schedule 12 (protective provisions for the protection of Electricity, Gas, Water and Sewerage Undertakers), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

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

Interpretation

57. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable SSW to fulfil its statutory functions for water supply in a manner no less efficient than previously;

"apparatus" means—

(a) mains, pipes or other apparatus belonging to or maintained by SSW for the purposes of water supply; and

(b) any drain or works, in each case for the purposes of water supply, vested in SSW under the Water Industry Act 1991(**a**),

and includes any manholes, ventilating shafts, pumps or other accessories forming part of any such drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

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

"plans" means a plan which includes sections, drawings, specifications and method statements; and

"SSW" means South Staffordshire Water Plc (company number: 02662742) and includes its successors in function as a water undertaker within the meaning of the Water Industry Act 1991 for the area of the authorised works or any successor in respect of any land interests which may exist at the time of this Order only where the interest is required for SSW to undertake its function as a water undertaker at the date of this Order.

Acquisition of apparatus

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

Alternative apparatus

59.—(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, that apparatus must not be removed under this Part of this Schedule, and any right of SSW 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 SSW.

(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, the undertaker must give to SSW 28 days written notice of that requirement, together with plans of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between SSW acting reasonably and the undertaker such agreement to be within 42 days of the service of a notice under sub-paragraph (2), or in default of such agreement settled by arbitration in accordance with article 60 (arbitration).

(4) In any case where alternative apparatus is to be provided or constructed under sub-paragraphs (2) or (3), or if in consequence of the exercise of any of the powers conferred by this Order SSW reasonably needs to remove any of its apparatus, the undertaker must, subject to sub-paragraph (5), afford to SSW 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 and SSW is entitled to recover its reasonable costs incurred in securing such necessary facilities and rights from the undertaker subject to paragraph 62(3) below.

(5) 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 (4), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SSW must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(**a**) 1991 c.56.

(6) SSW must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 59 (arbitration), and after the grant to SSW of any such facilities and rights as are referred to in sub-paragraph (4) or (5), proceed without unreasonable delay (having regard to the operational requirements of SSW) to construct and bring into operation the alternative apparatus and subsequently to allow the undertaker to remove any apparatus as required to be removed by the undertaker (acting reasonably) under the provisions of this Part of this Schedule.

(7) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to SSW 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 SSW, must be executed by the undertaker without unreasonable delay under the superintendence of and to reasonable satisfaction of SSW (subject to compliance with all health and safety legislation in relation to the works).

(8) Nothing in sub-paragraph (6) 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 5 metres of the apparatus without the written consent of SSW (such consent not to be unreasonably withheld or denied).

(9) In relation to any works for the provision of alternative apparatus which will or may be situated on, over or within 5 metres measured in any direction of any apparatus, the plan to be submitted to SSW under sub-paragraph (2) must be detailed, include a method statement and describe—

(a) the exact position of the works;

(b) the level at which they are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation and positioning of plant;

(d) the position of all apparatus including existing apparatus and apparatus to be retained;

(e) by way of detailed drawings, every alteration proposed to be made to such apparatus; and

(f) any maintenance required.

60.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to SSW 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 acting reasonably and SSW or in default of agreement settled by arbitration in accordance with article 60 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed within 5 metres of any existing apparatus of SSW, the arbitrator must—

(a) have regard to all reasonable requirements of SSW for ensuring the protection of the existing apparatus and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the existing apparatus; 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 existing apparatus 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 arbitrator less favourable on the whole to SSW than the facilities and rights enjoyed by SSW 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 SSW as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Existing apparatus: protection and access

61.—(1) Not less than 35 days before starting the execution of any of the authorised 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 (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 59(2), the undertaker must submit to SSW a plan of the works to be executed.

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

(3) Any requirements made by SSW under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which plans and a description under sub-paragraph (1) are submitted to it.

(4) If SSW 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 54 to 60 apply as if the removal of the apparatus had been required by the undertaker under paragraph 59(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 35 days before commencing the execution of any works, new plans and description instead of the plans and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plans and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to SSW notice as soon as is reasonably practicable and plans and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near SSW's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

(a) 4 metres where the diameter of the pipe is less than 250 millimetres;

(b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and

(c) a distance to be agreed on a case by case basis and before the submission of the Plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres up to a maximum of 7.5 metres.

Expenses

62.—(1) Subject to article 59 (no double recovery) and the following provisions of this paragraph, the undertaker must repay to SSW the reasonable costs incurred by SSW in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including reasonable costs or compensation payable in connection with the acquisition of land or any interest in land for that purpose) which may be required in consequence of the execution of any of the authorised works.

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

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; 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 60 (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 type, capacity, dimensions, or at the existing depth required to maintain the existing operational requirement, as the case may be, the amount which apart from this paragraph would be payable to SSW by virtue of sub-paragraph (1) is to be reduced by the amount of that excess (save to the extent it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth).

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

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

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

(5) An amount which apart from this sub-paragraph would be payable to SSW in respect of works under sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on SSW 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.

(6) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (4) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 60 (arbitration).

Damage to apparatus: costs, losses, etc.

63.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised works 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 SSW or there is any interruption in any service provided or in the supply of any goods, by SSW the undertaker must—

(a) bear and pay the cost reasonably incurred by SSW in making good such damage or restoring the supply; and

(b) make reasonable compensation to SSW including in relation to any claim or demand as per sub-paragraph (3) and for any other expenses, loss, damages, penalty or costs incurred by SSW, 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 of the following:

(a) any damage or interruption to the extent that it is attributable to the wilful act, neglect or default of SSW, its officers, workers, servants, contractors or agents; and

(b) any damage or interruption to the extent that it is attributable to work carried out by SSW save that this shall not apply where that is as a result of sub-paragraph (1)(a) above.

(3) SSW must:

(a) give the undertaker reasonable notice of any such claim or demand;

(b) not admit any liability or make any offer to settle or any settlement or compromise without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) and if such consent is not provided by the undertaker within 21 days, the undertaker shall assume sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand;

(c) take such steps as are within SSW's control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands; and

(d) where required in agreement with both parties, keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them.

Enactments and agreements

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

Arbitration

65. Any difference or dispute arising between the undertaker and SSW under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SSW, be determined by arbitration in accordance with article 60 (arbitration).

Payments

66.—(1) In the event that any payment is not made by the undertaker to SSW within thirty (30) working days of the due date (which in the case of any costs, charges and expenses to be incurred by SSW shall be the date on which the undertaker is notified of such costs, charges and expenses actually being incurred by way of receipt of an invoice), then SSW shall be entitled to interest on the outstanding balance (excluding any payments made by the undertaker to SSW on account) at a rate of 4% above the base rate for the time being of Barclays Bank Plc, from the due date until the date payment is actually made.

(2) All payments made by the undertaker under this this Part of this Schedule shall be made by direct bank transfer to an account in England nominated in advance by SSW for that purpose.

PART 7

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

67.—(1) The following provisions of this Part of this Schedule apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

"the Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal and "construct" and "constructed" are to be construed accordingly;

"drainage work" means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"the fishery" means any waters containing fish and fish in, or migrating to or from such waters and the spawn, spawning grounds, habitat or food of such fish;

"main river" has the same meaning as in section 221 (general interpretation) of the Water Resources Act 1991;

"plans" includes sections, drawings, specifications and method statements; and

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;

(c) cause obstruction to the free passage of fish or damage to any fishery;

(d) affect the conservation, distribution or use of water resources; or

(e) affect the conservation value of any main river and habitats in its immediate vicinity.

68.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 68.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval or where further particulars are submitted under sub-paragraph (1) within 2 months of the submission of those particulars, and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

69. Without limitation on the scope of paragraph 68, the requirements which the Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

70. Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 69, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 74, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it

has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 79.

71.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 74, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (1) on the undertaker , the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (1), the Agency must not except in a case of an emergency exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 79.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not precluded by the powers of the Order from doing so; or

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provision of this Part of this Schedule.

72. Subject to paragraph 74, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

73.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 74, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (1), the Agency may take those steps and may recover from the undertaker the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 74, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker the reasonable cost of so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

74. Nothing in paragraphs 70(4), 71(3), 72, 73(3) and 73(4) authorises the Agency to execute works on or affecting a guided busway system without the prior consent in writing of the undertaker, such consent not to be unreasonably withheld or delayed.

75. If by reason of the construction of any specified work the Agency's access to flood defences or equipment maintained by the Agency for flood defence purposes is materially obstructed, the undertaker must as soon as reasonably practicable provide such alternative means of access as will (so far as reasonably practicable) allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction.

76. The undertaker must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule.

77.—(1) Without affecting the other provisions of this Part of this Schedule, the undertaker must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(b) any damage to the fishery;

(c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;

(d) any flooding or increased flooding of any such lands; or

(e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

78. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

79. Any dispute arising between the undertaker and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 60 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and Cambridgeshire County Council, acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 8

FOR THE PROTECTION OF THE LEAD LOCAL FLOOD AUTHORITY

80.—(1) The following provisions of this Part of this Schedule apply for the protection of the lead local flood authority unless otherwise agreed in writing between the undertaker and the lead local flood authority.

(2) In this Part of this Schedule—

"construction" includes execution, placing, altering, replacing, relaying and removal and "construct" and "constructed" are to be construed accordingly;

"drainage work" means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

"lead local flood authority" means in relation to an ordinary watercourse the lead local flood authority concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991;

"ordinary watercourse" has the meaning given by the Land Drainage Act 1991;

"plans" includes sections, drawings, specifications and method statements; and

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 5 metres of a drainage work or is otherwise likely to affect any drainage work.

81.—(1) Before beginning to construct any specified work, the undertaker must submit to the lead local flood authority plans of the specified work and such further particulars available to it as the lead local flood authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the lead local flood authority, or determined under paragraph 88.

(3) Any approval of the lead local flood authority required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the lead local flood authority may make for the protection of any drainage work.

(4) The lead local flood authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

82. Without limitation on the scope of paragraph 81, the requirements which the lead local flood authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

83.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the lead local flood authority under paragraph 82 must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the lead local flood authority,

and an officer of the lead local flood authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the lead local flood authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work or any protective work required by the lead local flood authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the lead local flood authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the lead local flood authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the lead local flood authority must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

84.—(1) Subject to sub-paragraph (3) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the lead local flood authority, the lead local flood authority may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the lead local flood authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the lead local flood authority reasonably requires.

(3) This paragraph does not apply to—

(a) drainage works which are vested in the lead local flood authority, or which the lead local flood authority or another person is liable to maintain and is not precluded by the powers of the Order from doing so; or

(b) any obstruction of a drainage work for the purposes of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

85. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the lead local flood authority and if the undertaker fails to do so, the lead local flood authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in so doing.

86. The undertaker must pay all costs, charges and expenses which the lead local flood authority may reasonably incur or have to pay—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in the inspection of the construction of the specified works or any protective works required by the lead local flood authority under this Part of this Schedule.

87. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the lead local flood authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

88. Any dispute arising between the undertaker and the lead local flood authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 60 (arbitration).

PART 9

FOR THE PROTECTION OF HOBSON'S CONDUIT TRUST

Application

89. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the Trust.

Interpretation

90. In this Part of this Schedule—

"construction", in relation to any specified work or protective work, includes—

(a) the execution and placing of that work; and

(b) any relaying, renewal or maintenance of that work,

and "construct" and "constructed" are construed accordingly;

"detriment" means any damage to the waterway, including—

(c) any obstruction of, or interference with, or hindrance or danger to, the waterway;

(d) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works or lands forming part of the waterway;

(e) the deposit of materials or the siltation of the waterway so as to damage the waterway;

(f) the pollution of the waterway; and

(g) any significant alteration in the water level of the waterway, or significant interference with the supply of water to it, or drainage of water from it (save to the extent that such alteration or interference was otherwise approved by the Trust);

"plans" includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

"practical completion" means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression "practically complete" and "practically completed" are to be construed accordingly;

"protective work" means a work constructed following a request from the Trust under paragraph 94(2);

"specified work" means so much of any of the authorised works as is situated upon, across, under, over or within 5 metres of the waterway, or may in any way adversely affect the waterway but does not include any temporary bridging of the waterway for the purpose of carrying a temporary diversion of the path for walkers and cyclist between Granham's Road, Great Shelford and Addenbrookes Road, Cambridge;

"the Trust" means the Hobson's Conduit Trust (charity registration no. 204644);

"the waterway" means Hobson's Brook, and includes any works belonging to the Trust, or under its management or control, which are held or used by the Trust in connection with Hobson's Brook.

Exercise of Powers

91.—(1) The undertaker must not exercise the powers conferred by or under this Order to acquire an interest of the Trust except with the consent of the Trust.

(2) The consent of the Trust under sub-paragraph (1) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

92. The undertaker must not use any land or property of the Trust forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of a specified work other than—

(a) with the consent in writing of the Trust whose consent must not be unreasonably withheld or delayed; and

(b) subject to compliance with such reasonably practicable requirements as the Trust may from time to time specify—

(i) for the prevention of detriment; or

(ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 6.

Survey of waterway

93.—(1) Before the commencement of the initial construction of any part of a specified work and again following practical completion of the specified work the undertaker must bear the reasonable cost of the carrying out by a qualified surveyor ("the surveyor"), to be approved by the Trust and the undertaker, of a condition survey ("the survey") of so much of the waterway and of any land and works of the undertaker in existence at the date of the coming into force of this Order which may be affected by the specified works.

(2) For the purposes of the survey the undertaker must—

(a) on being given reasonable notice afford reasonable facilities to the surveyor for access to the site of the specified work; and

(b) supply the surveyor as soon as reasonably practicable with all such information as the surveyor may reasonably require with regard to the specified work or the method of their construction.

(3) The reasonable costs of the survey may include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be required to be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though those measures were specified works.

(4) Copies of the survey must be provided to the Trust and the undertaker at no cost to the Trust.

Notification, consultation, protective works

94.—(1) The undertaker must at least 28 days before commencing construction of any specified work including any temporary works supply to the Trust proper and sufficient plans of that work and such further particulars available to it as the Trust may within 14 days of the submission of those plans reasonably require for the approval.

(2) The Trust may within 14 days of being consulted subject to paragraph (1) notify the undertaker of any recommended amendments to the plans submitted to it, including, if reasonably required by the Trust, any protective works and provide reasons for those recommendations.

(3) The undertaker must within 14 days of receiving recommendations of suggested amendments pursuant to sub paragraph (2) above consider the suggested recommendations and provide to the Trust the Undertaker's reasons for accepting or rejecting the recommendations made by the Trust and provide amended plans to the Trust illustrating the recommendations accepted by the Undertaker.

Carrying out specified works and protective works

95.—(1) Any specified works or protective works must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans provided in accordance with paragraph 94(1) including any changes made under paragraph 94(3);

(b) under the supervision (if given) and to the reasonable satisfaction of the Trust;

(c) in such manner as to cause as little detriment as is reasonably practicable; and

(d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents, except to the extent agreed by the Trust.

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway which will reduce the dimensions of the waterway other than with the written consent of the Trust.

(3) Following the completion of the construction of the specified works and any temporary works have removed the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

96. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution of the waterway or the deposit of materials in it and must take such steps as the Trust may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access

97.—(1) The undertaker on being given reasonable notice must—

(a) at all times allow reasonable facilities to the Trust for access to a specified work during its construction; and

(b) supply the Trust with all such information as the Trust may reasonably require with regard to a specified work or the method of constructing it.

(2) The Trust on being given reasonable notice must—

(a) at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction; and

(b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Trust's reasonable costs in relation to the supply of such information.

Maintenance of the specified works and protective works

98. If at any time after the completion of a specified work or a protective work, not being a work vested in the Trust, the Trust gives notice to the undertaker informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Expenses

99.—(1) Subject to sub-paragraph (2), the undertaker must repay to the Trust all fees, costs, charges and expenses reasonably and properly incurred by the Trust—

(a) in constructing any protective works agreed to by the undertaker under paragraph 94(3);

(b) in respect of the approval by the Trust of plans submitted by the undertaker and the reasonable supervision by the Trust of the construction or repair of a specified work and any protective works; and

(c) in respect of the employment during the construction of the specified works or any protective works of any inspectors and other persons whom it is reasonably necessary to appoint for inspecting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the specified works or any protective works.

(2) Nothing in this paragraph shall impose any liability on the undertaker with respect to any fees, costs, charges and expenses attributable to the act, neglect, default or omission of the Trust or its servants, contractors or agents and any liability of the undertaker under this paragraph shall be reduced proportionately to the extent to which any fees, costs, charges or expenses are is attributable to the act, neglect, default or omission of the Trust or its servants, contractors or agents.

Detriment to the waterway

100.—(1) If any detriment to the waterway is caused during the construction of the specified works or the protective works carried out by the undertaker, the undertaker (if reasonably required by the Trust) must use reasonable endeavours to make good such detriment or pay compensation for any loss which the Trust may sustain.

(2) the undertaker must pay to the Trust the reasonable and proper expenses to which the Trust may be put if the Trust takes reasonable steps to make good such detriment that can be demonstrated by the Trust to have been caused to the waterway during the specified works.

Disputes

101. Any difference arising between the undertaker and the Trust under this Part of this Schedule (other than a difference as to the meaning or construction of the Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 60 (arbitration).

PART 10

FOR THE PROTECTION OF RAILWAY INTERESTS

102. The 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 116 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

103. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

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

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

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, United Kingdom, SE1 8SW) 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) 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 and any successor to Network Rail Infrastructure Limited's railway undertaking;

"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 and-

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

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

"regulatory consents" means any consent or approval required under:

(c) the Railways Act 1993;

(d) the network licence; or

(e) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised works;

"specified work" means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to construct and maintain works) in respect of such works.

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

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

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

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

105.—(1) The undertaker must not exercise the powers conferred by—

(a) article 5 (power to construct and maintain works);

(b) article 18 (discharge of water);

(c) article 19 (authority to survey and investigate land, etc.);

(d) article 23 (power to acquire land);

(e) article 26 (power to acquire new rights and imposition of restrictive covenants);

(f) article 28 (temporary use of land for construction of works);

(g) article 29 (temporary use of land for maintenance of works);

(h) article 33 (extinguishment or suspension of private rights)

(i) article 34 (power to acquire subsoil or airspace only);

(j) article 45 (power to lop trees overhanging the guided busway system);

(k) article 54 (statutory undertakers, etc.);

(l) the powers conferred by section 11(3) (power of entry) of the 1965 Act; or

(m) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

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, article 33 (extinguishment or suspension of private rights) or article 54 (statutory undertakers, etc.) in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) 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 but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

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

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their 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 their 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 their reasonable satisfaction.

107.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 106(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 106;

(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.

108. 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 they may reasonably require with regard to a specified work or the method of constructing it.

109. 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.

110.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified 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 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) 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 106(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 111(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.

111. 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 106(3) or in constructing any protective works under the provisions of paragraph 106(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.

112.—(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 106(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 106(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 106(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised works the undertaker shall test the use of the authorised works in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing 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;

(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; and

(d) the undertaker shall not allow the use or operation of the authorised works in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(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 107.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 116(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 111(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 60 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

113. 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.

114. 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.

115. 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.

116.—(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 (subject to article 59 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation 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;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised works;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised works by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised works;

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–

(a) give the undertaker reasonable written notice of any such claims or demands

(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant 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, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

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

117. 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 116) 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).

118. 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.

119. 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.

120. 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.

121. 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 58 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

122. In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 112(11)) the provisions of article 60 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a

single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

PART 11

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

123.—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 49 (Powers of disposal, agreements for operation, etc.)–

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to paragraph 132(3)(b).

Interpretation

124. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term in article 2 (Interpretation) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" in relation to any part of the authorised works referred to in the provisions of this Schedule means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) in respect of that part of the authorised works save that for the purposes of this Part of this Schedule shall also include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, 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 National Gas (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 National Gas's approval a ground mitigation scheme;

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

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

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

"National Gas" means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

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

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 129(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 129(2) or otherwise; or

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties".

"undertaker" means the undertaker as defined in article 2(1) of this Order;

On Street Apparatus

125. Except for paragraphs 126 (apparatus in stopped up streets), 130 (retained apparatus: protection), 131 (expenses) and 132 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Gas in stopped up streets

126.—(1) Where any street is stopped up under article 11 (Construction of new and stopping up of existing streets, means of access, etc.), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that

apparatus under paragraph 129 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 131.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (Temporary stopping up of streets), National Gas 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

127.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of National Gas otherwise than by agreement.

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

(3) Save where otherwise agreed in writing between National Gas and the undertaker the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas or other enactments relied upon by National Gas 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 National Gas under paragraph 130 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

128.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas 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 National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative

apparatus and afford to National Gas to its reasonable satisfaction (taking into account paragraph 129(1)) 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, National Gas must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed including if necessary using its powers of compulsory purchase.

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

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

Facilities and rights for alternative apparatus

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

(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 less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 136 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

130.—(1) Not less than 28 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas 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-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must 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 National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where under sub-paragraph (6) National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas' reasonable satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 28 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas 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, paragraphs 123 to 125 and 127 to 129 apply as if the removal of the apparatus had been required by the undertaker under paragraph 129(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 specified 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 National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works the undertaker shall implement an appropriate ground mitigation scheme save that National Gas 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 131.

Expenses

131.—(1) Subject to the following provisions of this paragraph, save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas:

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 128(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 136 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas 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

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

(a) bear and pay within 30 days of an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and

(b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party other than arising from any default of National Gas.

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

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

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;

(b) any part of the authorised works or any other works authorised by this Part of this Schedule carried out by National Gas 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 132; or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

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

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

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

Co-operation

134.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 128(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 130, 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 works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval 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

135. If in consequence of the agreement reached in accordance with paragraph 127(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 National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

136. Any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 60 (arbitration).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Cambridgeshire County Council to construct a new guided busway system between Francis Crick Avenue within Cambridge Medipark, to a new transport hub facility next to the A11 at Babraham, south east of Cambridge, and carry out all associated works.

The Order permits Cambridgeshire County Council to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the works.

A copy of the plans, engineering drawings and sections, book of reference and environmental statement mentioned in this Order and certified in accordance with article 57 (certification of plans, etc.) may be inspected free of charge during working hours at Cambridgeshire County Council. Shire Hall, Cambridge CB3 0AP.